



Environmental Law Enforcement

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What is this factsheet about?

Environmental laws aim to protect and minimise impacts to the environment and human health. If environmental laws are not complied with, steps need to be taken to enforce them.

The regulatory authorities that administer environmental legislation can appoint authorised officers to hold powers to enforce environmental laws.

In instances of serious environmental harm that warrant prosecution, the relevant regulatory authority may investigate the harm and take enforcement action.

For example, in NSW authorised officers of the Environment Protection Authority (**EPA**) have broad investigative powers and enforcement functions under the POEO Act, including the power to issue a PIN for breaches of that Act.¹

In some instances, individuals or groups can bring enforcement action in relation to environmental laws, particularly where the relevant regulatory authority has decided not to take action.

This Fact Sheet explains the process for enforcing environmental laws in NSW with a focus on:

- the *Protection of the Environment Operations Act 1997* (**POEO Act**)
- the *Biodiversity Conservation Act 2016* (**BC Act**)
- the *Environmental Planning and Assessment Act 1979* (**EPA Act**)
- Enforcement under the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) is also covered.

¹ POEO Act, Chapter 8, Part 8.2, Division 3.

How are environmental laws enforced?

Environmental laws are enforced through:

- [Statutory notices and orders](#);
- [Enforceable undertakings](#);
- [Penalty infringement notices \(PIN\) \(on-the-spot fines\)](#);
- [Civil proceedings](#); and
- [Criminal prosecutions](#).

Statutory notices and orders

What	Who	When	Examples
Requires the recipient to do the thing set out in the notice or order in the timeframe specified	Depending on the notice/order: <ul style="list-style-type: none"> • Authorised officers of relevant regulatory authority (e.g. EPA or local Council) • Minister for the Environment² 	Where the offence is in the low range of seriousness or where immediate action is required to be carried out in order to protect the environment and community	<ul style="list-style-type: none"> • clean-up notice³ • prevention notice⁴ • prohibition notice⁵

Visit: The EPA publishes a [Guide to notices](#) which outlines the powers available to the EPA and other regulatory authorities (such as local councils) when issuing environment protection notices.

Clean-up Notice

The appropriate regulatory authority (**ARA**) may issue a clean-up notice:

- in writing⁶; and

² POEO Act, Chapter 4, Parts 4.2 and 4.5.

³ POEO Act, Chapter 4, Part 4.2; s 46 CLM Act.

⁴ POEO Act, Chapter 4, Part 4.3; s 46 CLM Act.

⁵ POEO Act, Chapter 4, Part 4.4.

⁶ Clean-up directions may also be given orally, which has the same effect as a notice in writing and is taken to be a clean-up notice (but it must be confirmed in writing within 3 days). See POEO Act, s 93.

- to an owner or occupier of a premises at or from which it reasonably suspects that a pollution incident⁷ is occurring, or to a person who is reasonably suspected of causing or having caused the pollution incident, or contributing to the incident; and
- requiring them to take specified clean-up action within a certain timeframe.⁸

The EPA (regardless of whether it is the ARA) can issue a clean-up notice to a public authority, such as a local council, directing it to take the clean-up action specified in the notice, if it reasonably suspects that a pollution incident has occurred or is occurring.⁹

N.B. 'Clean-up action' includes a broad range of activities, including action to:¹⁰

- prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident
- ascertain the nature and extent of the pollution incident and of the actual or likely resulting pollution
- prepare and carry out a remedial plan of action
- remove or store waste that has been disposed of on land unlawfully

It is an offence not to comply with a clean-up notice (without a reasonable excuse). The maximum penalty is:¹¹

- For a corporation: \$1 million and \$120,000 for each day the offence continues; and
- For an individual: \$250,000 and \$60,000 for each day the offence continues.

Read: Our other factsheets for more information:

[Water, Air and Noise Pollution in NSW](#)

[Contaminated Lands in NSW](#)

[Regulation of Chemicals and Pesticides in NSW](#)

Prevention Notice

A prevention notice directs the occupier of a premises or the person carrying out an activity to take action to ensure that an activity is carried out in future in an

⁷ 'Pollution incident' is defined in POEO Act, Dictionary.

⁸ POEO Act, s 91 (1).

⁹ POEO Act, s 92.

¹⁰ POEO Act, Dictionary.

¹¹ POEO Act, s 91(5).

‘environmentally satisfactory manner’ to prevent environmental harm or breaches of the law from occurring.¹²

The ARA may issue a prevention notice if it reasonably suspects that an activity has been or is being carried out in an ‘environmentally unsatisfactory manner’.¹³

For example, a prevention notice might direct a person occupying a waste management facility to store or transport waste in a particular manner to not cause a pollution incident.

*It is an offence not to comply with a prevention notice. The maximum penalty is:*¹⁴

- *For a corporation: \$1 million and \$120,000 for each day the offence continues; and*
- *For an individual: \$250,000 and \$60,000 for each day the offence continues.*

Prohibition Notice

For more serious pollution incidents, the EPA can recommend that the Minister issue a prohibition notice.¹⁵

A prohibition notice is used to direct a person to stop carrying on an activity (or an aspect of the activity) that is causing or likely to cause harm to the environment or public health, or that is causing or is likely to cause discomfort or inconvenience to any persons not associated with the management or operation of the activity.¹⁶

The Minister may issue a prohibition notice to the occupier of a premises or occupiers of a class of premises, as well as a person or persons of a class of persons.¹⁷

In certain circumstances, the ARA may take the action required to mitigate or prevent harm to the environment (for example, if a person does not comply with a prevention notice).¹⁸

The ARA may also issue a compliance cost notice to the person responsible to recover costs incurred in connection with the notice and any action taken by the authority.¹⁹

It is an offence not to comply with a prevention notice. The maximum penalty is:²⁰

¹² POEO Act, s 96(2).

