

# EPA Compliance Management Framework

SEPTEMBER 2018

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Published by:

NSW Environment Protection Authority  
59 Goulburn Street, Sydney NSW 2000  
PO Box A290, Sydney South NSW 1232  
Phone: +61 2 9995 5000 (switchboard)  
Phone: 131 555 (NSW only – environment information and publications requests)  
Fax: +61 2 9995 5999  
TTY users: phone 133 677, then ask for 131 555  
Speak and listen users: phone 1300 555 727, then ask for 131 555  
Email: [info@epa.nsw.gov.au](mailto:info@epa.nsw.gov.au)  
Website: [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or [info@epa.nsw.gov.au](mailto:info@epa.nsw.gov.au)

See also [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

ISBN 978 1 925790 67 2

EPA 2018P1104

September 2018

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# 1. Introduction

The NSW Environment Protection Authority (EPA) is the state's primary environmental regulator. We lead in protecting the health of the community now and in the future by protecting our air, waterways and land. We work with communities, governments and businesses to reduce our impact on the environment. We hold people and organisations to account through licensing, monitoring, regulation and enforcement.

As the state's primary environmental regulator, the EPA is responsible for regulating a diverse range of activities and monitoring compliance with legislation and statutory instruments covering air emissions, noise, waste, water quality, forestry, contaminated sites, dangerous goods, hazardous materials and pesticides. Similarly, the EPA is responsible for self-regulating its own compliance with legislation, statutory instruments and other legal, contractual and policy obligations.

One of our five foundational statements is that:

- our culture emphasises ethical conduct and evidence-based decisions.

As a government sector agency and regulator, it is essential that the EPA is exemplary in its ethical practices and aims to achieve best practice in self-managing compliance with our obligations.

## 2. Definitions

Compliance	<p>The EPA's conformance with stated requirements of legislation, other statutory instruments, policies, contracts and formal understandings.</p> <p>This policy does not include compliance and enforcement within the meaning of the <i>EPA Compliance Policy</i>, which is concerned with monitoring and enforcing compliance by the EPA's regulated community.</p>
Compliance management	<p>The management system framework of policies, processes and procedures used by the EPA to ensure it complies with its obligations; monitors, assesses and reports on compliance; rectifies the causes of non-compliance; and evaluates and improves the compliance management framework.</p>

## 3. Objectives

An organisation's responsibility for its own compliance effort involves self-regulation and self-evaluation, which in turn require a level of maturity and a capacity for self-evaluation.

The compliance management framework is designed to assist staff to:

- demonstrate mature compliance conduct consistent with the EPA's values
- develop and maintain awareness of their obligations to comply with a large and fluctuating range of obligations found in legislation, New South Wales government policy, cluster policy, EPA policy, contractual terms and conditions that bind the EPA, and standard operating procedures
- manage the risks consequent upon non-compliance
- apply relevant and proportionate controls to prevent non-compliance
- undertake positive actions on a regular basis to monitor and detect instances of non-compliance
- promptly report serious instances of non-compliance to Branch Directors and the Executive
- take proportionate corrective action in response to instances of non-compliance.

# 4. Scope and application

This framework is applicable to all EPA staff including ongoing, temporary or casual employees, labour hire (contractors who are working as though they were EPA staff) and seconded staff. It does not apply to contractors who are not representing the EPA but are providing professional services to the EPA.

This framework is not applicable to the Board of the EPA.

The EPA is committed to the highest standards of ethical conduct and strives to conduct its activities in a manner consistent with its core values of integrity, trust, service, accountability, transparency and innovation, as outlined in the *EPA Code of Ethics and Conduct*.

All staff are required to apply environmental legislation they administer in accordance with the processes mandated in the relevant NSW statutes (together with subordinate Regulations and other instruments).

All staff are also required to comply with Commonwealth and New South Wales statutes (together with the subordinate Regulations and other instruments) applicable to the EPA or to NSW government agencies generally.

Compliance with this framework is mandatory and forms part of the contract of employment for employees. Failure to comply with the framework may lead to disciplinary action.

