



Environment Protection Authority

Regulatory Impact Statement

Protection of the Environment Operations (General) Regulation 2021



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The Protection of the Environment Operations (General) Regulation 2021 came into force on 1 September 2021. It replaces the Protection of the Environment Operations (General) Regulation 2009 which was automatically repealed on 1 September 2021.

This Regulatory Impact Statement (RIS) details the EPA's approach to the making of the POEO General Regulation 2021 and outlines a subsequent POEO General Regulation planned for 2022.

Summary

The NSW Environment Protection Authority (EPA) is the primary environmental regulator for NSW. We partner with business, government and the community to reduce pollution and waste, protect human health, and prevent degradation of the environment.

The *Protection of the Environment Operations Act 1997* (POEO Act) is the key piece of environment protection legislation administered by the EPA to deliver these outcomes through managing environmental issues, responding to pollution incidents and emergencies, and enforcing environmental regulations.

The Protection of the Environment Operations (General) Regulation 2021 (the POEO General Regulation 2021) is made under the POEO Act and provides the details to implement legal frameworks established by the POEO Act.

The POEO General Regulation 2021 should support the operation of the POEO Act at least cost to the community and assist the EPA (and other relevant appropriate regulatory authorities (ARAs)) to achieve the objectives of the POEO Act and other legislation it administers.

Under the *Subordinate Legislation Act 1989*, the Protection of the Environment (General) Regulation 2009 (POEO General Regulation 2009) was due for repeal on 1 September 2021. To meet the 1 September 2021 deadline, the POEO General Regulation 2021 was made as an interim regulation, adopting the provisions of the POEO General Regulation 2009 with minor changes.

This has allowed the EPA to continue to progress more complex amendments through a subsequent regulation which will come into force by 1 September 2022.

By making the POEO General Regulation 2021 in the same form as the POEO General Regulation 2009 with only minor amendments, the legal frameworks established by the POEO Act remain effective and enforceable, and allow for the continued recovery of costs of administering the POEO Act and the POEO General Regulation.

The making of the POEO General Regulation 2021, given that it is on largely the same terms as the POEO General Regulation 2009, is not expected to have any operational or financial impacts on stakeholders or the community. The minor amendments include clarification of ARAs and clarification of certain lands. Administrative changes include replacing the alpha numerical numbering with numerical numbering only and removing repealed and outdated references.

Consultation

The Statute Law (Miscellaneous Provisions) Bill 2021 put before Parliament sought to postpone the automatic repeal of the POEO General Regulation 2009 on 1 September 2021. This postponement was initiated due to the complexity of proposed amendments to the POEO General Regulation 2009 and to enable a genuine and thorough consultation with stakeholders on this substantive review.

Parliament sittings had been cancelled in August due to the COVID-19 Delta variant outbreak in NSW. As a result, the 12-month postponement of the regulations was not able to occur through the Bill.

Due to the specific circumstances of the case and that it was in the public interest for the matters regulated by the POEO General Regulation 2009 to continue, the following actions were taken.

The Minister for Energy and Environment certified that the POEO General Regulation 2021 was made in accordance with the requirements of the Subordinate Legislation Act 1989 and the Minister administering the Subordinate Legislation Act 1989 issued a certificate under s6(1)(b) of that Act which dispensed with the requirements to prepare and publicly consult on a RIS before the

POEO General Regulation 2021 was made. Instead, the EPA must prepare and consult on a RIS within 4 months of the POEO General Regulation 2021 being made.

The EPA is now consulting on the minor amendments made and POEO General Regulation 2021 as a whole. Submissions received will be considered as part of more significant reforms to the POEO General Regulation 2021 as part of a subsequent regulation that will come into force on or before 1 September 2022.

The EPA will be undertaking consultation with stakeholders including licensees, other ARAs and the general community as part of these more significant reforms. This consultation phase will ensure that stakeholders have detailed understanding of the proposed changes, how each change may affect each stakeholder group, and allow for submissions to be received and considered by the EPA.

1. Introduction

The *Protection of the Environment Operations Act 1997* (POEO Act) is the key piece of environment protection legislation administered by the Environment Protection Authority (EPA). The Protection of the Environment Operations (General) Regulation 2021 (POEO General Regulation 2021) is made under the POEO Act and provides the details to implement legal frameworks established by the POEO Act.

Section 5 and Schedule 2 of the Subordinate Legislation Act 1989 outline the matters which must be addressed in a RIS. This RIS complies with section 5 and Schedule 2 of the Subordinate Legislation Act 1989.

2. Legislation

The NSW Government has comprehensive legislation in place to protect public health and the environment from potential harm. A major component is the POEO Act that was enacted in 1997. This section outlines the legislative framework within which the POEO General Regulation operates. It is subordinate to the POEO Act and gives effect to many of the powers provided by the Act.

2.1. Protection of the Environment Operations Act 1997

The POEO Act commenced operation on 1 July 1999. The object of the Act is to achieve the protection, restoration and enhancement of the quality of the NSW environment.

The aims of the POEO Act are achieved through a number of tools within it. The Act establishes the following to deal with activities that have an impact on the environment:

- appropriate regulatory authorities (ARAs) for activities that have an impact on the environment
- environment protection licences to regulate certain activities that have an impact on the environment
- environment protection notices, which can be issued in respect of activities that have an impact on the environment
- duty to notify and prepare pollution incident response management plans (PIRMPs) for certain activities
- establishment of environmental offences for certain actions that cause harm to the environment
- requirements relating to environmental audits
- specific requirements in relation to certain activities, such as motor vehicles.

2.2. Protection of the Environment Operations (General) Regulation 2021

The POEO General Regulation 2021 commenced on 1 September 2021 and replaced the Protection of the Environment Operations (General) Regulation 2009.

The POEO General Regulation 2021:

- provides for the administration of environment protection licences
- establishes the method of calculating licence fees, including load-based licence fees, and environment protection notice fees
- prescribes certain matters for the purposes of the definition of water pollution

- gives effect to and requires compliance with the National Environment Protection (National Pollutant Inventory) Measure made under the National Environment Protection Council Act 1994 (Commonwealth)
- creates the Upper Hunter and Newcastle Air Quality Monitoring Networks
- prescribes requirements in respect of pollution incident response management plans
- prescribes the appropriate regulatory authority (ARA) for certain activities, such as Transport for NSW and local councils
- creates exemptions from certain provisions of the POEO Act
- prescribes certain offences as penalty notice offences and prescribes penalty notice amounts.

3. Need for government action

The *Guide to Better Regulation* requires that a RIS establishes the need for government action in relation to proposed amendments.

The POEO General Regulation 2021 was made carrying over the provisions of the POEO General Regulation 2009 with minor amendments. The POEO General Regulation 2021 came into force on 1 September 2021. The POEO General Regulation provides for the administration of the POEO Act.

If the POEO General Regulation 2009 had not been replaced, there would be significant adverse consequences to the operability and effectiveness of the POEO Act, including the EPA's regulatory powers and cost recovery capabilities. These consequences would affect a broad range of stakeholders, including the EPA itself, the EPA's regulated community and the general community as a whole.

Adverse consequences that would have resulted from allowing the POEO General Regulation 2009 to be repealed include:

- the removal of agencies prescribed as appropriate regulatory authorities, creating confusion and possibly an inability to regulate certain activities
- the removal of the requirements on licensed operators to comply with pollution incident response planning and testing, National Pollutant Inventory (NPI) reporting and participation in air monitoring networks
- the EPA being unable to administer environment protection licences and collect fees for licensing, including administrative fees and load-based licence fees and
- ARAs being unable to issue penalty notices for offences.

4. Objective of government action

The objective of government action is to ensure the POEO General Regulation 2021 continues to support the operation of the POEO Act at least cost to the community and assist the EPA (and other relevant ARAs) to achieve the objectives of the POEO Act and other legislation it administers. The POEO General Regulation 2021 was made to ensure this objective was met.

In its review of the POEO General Regulation 2009, the EPA identified amendment opportunities to improve the effectiveness and operability of the POEO General Regulation 2009 and Schedule 1 of the POEO Act. Due to the complexity of some of the amendments being evaluated, the current time constraints (i.e. deadline of 1 September 2021) and the ongoing impacts of COVID-19 on the workforce, the EPA made the POEO General Regulation 2021, carrying over the provisions of the POEO General Regulation 2009 with only minor amendments. These amendments are detailed in Section 5 and Appendix B.

Now that the POEO General Regulation 2021 is in force, the EPA is continuing to progress more complex amendments (which will be informed by public consultation) to further meet the objectives outlined above.

5. Changes to the POEO General Regulation

Based on the *NSW Government Guide to Better Regulation*, the changes in the POEO General Regulation 2021 are considered non-significant and have been assessed in accordance with the NSW Better Regulation Principles. Appendix A sets out the Better Regulation Principles and where they are addressed in this RIS.

The provisions from the POEO General Regulation 2009 that were carried over and amended in the POEO General Regulation 2021 are considered only minor or administrative in nature. The changes are reflected in the POEO General Regulation 2021. There is no significant social, economic or environmental impact to the community, stakeholders or government. Therefore, a cost benefit analysis has not been undertaken for these changes.

The minor changes include:

- clarification of the ARA in marine parks and light rail infrastructure, and
- clarification of descriptions of lands and venues for outdoor entertainment activities.

The changes considered administrative in nature include:

- replacing “alpha” numerical numbering with current style numbering
- inclusion of a “sunset clause” – i.e. the date the POEO General Regulation 2021 will be repealed
- removing repealed provisions
- removing savings and/transitional provisions that are spent
- updating references to legislation, guidelines and government agencies, and
- removing gendered language.

The rest of this section provides further details on the changes.

Appendix B is a comparison table of the clause references in the POEO General Regulation 2009 compared with the POEO General Regulation 2021 (i.e. it shows any new clause number for the same provision).

5.1. Appropriate Regulatory Authority

An ARA is responsible for undertaking certain regulatory activities under the *Protection of the Environment Operations Act 1997* and associated Regulations. For example, an ARA is responsible for issuing environment protection notices, responding to pollution incidents and undertaking investigations in relation to non-licensed activities. An ARA can be a public or local authority, such as a government department, state-owned corporation or local council. Section 6 of the POEO Act sets out the circumstances in which different entities are an ARA and provides that the regulation may also declare a public authority as an ARA for specific matters.

5.1.1. Marine Parks

This amendment relates to clauses 85 and 86 of the repealed POEO General Regulation 2009 and clause 111 of the POEO General Regulation 2021 that is now in force.

Background

Previously, the Marine Park Authority (MPA) was the ARA for non-scheduled activities (i.e. activities that are not regulated by an environment protection licence) within NSW marine parks. The MPA was abolished by the *Marine Estate Management Act 2014*. The roles and responsibilities of the MPA were not transferred to a new body and there were no savings or transitional arrangements put in place. As a result, the EPA and local councils had ARA responsibilities until the new ARA was nominated and there was potential for confusion about the correct ARA.

Need for action

The amendment was designed to nominate a public authority to be the ARA for non-scheduled activities within marine parks.

Changes to the POEO General Regulation

The EPA considered various state government agencies who could take on this role of an ARA.