## 4.1 Five guiding principles for implementing compliance management

### 4.1.1 Senior executive commitment

The EPA Executive is committed to ensuring timely compliance with the EPA's obligations. Branch Directors should be involved to an appropriate degree in the determination of proportionate procedures (4.1.3) for implementing compliance management, having internal controls in place to ensure compliance with applicable obligations and ensure employees are aware of their obligations in adhering to internal controls.

### 4.1.2 Risk assessment

Executive, regional, branch and other directors (hereafter called Branch Directors) should assess the nature and extent of risks of non-compliance. This assessment may be stand-alone or part of a more general risk assessment carried out in relation to EPA and Branch objectives. The risk assessment should be appropriately resourced, include identification of the information sources that will enable risks of non-compliance to be assessed and reviewed and include accurate and appropriate documentation of the risk assessment and its conclusions.

### 4.1.3 Proportionate procedures

Procedures to gain compliance with the EPA's obligations should be proportionate to the risks that might result as consequences of non-compliance, beyond the mere fact of non-compliance. Procedures should also be clear, practical, effectively implemented and enforced. Procedures may be stand-alone or form part of broader guidance, for example in operational policies and supporting guidance materials.

### 4.1.4 Communication and training

Branch Directors should ensure compliance management is embedded and understood across each Branch through communication and training, proportionate to the risks that might result as consequences of non-compliance. Some training may be effective in encouraging a compliance culture, whatever the level of risk. Training should be tailored to the specific risks associated with specific EPA roles.

#### **4.1.5 Monitoring and review**

Branch management has day-to-day operational responsibility for the conduct of the EPA's activities and therefore are best placed to determine and document procedures for ensuring compliance with applicable obligations.

Branch Directors should monitor and review compliance management procedures and make improvements where necessary.

### **4.2 Accountabilities and responsibilities**

#### **4.2.1 Allocation of responsibilities under the Compliance Management Framework**

Finance, Audit and Risk Committee	Provides corporate assurance on the adequacy of the Compliance Management Framework
Chair and CEO	Approves the Compliance Management Framework
Branch Directors (Executive, regional, branch or other directors)	Have internal controls in place to ensure compliance with applicable obligations
	Ensure employees are aware of obligations in adhering to internal controls
	Also see 4.2.2
Executive Director, Legal	Documents changes in applicable environmental legislation
Director, Corporate Services	Seeks assurance from Branch Executive / Directors on compliance and non-compliance
	Reports at least annually to the Chair and CEO, and the Finance, Audit and Risk Committee
	Documents changes in legislation applying to the EPA or NSW government sector agencies generally
	Work with Planning and Environment Cluster Corporate Services and other service providers to develop appropriate reporting of compliance and non-compliance in services provided under Service Partnership Agreements
	Also see 4.2.2
Managers and Unit Heads	Ensure employees are aware of obligations in adhering to internal controls
	Also see 4.2.3
	Adhere to EPA policies, procedures and internal controls
Staff	Adhere to EPA policies, procedures and internal controls
	Promptly report serious non-compliance
	Also see 4.2.4 and 4.4

#### **4.2.2 Accountabilities of branch directors**

Branch Directors, assisted by the Chief Risk Officer, are accountable for:

- conducting an environmental scan, to identify new, amended and anticipated compliance obligations, at least annually
- reviewing and updating the legislative compliance register, at least annually
- identifying and implementing appropriate controls to prevent non-compliance
- maintaining regular monitoring processes to detect non-compliance
- developing and maintaining a register of instances of non-compliance
- assessing and reporting to the Executive, through the Finance and Governance Executive Subcommittee, on the level of compliance and non-compliance, at least annually
- correcting the root causes of non-compliance.

The **legislative** compliance register is a repository for the specific responsibilities and obligations applying to the EPA as a regulator administering environmental legislation.

The **corporate** compliance register is a repository for the specific responsibilities and obligations applying to the EPA as a government sector agency. The Director, Corporate Services has the lead role in reviewing and updating the corporate compliance register.