After discussions between Transport for NSW (TfNSW) and the EPA, TfNSW agreed to take on the following additional ARA role from 1 September 2021. TfNSW is now also the ARA for non-scheduled activities involving a non-pilotage vessel in navigable waters (including in marine parks), subject to the exclusions listed in (a)-(d) of the POEO General Regulation 2021. TfNSW is best placed to take on this additional role for the following reasons:

- TfNSW is currently the ARA for non-pilotage vessels in all navigable waters (with the previous exclusion of marine parks). Extension of this role to within marine parks is appropriate because the environmental issues arising in marine parks are similar to those in all other navigable waters.
- TfNSW has a wealth of experience as an ARA for non-pilotage vessels in areas outside of marine parks. TfNSW is therefore well placed to ensure that environmental requirements are applied consistently across all navigable waters in NSW and to allow a seamless transition to the extension in an ARA's roles.
- TfNSW already has a range of powers under the POEO Act within marine parks (TfNSW is responsible for all noise-related issues in marine parks and currently has extensive enforcement officer powers within marine parks).
- Under the State Emergency Management Plan and sub-plans, TfNSW is one of the combat agencies which leads the response to major incidents in marine parks and is therefore experienced in undertaking regulatory functions on water.
- TfNSW is already physically present in marine parks as a regulator for a range of matters beyond environmental regulation, and has the appropriate equipment and assets to undertake the ARA role.

As TfNSW already has the assets, experience and presence outside marine parks, there is not expected to be any additional costs incurred by TfNSW to take on this extension of their role to cover marine parks.

The EPA is the ARA for all other non-scheduled activities in a marine park, unless those activities are conducted in a declared local government area, in which case the local council is the ARA.

5.1.2. Light Rail Infrastructure

This amendment relates to clause 89 of the repealed POEO General Regulation 2009 and clause 114 of the General Regulation 2021 that is now in force.

Background

There are three ways the EPA is nominated as the ARA for light rail construction and operations:

- section 6 (2) of the POEO Act declares the EPA as the ARA for all light rail systems currently under construction or operating in NSW when carried out by or for a public authority
- when the General Regulation nominates the EPA as the ARA for non-scheduled activities on the route of a light rail system declared under section 104N (2) of the *Transport Administration Act 1988*. Without this nomination, local councils would be the ARA for light rail systems as they may be operated by a private entity¹
- through the scheduled activity of railway infrastructure construction (clause 33, Schedule 1 POEO Act).

Need for action

The existing ARA provisions where light rail systems are constructed or operated by a private entity were confusing. An amendment was needed to clarify the EPA's role and scope as an ARA for light rail systems.

The name of clause 89 in the POEO General Regulation 2009 was "Inner West Light Rail". This name was misleading and required updating. The clause is meant to apply to all light rail systems.

Changes to the POEO General Regulation

The EPA was previously declared as an ARA for all non-scheduled activities along the route of a light rail system. This meant that the EPA was an ARA for a broad range of activities such as road maintenance work or landscaping along the route of a light rail system. The EPA does not need to be the ARA for all non-scheduled activities on the light rail route and sought to limit the EPA's role to only construction and operation of light rail systems. Construction and operation of light rail systems can have moderate or greater environmental impacts and warrants EPA oversight, rather than non-scheduled activities generally.

The clause was complicated and referred to outdated legislation. It was also very difficult to determine the actual premises the clause applied to. This is because the *Transport Administration Act 1988* referred to light rail systems declared in the Transport Administration (General) Regulation 2018. All light rail systems in NSW have at some time been declared under that Regulation; however, over time the names of these have been removed from the Regulation. It was the EPA's intent to be the ARA for all light rail systems either currently or previously declared under the Transport Administration Act and Regulation.

Clause 111 in the POEO General Regulation 2021 ensures the EPA is the only ARA for activities directly associated with light rail construction and operation, rather than all non-scheduled activities associated with light rail. This ensures regulatory effort is provided when there are moderate or greater risks to the environment or human health. No additional costs are anticipated for the EPA, local councils or those carrying out light rail activities, as this reflects current regulatory practice. The amendments simply make this role transparent.

5.2. Outdoor entertainment activities

This amendment relates to clause 90 of the repealed POEO General Regulation 2009 and clause 115 of the POEO General Regulation 2021 that is now in force.

¹ section 6 of the POEO Act

Background

The POEO General Regulation 2021 declares the EPA as the ARA for outdoor entertainment activities involving 200 persons or more that are carried on at the premises listed in the POEO General Regulation 2021 that meet the definition of outdoor entertainment activities.^{2,3}

Clause 90 of the POEO General Regulation 2009 had stated:

“(1) The EPA is declared, under section 6(3) of the Act, to be the appropriate regulatory authority for outdoor entertainment activities involving 200 persons or more that are carried on at any of the following premises —

(a) the Trust lands within the meaning of the *Royal Botanic Gardens and Domain Trust Act 1980*,

(b) the Trust lands within the meaning of the *Centennial Park and Moore Park Trust Act 1983*,

(c) the Darling Harbour area within the meaning of Part 3 of the Sydney Harbour Foreshore Authority Regulation 2006,

(d) the trust land within the meaning of the *Parramatta Stadium Trust Act 1988*,

(e) Venues NSW’s land within the meaning of the *Sporting Venues Authorities Act 2008*,

(f) (Repealed)

(g) the Opera House within the meaning of the *Sydney Opera House Trust Act 1961*.”

Need for action

The EPA identified that the description of the following lands and venues was incorrect:

- Darling Harbour description
 - EPA lost its ARA role in the Cockle Bay area, which had been accidentally removed by an updated legislative reference
- Parramatta Stadium description and name:
 - the “trust land” references a repealed Act;
 - the Parramatta Stadium has been redeveloped and is now in a slightly different location
 - the Parramatta Stadium has been renamed.
- Sydney Cricket Ground and Football Stadium description and name.

Changes to the POEO General Regulation

Darling Harbour

The premises description for the ‘Darling Harbour area’ in this clause refers to the Sydney Harbour Foreshore Authority Regulation 2006, which has been superseded by the Place Management NSW Regulation 2017. The premise description in the replacement regulation has removed Cockle Bay, but the EPA seeks to retain ARA responsibility for outdoor activities in this area. The EPA

² Broadly this list includes: the Royal Botanic Gardens and Domain, Centennial Park and Moore Park, the Darling Harbour area, Parramatta Stadium, Venues NSW’s land and the Opera House.

³ Outdoor entertainment activities means any of the following activities, but only if the activity is carried on outdoors (including if it is carried on, under or within a tent, marquee or similar structure) and sound amplification equipment is used as part of the activity: (a) concerts, (b) festivals, (c) cinematic and theatrical events, (d) sporting events, (e) a rehearsal, sound check or other preparation for an activity listed in paragraphs (a)–(d).

defined the “Darling Harbour area” in clause 115(2) of the POEO General Regulation 2021 to include Cockle Bay.

Parramatta Stadium

The *Parramatta Stadium Trust Act 1988* is used to describe the land where the EPA is ARA for outdoor entertainment activities at Parramatta Stadium.⁴ However, this act has been repealed, the Parramatta Stadium has been redeveloped in a slightly different location and is now called the Western Sydney Stadium.

To address these issues, the POEO General Regulation 2021:

- removes reference to the repealed Parramatta Stadium Trust Act 1988
- renames the stadium as the Western Sydney Stadium
- describes the lot and deposited plan of Western Sydney Stadium in clause 115(2).

Sydney Cricket Ground and Football Stadium

As part of the establishment of Venues NSW, the Sydney Cricket Ground Trust was dis-established, and clause 90 (1)(e) the POEO General Regulation 2009 was changed in a global legislative update. This saw the original description of the trust’s lands that was in the *Sydney Cricket and Sports Ground Act 1978* (now repealed) replaced with “Venues NSW’s land within the meaning of the *Sporting Venues Authorities Act 2008*”. This land area description included land and venues across NSW (which extended the EPA’s responsibilities for regulating outdoor activities to all of Venues NSW’s lands) and did not clearly indicate the Cricket Ground and Football Stadium in this clause.

To address these issues, the POEO General Regulation 2021:

- Removed reference to “Venues NSW’s land within the meaning of the *Sporting Venues Authorities Act 2008*”
- Details the land area description for Sydney Cricket Ground and Football Stadium in Schedule 4A Part 1 for the Cricket and Sports Ground in *Sporting Venues Authorities Act 2008*.

⁴ The Act defines ‘the trust land’ as “the land comprised of lots 951–965 in the plan filed in the office of the Registrar-General as Deposited Plan 42643” (section 3).

5.3. All changes to the POEO General Regulation

Table 1: All Changes Made to the POEO General Regulation 2009

Old clause number	New clause number	Clause name (POEO General Regulation 2021)	Type of change	Description
2	2	Commencement	Date update	Commencement date changed to reflect new regulation
3	3	Interpretation	Clarity	<ul style="list-style-type: none"> • Clause renamed from “Definitions” to “Interpretation” • Volatile organic compound – definition reworded
4	4	Definitions (Licence Fees)	Reference update / Definition update	<ul style="list-style-type: none"> • Clause references updated in the following definitions: <ul style="list-style-type: none"> ○ actual load ○ environment management calculation protocol ○ load calculation protocol ○ step • “Sydney basin area” definition updated
9	9	Amount of administrative fee unit	Removal of outdated clause	Removal of outdated administrative fee units
10(2)(a)	10(2)(a)	Calculating amount of administrative fee	Removal of outdated clause	Removal of clause 10(2)(a) which stated “calculating the administrative fee for a licence fee period that commences before 1 July 2016, or”
12(1)(b1)	15(1)(c)	Refunds and waivers – licence holders	Reference update	Reference to clause “10C” updated to clause “13”
19(7), 19(8)(b)	22(7), 22(8)(b)	Calculating the fee for each assessable pollutant – Step 4 of load-based fee calculation	Removal of outdated subclauses Error correction	<ul style="list-style-type: none"> • Outdated pollutant fee units removed • Column references for “open coastal waters” and “enclosed waters” to Table 2 Part 2 of Schedule 2 corrected
32(3)	35(3)	Amounts payable on termination or expiration	Clarification	Refers to load reduction agreements entered into before the commencement of “this Regulation”. The words “this Regulation” now read “ <i>the Protection of the Environment Operations (General) Regulation 2009</i> ”.

Old clause number	New clause number	Clause name (POEO General Regulation 2021)	Type of change	Description
32 Note	35	Amounts payable on termination or expiration	Deletion of Note	The following note was deleted, " <i>In relation to load reduction agreements entered into before the commencement of this Regulation, see clause 7 of Schedule 8.</i> "
43(2)(b), 43(2)(b)(iv)	46(2)(b), 46(2)(b)(iv)	Members (Load-based Licensing Technical Review Panel)	Word replacing number Reference update	<ul style="list-style-type: none"> The number "1" has been replaced with the word "one" for the number of representative types on the Load-based Licensing Technical Review Panel Reference to the "Office of Environment and Heritage" has been updated to the "Department of Planning, Industry and Environment"
55(2)	59(2)	Pollutants discharged from Victoria premises into Murray	Clarification	The exemption from committing an offence under s120 of the Act (pollution of waters) into the Murray River only applies where that conduct is authorised by a <u>permission</u> in force under the <i>Environment Protection Act 2017</i> of Victoria. The word "permission" replaced the previous word "licence".
57(1), 57(2)	61(1), 61(2)	Sewage discharged from vessels	Reference updates Addition of definition	<ul style="list-style-type: none"> The Marine Pollution Regulation 2006 was repealed and is now the Marine Pollution Regulation 2014. Associated references have been updated. Definition of "navigable waters" added.
62	66	Object of Chapter (National Pollutant Inventory)	Date update	Date referenced in clause updated from 13 November 2008 to 2 December 2008
63	67	Definitions (National Pollutant Inventory)	Reference update	NPIM clause reference updated
72	76	Definitions (Vehicle testing and inspection)	Reference update	"vehicle inspection report" clause reference updated
73	77(8)	Approved mechanics	Removed gendered language	"himself or herself" removed