#### **4.2.3 Responsibilities of managers and unit heads**

Managers and Unit Heads, assisted by the Chief Risk Officer, are responsible for ensuring that they and the staff who report to them are aware of and comply with the obligations applicable to their staff.

#### **4.2.4 Responsibilities of all staff**

All staff are required to comply with statutory obligations, relevant government policies, relevant Planning and Environment cluster policies, and EPA policies, procedures and internal controls. Failure to do so may result in disciplinary action.

### **4.3 Structured approach to assessing and managing risks consequent of non-compliance**

Compliance management is not simply deciding between binary results of “compliant” or “non-compliant”. An effective compliance management system will disclose rather than obscure the underlying factors that explain the reported compliance results. Effective compliance management includes selecting appropriate controls – specific checks or gateways – on transactions and key procedural decision points; and robust monitoring and measurement processes.

The more that compliance management is integrated with the core regulatory activities and support functions, the more likely that key information about risk and compliance issues will be available to decision-makers in a timely manner.

Branch management should apply a risk management approach to compliance management and allocate resources proportionate to the assessed levels of risks.

To report meaningfully on compliance management performance, Branch Directors may need to implement a compliance management system, conduct compliance reviews and evaluate how well the compliance management system operates.

In assessing risks, it is appropriate to consider the significance of the consequences of non-compliance, beyond the mere fact of non-compliance. If the consequences of non-compliance are assessed as trivial or negligible, then the risk should generally be given a low rating.

## 4.4 Responsibilities of all staff to report serious non-compliance

All staff are obliged to promptly report serious non-compliance, including corrupt conduct, suspicion on reasonable grounds of corrupt conduct, employee misconduct or serious misconduct, maladministration, or serious and substantial waste. The table below sets out to whom such reports may be made.

To whom reports may be made	Corrupt conduct	Public interest disclosure	Misconduct	Maladministration	Serious and substantial waste
Unit Head	YES	NO	YES	YES	YES
Manager	YES	NO	YES	YES	YES
Director	YES	YES	YES	YES	YES
Manager, Finance, Risk & Governance	YES	YES	YES	YES	YES
Chief Environmental Regulator	YES	YES	YES	YES	YES
Chair & CEO	YES	YES	YES	YES	YES
ICAC	YES	NO	YES	NO	NO
Environment Line	YES	NO	YES	YES	YES
Auditor-General	NO	NO	NO	NO	YES
Ombudsman	NO	NO	YES	YES	NO

## 5. Related resources and guidance

- Auditor-General's Report Volume 1 2016 – Areas of focus from 2015, p25 – Compliance Management
- EPA Fraud and Corruption Control Plan
- EPA Complaint Handling Policy
- EPA Code of Ethics and Conduct
- Guidance about procedures – Bribery Act 2010, UK (Ministry of Justice)
- Guide for Audit & Risk Committees: Compliance Management (NSW Treasury, June 2017)
- Managing Misconduct and Serious Misconduct Policy.

### 5.1 Review

The EPA will review the Compliance Management Framework initially by December 2020, and then every three years.

## **6. Further advice and information**

For further advice and information on compliance management or how to report serious non-compliance you should contact the:

- Senior Governance Officer 9995 5404 or
- Manager, Finance, Risk and Governance 9995 6181 or
- Director, Corporate Services 9585 6822.

# Appendix A

## Sources of compliance obligations

### Statutes

#### Environmental legislation

*Contaminated Land Management Act 1997*  
*Dangerous Goods (Road and Rail Transport) Act 2008*  
*Environmentally Hazardous Chemicals Act 1985*  
*Forestry Act 2012*  
*National Environment Protection Council (New South Wales) Act 1995*  
*Ozone Protection Act 1989*  
*Pesticides Act 1999*  
*Protection of the Environment (Administration) Act 1991*  
*Protection of the Environment (Operations) Act 1997*  
*Radiation Control Act 1990*  
*Recreation Vehicles Act 1983*  
*State Emergency and Rescue Management Act 1989*  
*Waste Avoidance and Resource Recovery Act 2001*

#### Legislative compliance register

The legislative compliance register is a repository for the specific responsibilities and obligations applying to the EPA under environmental legislation.