Old clause number	New clause number	Clause name (POEO General Regulation 2021)	Type of change	Description
79A(1), 79A(2)	84(1)	Preliminary (Upper Hunter Air Quality Monitoring Network)	Reference updates Removal of outdated clause	<ul style="list-style-type: none"> “annual levy” clause references updated Clause 79A(2) removed which stated “This Part extends to the levy period commencing on 1 July 2012”
79D(2)	87(2)	Calculation of annual levy for Upper Hunter electricity generation licence holders	Reference update	Clause reference updated in regards to Upper Hunter (electricity generation) licence holders and the information they must provide to the EPA
79E(1), 79E(2)	88(1), 88(2)	Calculation of annual levy for Upper Hunter coal mining licence holders	Reference updates	<ul style="list-style-type: none"> Formula “F” definition – clause reference updated Clause reference updated in regards to Upper Hunter (coal mining) licence holders and the information they must provide to the EPA
79F(1)	89(1)	Calculation of annual levy for first and second levy periods for new Upper Hunter licence holders	Reference updates	<ul style="list-style-type: none"> Clause reference updates in regards to the amount of the annual levy payable by a new Upper Hunter licence holder
79G(3), 79G(8)	90(3), 90(8)	Calculation of cost of Upper Hunter monitoring program	Reference updates	<ul style="list-style-type: none"> Calculation of cost of monitoring program reference updates
79L(2)	95(2)	EPA to report on Upper Hunter monitoring program	Date update	EPA report due date updated from “1 February 2017...” to “1 February 2022...”
79W	106(2)	EPA to report on (Newcastle) monitoring program	Date update	EPA report due date updated from “1 September 2018...” to “1 September 2022...”
80	-	(Repealed)	Regulation tidy up	Repealed clause removed

Old clause number	New clause number	Clause name (POEO General Regulation 2021)	Type of change	Description
81(6)(a)(ii), 81(6)(i)(i), 81(6)(i)(ii) 81(6)(o), 81(6)(q)	107(6)(a)(ii), 107(6)(i)(i), 107(6)(i)(ii), 107(6)(o), 107(6)(q)	Enforcement Officers (Penalty Notices)	Reference updates	<ul style="list-style-type: none"> “Office of Environment and Heritage” updated to Department of Planning, Industry and Environment “Department of Premier and Cabinet” updated to “Department of Planning, Industry and Environment” “Parramatta Stadium” updated to “Western Sydney Stadium” Incorrect Lot/DP removed and reference to clause 115 (which details the land of the Western Sydney Stadium) added. Class 15 – “a person employed in the Transport Service” updated to “a member of staff of Transport for NSW”
82	-	(Repealed)	Regulation tidy up	Repealed clause removed
85	-	Marine Parks Authority	Repealed clause	Clause 85 repealed
-	-	-	-	-
86(1)(e)	111	Transport for NSW	ARA clarification	The exemption in clause 86(1)(e) has been removed. As agreed by TfNSW, it is now the ARA for non-scheduled activities in marine parks.
87	112	Secretary of the Department of Planning, Industry and Environment	Reference updates	The “Chief Executive of Office of Environment and Heritage” has been updated and replaced with the “Secretary of the Department of Planning, Industry and Environment”.
89	114	Light Rail Infrastructure	Title and reference updates ARA clarification	For detail of the changes refer to section 5.1.2
90(1)(c)(d)(e)	115(1)(c)(d)(e)	Outdoor entertainment activities	ARA clarification Land description updates Reference updates	For detail of the changes refer to section 5.2
93A	120	Discharge of PFAS firefighting foam	Reference update Words removed	<ul style="list-style-type: none"> Regulation references updated The words “this Regulation” removed

Old clause number	New clause number	Clause name (POEO General Regulation 2021)	Type of change	Description
94(2)	121(2)	Prohibition on placing advertising material on vehicles	Reference update	“Road Transport (General) Regulation 2013” replaced with “Road Transport (General) Regulation 2021”
95B	124	PFAS firefighting foam pollution prevention measures – exemptions granted by the EPA	Reference update	Regulation references updated
96	125	Definitions (Burning of bio-material in electricity generating works)	Reference updates Regulation tidy up	<ul style="list-style-type: none"> • Definition of “native forest bio-material” – Clause reference updates • Definition of “native forest bio-material (a1)(ii) (Repealed)” has been removed from the regulation
97A(1)	127(1)	Exception to prohibition on burning native title forest bio-material to generate electricity	Reference update	Clause reference updated
98F	-	Transitional period for existing licence holders	Regulation tidy up	Removed spent clause and note
98J(3), 98(4)	137(3) 137(4)	Sale of potable fire extinguishers containing precursor to PFAS firefighting foam	Reference updates	<ul style="list-style-type: none"> • Reference in the “Note” updated • References in subclause 4 updated
99	138	Fee for clean up, prevention and noise control notices	Tidy up	Removed outdated fee amounts
106	146	Additional matters to be included in public register	Reference update	The “Protection of the Environment Operations (Clean Air) Regulation 2010” has been updated to the “Protection of the Environment Operations (Clean Air) Regulation 2021” including the associated clause references.

Old clause number	New clause number	Clause name (POEO General Regulation 2021)	Type of change	Description
107(1)	147(1)	Keeping of register – certain non-scheduled activities	Reference updates	Clause reference updates
108	-	(Repealed)	Regulation tidy up	Repealed clause removed
110	-	(Repealed)	Regulation tidy up	Repealed clause removed
-	149	Repeal and saving	Addition of sunset clause	This Regulation is to be repealed on 1 September 2022
Schedule 1	Schedule 1	Licensing fees	Reference updates	Clause reference updates at start of Schedule 1
Schedule 1	Schedule	Licensing fees	Regulation tidy up	“Logging Operations” removed as the scheduled activity was repealed in the Act.
Schedule 2	Schedule 2	Load-based fee calculation	Reference updates	Clause references at start of Schedule 2 updated
Schedule 2	Schedule 2	Load-based fee calculation	Reference updates	Council references updated due to council amalgamations
Schedule 3	Schedule 3	Open coastal waters	Reference update	Clause reference at start of Schedule 3 updated
Schedule 4	Schedule 4	Membership and procedure of Review Panel	Reference update Removal of gendered language	<ul style="list-style-type: none"> • Clause reference at start of Schedule 4 updated • “...his or her creditors” in 5(1)(f) replaced with “member’s creditors”
Schedule 5	Schedule 5	Prescribed matter for the definition of water pollution	Reference updates	<ul style="list-style-type: none"> • (t) reference updated from the “Office of the Australian Safety and Compensation Council” to “Safe Work Australia” • (u) reference updated from the “Australian and New Zealand Guidelines for Fresh and Marine Water Quality published in October 2000 by the Australian and New Zealand Environment and Conservation Council and the Agriculture and Resource Management Council of Australia and New Zealand ” updated to the “Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2018 published by the Australian and New Zealand Governments and State and Territory Governments, as in force from time to time”.

Old clause number	New clause number	Clause name (POEO General Regulation 2021)	Type of change	Description
Schedule 6	Schedule 6	Penalty Notice Offences	Reference updates	<ul style="list-style-type: none"> Protection of the Environment (Clean Air) Regulation 2010 updated to Protection of the Environment (Clean Air) Regulation 2021 References updated under the Protection of the Environment (Clean Air) Regulation 2021 Protection of the Environment (General) Regulation 2009 updated to Protection of the Environment (General) Regulation 2021 References updated under the Protection of the Environment (General) Regulation 2021
Schedule 7	Schedule 7	Forms relating to noise abatement directions	Reference update	Clause reference at the start of Schedule 7 has been updated
Schedule 8	Schedule 8	Savings and transitional provisions		All outdated savings and transitional provisions have been deleted. Replaced with savings and transitional provisions consequent on commencement of the Protection of the Environment Operations (General) Regulation 2021
Schedule 9	-	(Repealed)	Regulation tidy up	Repealed schedule removed

Appendix A

Better Regulation Principles

Principle 1	The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.	Section 3
Principle 2	The objective of government action should be clear.	Section 4
Principle 3	The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.	Section 5
Principle 4	Government action should be effective and proportional.	Section 5
Principle 5	Consultation with business and the community should inform regulatory development.	Page 1
Principle 6	The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered.	Section 5
Principle 7	Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.	Section 1

Appendix B

POEO General Regulation – clause comparison

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
Chapter 1	Preliminary	Chapter 1	Preliminary
1	Name of Regulation	1	Name of Regulation
2	Commencement	2	Commencement
3	Definitions	3	Interpretation
Chapter 2	Environment protection licences	Chapter 2	Environment protection licences
Part 1	Licence fees	Part 1	Licence fees
Division 1	Preliminary	Division 1	Preliminary
4	Definitions	4	Definitions
5	Licence fee period	5	Licence fee period
6	Changes in licence fee period	6	Changes in licence fee period
7	Annual licence fee	7	Annual licence fee
Division 2	Administrative fees	Division 2	Administrative fees
8	Administrative fee must accompany application	8	Administrative fee must accompany application
9	Amount of administrative fee unit	9	Amount of administrative fee unit
10	Calculating amount of administrative fee	10	Calculating amount of administrative fee
10A	Environmental management calculation protocol	11	Environmental management calculation protocol
10B	Determination of environmental management category – insufficient information provided	12	Determination of environmental management category – insufficient information provided
10C	Change in environmental management category – adjustment of administrative fee	13	Change in environmental management category – adjustment of administrative fee
11	Refunds if application refused or withdrawn	14	Refunds if application refused or withdrawn
12	Refunds and waivers – licence holders	15	Refunds and waivers – licence holders
Division 3	Load-based fees	Division 3	Load-based fees
13	Objects of load-based licensing scheme	16	Objects of load-based licensing scheme
14	Circumstances in which no load-based fee payable	17	Circumstances in which no load-based fee payable
15	Requirement to calculate and record actual load	18	Requirement to calculate and record actual load

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
16	Calculation of load-based fee	19	Calculation of load-based fee
17	Determining the assessable load – Step 2 of load-based fee calculation	20	Determining the assessable load – Step 2 of load-based fee calculation
18	Fee rate thresholds – Step 3 of load-based fee calculation	21	Fee rate thresholds – Step 3 of load-based fee calculation
19	Calculating the fee of each assessable pollutant – Step 4 of load-based fee calculation	22	Calculating the fee of each assessable pollutant – Step 4 of load-based fee calculation
20	Nitrogen oxides or VOCs discharged in Sydney basin area in summer – Step 6 of load-based fee calculation	23	Nitrogen oxides or VOCs discharged in Sydney basin area in summer – Step 6 of load-based fee calculation
21	Load calculation protocol	24	Load calculation protocol
22	Determination of load-based fee – insufficient information provided	25	Determination of load-based fee – insufficient information provided
23	Aggregation of licences – “bubble licence arrangements”	26	Aggregation of licences – “bubble licence arrangements”
24	Refunds – errors in calculations	27	Refunds – errors in calculations
Division 4	Load reduction agreements and fee reductions	Division 4	Load reduction agreements and fee reductions
25	Definitions	28	Definitions
26	Effect and term of load reduction agreement	29	Effect and term of load reduction agreement
27	Applications for load reduction agreements	30	Applications for load reduction agreements
28	Content of load reduction agreements	31	Content of load reduction agreements
29	Amendment of load reduction agreement	32	Amendment of load reduction agreement
30	Agreement of no effect without condition in licence	33	Agreement of no effect without condition in licence
31	Termination of agreement	34	Termination of agreement
32	Amounts payable on termination or expiration	35	Amounts payable on termination or expiration
33	When amounts must be paid	36	When amounts must be paid
34	Payment by instalments	37	Payment by instalments
35	Effect of transfer of licences on load reduction agreements	38	Effect of transfer of licences on load reduction agreements
Division 5	Time for payment and penalties for late payment	Division 5	Time for payment and penalties for late payment
36	Administrative fee	39	Administrative fee