#### Legislation applying to EPA or NSW government sector agencies generally

*Annual Reports (Statutory Bodies) Act 1984*  
*Anti-Discrimination Act 1977*  
*Data Sharing (Government Sector) Act 2015*  
*Environmental Planning and Assessment Act 1979*  
*Government Advertising Act 2011*  
*Government Information (Public Access) Act 2009*  
*Government Sector Employment Act 2013*  
*Independent Commission Against Corruption Act 1988*  
*Lobbying of Government Officials Act 2011*  
*Privacy and Personal Information Protection Act 1998*  
*Protection of the Environment (Administration) Act 1991*  
*Public Authorities (Financial Arrangements) Act 1987*  
*Public Finance and Audit Act 1983*

*Public Interest Disclosures Act 1994*

*Public Works and Procurement Act 1912*

*State Records Act 1998*

*Work Health and Safety Act 2011*

### **Corporate compliance register**

The corporate compliance register is a repository for the specific responsibilities and obligations applying to the EPA as a government sector agency.

## **NSW Government policies**

### **Department of Premier and Cabinet**

- Premier's Memoranda
- NSW Lobbyists Code of Conduct
- Department of Premier and Cabinet Circulars
- Advertising requirements / NSW Government brand
- Website guidelines
- Media procurement
- Social media policy

### **Department of Finance, Services and Innovation**

Whole of government circulars dealing with:

- Procurement
- Information and communications technology
- Property and land
- Corporate and shared services

### **Treasury**

- Accounting policy
- Capital investment
- Commercial policy
- Economic and financial appraisal
- Financial management
- Governance, risk and audit
- Reporting

## **Planning and Environment cluster policies**

The following cluster or Corporate Shared Services policies are applicable to EPA staff.

### **Environmental / operational policies**

A "hands-on" guide to Cost Recovery in OEH / EPA.

## **Administrative / corporate policies**

- Finance Policy Manual
- Flexible Work Practices Policy
- Guideline for considering the rotation of staff when dealing with persons who are or likely to become abusive, threatening or violent towards staff
- Information and Communication Technology Acceptable Use Policy
- Leave Management Policy
- Managing Misconduct and Serious Misconduct Policy
- Managing Unsatisfactory Performance Policy
- Privacy Management Plan
- Private and Secondary Employment Policy
- Probation Policy
- Records Management Policy
- Respectful Workplace
- Travel Policy

## **EPA policies**

### **Environmental / operational policies**

Branch Directors should ensure staff are made aware of all environmental and operational policies that contain compliance obligations and related guidance resources, relevant to the work carried out by the Branch.

## **Administrative / corporate policies**

- EPA Addendum to OEH Public Interest Disclosure Policy
- EPA Anti-Bullying Policy
- EPA Brand Guidelines
- EPA Code of Ethics and Conduct
- EPA Complaint Handling Policy
- EPA Compliance Management Framework (this document – work in progress)
- EPA Delegations
- EPA Gifts and Benefits Policy
- EPA Grants Management Policy
- EPA Media Protocol
- EPA Risk Appetite Statement
- EPA Social Media Guidelines
- EPA Sponsorship Policy
- EPA Sponsorship Procedures
- EPA Statement of Business Ethics
- EPA writing guide
- ICT Strategy

## **EPA contracts, deeds and formal understandings**

### **Grant Agreements, Sponsorship Agreements, Memoranda of Understanding**

Branch Directors should ensure staff are made aware of all contractual agreements and memoranda of understanding that contain compliance obligations, and related guidance resources, relevant to the work carried out by the Branch.

## **EPA Standard operating procedures**

Branch Directors should ensure staff are made aware of all standard operating procedures that contain compliance obligations and related guidance resources, relevant to the work carried out by the Branch.