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
37	Load-based fee	40	Load-based fee
38	Refunds and waivers – penalties for late payment	41	Refunds and waivers – penalties for late payment
Division 6	Change in activity classification or scale	Division 6	Change in activity classification or scale
39	Application of Division	42	Application of Division
40	Adjustment of administrative fee	43	Adjustment of administrative fee
41	Adjustment of load-based fee	44	Adjustment of load-based fee
Part 2	Load-based Licensing Technical Review Panel	Part 2	Load-based Licensing Technical Review Panel
42	Constitution	45	Constitution
43	Members	46	Members
44	Functions	47	Functions
45	Membership and procedure	48	Membership and procedure
Part 3	Miscellaneous licensing provisions	Part 3	Miscellaneous licensing provisions
46	Scheduled development work	49	Scheduled development work
47	Commencement of licensing for existing activities	50	Commencement of licensing for existing activities
47A	(Repealed)		
48	Exclusion of Part 5 of EPA Act	51	Exclusion of Part 5 of EPA Act
49	Statement of reasons for grant or refusal of licence	52	Statement of reasons for grant or refusal of licence
50	Fee for transfer of licence	53	Fee for transfer of licence
51	Refusal of certain licence applications	54	Refusal of certain licence applications
51A	Fit and proper persons	55	Fit and proper persons
52	Other relevant legislation	56	Other relevant legislation
53	Application of payments	57	Application of payments
54	Preservation of records	58	Preservation of records
Chapter 3	Water pollution	Chapter 3	Water pollution
Part 1	Exemptions	Part 1	Exemptions
55	Pollutants discharged from Victorian premises into Murray	59	Pollutants discharged from Victorian premises into Murray
56	Pollutants discharged into sewer	60	Pollutants discharged into sewer
57	Sewage discharged from vessels	61	Sewage discharged from vessels
58	Operation of engines propelling vessels	62	Operation of engines propelling vessels
59	Cold water releases	63	Cold water releases

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
Part 2	Other	Part 2	Other
60	Methodology for testing for matter in waters	64	Methodology for testing for matter in waters
61	Emergency prohibition or regulation – safety of drinking water	65	Emergency prohibition or regulation – safety of drinking water
Chapter 4	National Pollutant Inventory	Chapter 4	National Pollutant Inventory
Part 1	Preliminary	Part 1	Preliminary
62	Objects of Chapter	66	Objects of Chapter
63	Definitions	67	Definitions
64	Occupiers to whom Chapter applies	68	Occupiers to whom Chapter applies
Part 2	Reporting and record keeping requirements	Part 2	Reporting and record keeping requirements
65	Collection of data from reporting facilities	69	Collection of data from reporting facilities
66	Occupier must keep data for period of 4 years	70	Occupier must keep data for period of 4 years
Part 3	Estimation techniques	Part 3	Estimation techniques
67	Emission and transfer estimation techniques	71	Emission and transfer estimation techniques
68	Application for approval of estimation technique	72	Application for approval of estimation technique
69	Determination of application	73	Determination of application
Part 4	Exemptions from reporting requirements	Part 4	Exemptions from reporting requirements
70	National security	74	National security
71	Commercial confidentiality	75	Commercial confidentiality
Chapter 5	Vehicle testing and inspection	Chapter 5	Vehicle testing and inspection
72	Definitions	76	Definitions
73	Approved mechanics	77	Approved mechanics
74	Approved inspection stations	78	Approved inspection stations
75	Maximum fee for test or inspection	79	Maximum fee for test or inspection
76	Vehicle inspection reports	80	Vehicle inspection reports
77	Variation of approvals	81	Variation of approvals
78	Surrender of approvals	82	Surrender of approvals
79	Suspension or revocation of approvals	83	Suspension or revocation of approvals
Chapter 5A	Environmental Monitoring	Chapter 6	Environmental Monitoring
Part 1	Upper Hunter Air Quality Monitoring Network	Part 1	Upper Hunter Air Quality Monitoring Network
79A	Preliminary	84	Preliminary

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
79B	Objectives of Upper Hunter monitoring program	85	Objectives of Upper Hunter monitoring program
79C	Upper Hunter licence holders required to pay environmental monitoring levy	86	Upper Hunter licence holders required to pay environmental monitoring levy
79D	Calculation of annual levy for Upper Hunter electricity generation licence holders	87	Calculation of annual levy for Upper Hunter electricity generation licence holders
79E	Calculation of annual levy for Upper Hunter coal mining licence holders	88	Calculation of annual levy for Upper Hunter coal mining licence holders
79F	Calculation of annual levy for first and second levy periods for new Upper Hunter licence holders	89	Calculation of annual levy for first and second levy periods for new Upper Hunter licence holders
79G	Calculation of cost of Upper Hunter monitoring program	90	Calculation of cost of Upper Hunter monitoring program
79H	Certain Upper Hunter licence holders to pay construction levy	91	Certain Upper Hunter licence holders to pay construction levy
79I	Upper Hunter licence holders to provide information to EPA	92	Upper Hunter licence holders to provide information to EPA
79J	Upper Hunter licence holders to provide assistance to EPA	93	Upper Hunter licence holders to provide assistance to EPA
79K	EPA to publish results of air quality monitoring in Upper Hunter	94	EPA to publish results of air quality monitoring in Upper Hunter
79L	EPA to report on Upper Hunter monitoring program	95	EPA to report on Upper Hunter monitoring program
Part 2	Newcastle Local Air Quality Monitoring Network	Part 2	Newcastle Local Air Quality Monitoring Network
79M	Definitions	96	Definitions
79N	Determining emissions	97	Determining emissions
79O	Objectives	98	Objectives
79P	Licence holders required to pay levy	99	Licence holders required to pay levy
79Q	Calculation of annual levy	100	Calculation of annual levy
79R	Emissions from vessels to be included in licence holder's emissions	101	Emissions from vessels to be included in licence holder's emissions
79S	Calculation of cost of monitoring program	102	Calculation of cost of monitoring program
79T	EPA may direct licence holder to provide information	103	EPA may direct licence holder to provide information

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
79U	Licence holders to provide assistance to EPA	104	Licence holders to provide assistance to EPA
79V	EPA to publish results of monitoring	105	EPA to publish results of monitoring
79W	EPA to report on monitoring program	106	EPA to report on monitoring program
Chapter 6	Penalty notices	Chapter 7	Penalty notices
80	(Repealed)		
81	Enforcement officers	107	Enforcement officers
82	(Repealed)		
83	Issue of penalty notices to owners of vehicles or vessels	108	Issue of penalty notices to owners of vehicles or vessels
83A	Issue of penalty notices to masters of vessels	109	Issue of penalty notices to masters of vessels
Chapter 7	Miscellaneous	Chapter 8	Miscellaneous
Part 1	Appropriate regulatory authority	Part 1	Appropriate regulatory authority
84	Definitions	110	Definitions
85	Marine Parks Authority		
86	Transport for NSW	111	Transport for NSW
87	Chief Executive of Office of Environment and Heritage	112	Secretary of the Department of Planning, Industry and Environment
88	Burning of bio-material in electricity generating works	113	Burning of bio-material in electricity generating works
89	Inner West Light Rail	114	Light rail infrastructure
90	Outdoor entertainment activities	115	Outdoor entertainment activities
90A	Entertainment activities at Sydney Olympic Park	116	Entertainment activities at Sydney Olympic Park
91	Underground petroleum storage systems – EPA ceasing to be appropriate regulatory authority in relation to certain premises	117	Underground petroleum storage systems – EPA ceasing to be appropriate regulatory authority in relation to certain premises
92	EPA – non-scheduled activities	118	EPA – non-scheduled activities
93	Waste activities licensed before substitution of Schedule 1	119	Waste activities licensed before substitution of Schedule 1
93A	Discharge of PFAS firefighting foam	120	Discharge of PFAS firefighting foam
Part 2	Exemptions from provisions of Act or regulations	Part 2	Exemptions from provisions of Act or regulations
Note			

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
94	Prohibition on placing advertising material on vehicles	121	Prohibition on placing advertising material on vehicles
95	Noise control – Luna Park site	122	Noise control – Luna Park site
95A	Road tunnel emissions (licence limited to air pollution from stack)	123	Road tunnel emissions (licence limited to air pollution from stack)
95B	PFAS firefighting foam pollution prevention measures – exemptions granted by EPA	124	PFAS firefighting foam pollution prevention measures – exemptions granted by EPA
Part 3	Burning of bio-material in electricity generating works	Part 3	Burning of bio-material in electricity generating works
96	Definitions	125	Definitions
97	Must not use native forest bio-material to generate electricity	126	Must not use native forest bio-material to generate electricity
97A	Exemption to prohibition on burning native forest bio-material to generate electricity	127	Exemption to prohibition on burning native forest bio-material to generate electricity
98	Record keeping	128	Record keeping
Part 3A	Pollution incident response management plans	Part 4	Pollution incident response management plans
98A	Definition	129	Definition
98B	Form of plan	130	Form of plan
98C	Additional matters to be included in plan	131	Additional matters to be included in plan
98D	Availability of plan	132	Availability of plan
98E	Testing of plan	133	Testing of plan
98F	Transitional period for existing licence holders		
Part 3B	PFAS firefighting foam – pollution prevention measures – Schedule 2, clause 15(1) of the Act	Chapter 5	PFAS firefighting foam – pollution prevention measures – Schedule 2, clause 15(1) of the Act
98G	Definitions	134	Definitions
98H	Discharge of PFAS firefighting foam in training	135	Discharge of PFAS firefighting foam in training
98I	Discharge of PFAS firefighting foam	136	Discharge of PFAS firefighting foam
98J	Sale of portable fire extinguishers containing precursor to PFAS firefighting foam	137	Sale of portable fire extinguishers containing precursor to PFAS firefighting foam
Part 4	Other	Part 6	Other
99	Fee for clean up, prevention and noise control notices	138	Fee for clean-up, prevention and noise control notices

Protection of the Environment Operations (General) Regulation 2009		Protection of the Environment Operations (General) Regulation 2021	
Current clause	Name of clause	New clause	Name of clause
100	Defences relating to pesticides, fertilisers and other substances	139	Defences relating to pesticides, fertilisers and other substances
101	Notification of pollution incidents	140	Notification of pollution incidents
101A	Protocol for determining amount representing monetary benefits	141	Protocol for determining amount representing monetary benefits
102	Warrants relating to noise abatement directions	142	Warrants relating to noise abatement directions
103	Appeals regarding noise	143	Appeals regarding noise
104	Evaluation of green offset schemes or works	144	Evaluation of green offset schemes or works
105	Additional restriction on requiring financial assurances	145	Additional restriction on requiring financial assurances
106	Additional matters to be included in public register	146	Additional matters to be included in public register
107	Keeping of register – certain non-scheduled activities	147	Keeping of register – certain non-scheduled activities
108	(Repealed)		
109	Definition of “land pollution”	148	Definition of “land pollution”
110	(Repealed)		
		149	Repeal and saving
Schedule 1	Licensing fees	Schedule 1	Licensing fees
Schedule 2	Load-based fee calculation	Schedule 2	Load-based fee calculation
Schedule 3	Open coastal waters	Schedule 3	Open coastal waters
Schedule 4	Membership and procedure of Review Panel	Schedule 4	Membership and procedure of Review Panel
Schedule 5	Prescribed matter for the definition of water pollution	Schedule 5	Prescribed matter for the definition of water pollution
Schedule 6	Penalty notice offences	Schedule 6	Penalty notice offences
Schedule 7	Forms relating to noise abatement directions	Schedule 7	Forms relating to noise abatement directions
Schedule 8	Savings and transitional provisions	Schedule 8	Savings and transitional provisions
Schedule 9	(Repealed)		

Bibliography

NSW Treasury 2019, *NSW Government Guide to Better Regulation, Policy and Guidelines Paper TPP 19-01*, NSW Treasury, available from www.productivity.nsw.gov.au/better-regulation