¹³ POEO Act, s 96(2). ‘Environmentally unsatisfactory manner’ is defined in POEO Act, s 95.

¹⁴ POEO Act, s. 97.

¹⁵ POEO Act, s 101.

¹⁶ POEO Act, s 101.

¹⁷ POEO Act, s 101.

¹⁸ POEO Act, s 98.

¹⁹ POEO Act, s 104.

²⁰ POEO Act, s 97.

- For a corporation: \$1 million and \$120,000 for each day the offence continues; and
- For an individual: \$250,000 and \$60,000 for each day the offence continues.

Enforceable undertakings

What	Who	When	Examples
<p>A legal agreement under which the offender undertakes to carry out specified actions outlined in the agreement</p> <p>The activities required to be undertaken can directly respond to the specific offence in a pragmatic way that avoids the time and costs incurred in legal proceedings</p>	<p>Agreement between an offender and an authority responsible for administering environmental legislation (as set out in the relevant legislation)</p>	<p>In circumstances where the nature of the offending is too serious for a PIN, but does not warrant prosecution and the offender is willing to agree on the actions to be done</p>	<p>The power of an authority to accept an enforceable undertaking is available under various environmental laws, including:</p> <ul style="list-style-type: none"> • the POEO Act²¹ • EPA Act²² • <i>Contaminated Lands Management Act 1997 (CLM Act)</i>²³

Penalty infringement notices (PIN) (on-the-spot fines)

What	Who	When	Examples
<p>Requires the recipient to pay a fine, or defend the matter in court by electing to go to court and have a hearing</p>	<p>Depending on the offence:</p> <ul style="list-style-type: none"> • Authorised officers of relevant regulatory authority (e.g. EPA or local Council) • Police officers²⁴ 	<p>A PIN can be issued for offences that are prescribed as 'penalty notice offences' as an alternative to court proceedings</p> <p>The fine amount for each of the prescribed penalty notice offences is</p>	<p>Prescribed penalty notice offences include:</p> <ul style="list-style-type: none"> • failure to comply with a clean-up notice • littering from vehicles • the unlawful transport or

²¹ See e.g. POEO Act, s 253A.

²² EPA Act, s 9.5.

²³ CLM Act, s 96A

²⁴ Protection of the Environment Operations (General) Regulation 2022 Schedule 6 item 2

		prescribed by the regulations, ²⁵ not exceeding the maximum amount of penalty that could be imposed for the offence by a court	dumping of waste <ul style="list-style-type: none"> • failure to comply with the conditions of a development consent • Failure to comply with the terms of a development control order
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Civil proceedings

What	Who	When	Examples
<p>Court proceedings brought seeking orders to remedy or restrain a breach of an environmental law, and/or prevent environmental harm from occurring</p>	<p>Civil enforcement proceedings are generally open standing, meaning that the proceedings may be brought by 'any person' (including a community group), regardless of whether any right of that person has been or may be infringed by the breach²⁶</p>	<p>Civil proceedings are often faster and simpler than criminal proceedings because a civil case only needs to be proved on 'the balance of probabilities', rather than 'beyond reasonable doubt'</p> <p>They can also be used to obtain court orders to prevent environmental harm from occurring, whereas criminal proceedings are generally reactive legal action taken</p>	<p>Examples of environmental laws that may be enforced through civil enforcement proceedings include (but are not limited to):</p> <ul style="list-style-type: none"> • where a person is carrying out a scheduled activity without an environment protection licence or not in compliance with the licence • where a person is causing pollution, such as water or air pollution; • where a developer breaches the conditions of their development consent

²⁵ POEO Act, s 224(4); EPA Act, s 9.58(7).

²⁶ POEO Act, s 252; EPA Act, s 9.45.

		after the damage has been done	or carries out development without a development consent <ul style="list-style-type: none"> • where a person breaches the CLM Act
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Case study: Civil enforcement to stop pollution of the Georges River

Macarthur Bushwalking and Cycling Club v Endeavour Coal and Illawarra Coal Holdings

The community group Macarthur Bushwalking and Cycling Club brought a case in the NSW Land and Environment Court because they were concerned that pollution from a coal mine operated by subsidiaries of BHP had been discharged into the Georges River for more than 10 years and that this pollution wasn't authorised by a pollution licence.

Just ten days after the case was filed in Court, the EPA issued a media release advising that it was looking to place limits on the pollution licence. This was formalised almost a year later, when the pollution licence was varied by the EPA. The community was heavily consulted throughout that process.

The variation to the licence in effect authorised the pollution. However, the EPA also took the important step of requiring BHP to stop polluting. Under its pollution licence, BHP was required to carry out a program of works to achieve 95% species protection in Brennans Creek and the Georges River by December 2016. The EPA also required ongoing monitoring of ecological impacts during the period that the works were being constructed.

Because the EPA did what the community asked it to do, there was no need to have a court hearing.

What orders can the Court make in civil enforcement proceedings?

The NSW Land and Environment Court has broad power to make orders in successful civil enforcement cases. Examples of orders that may be imposed include:

- Declarations – a legally binding statement by the court that a breach of an Act has occurred.

For example, the court could make a declaration that an environment protection licence is invalid because it was issued in breach of the POEO Act.

- Injunctions – an order restraining somebody from doing something. For example, from carrying out further work on a site.

- Demolition or removal orders.
- Remediation orders – an order directing a person to carry out remediation work on a site, such as replanting trees.
- An order that the decision be sent back to the original decision-maker to make the decision again, this time in accordance with the law.

Even if the court is satisfied that a breach has occurred, the court has discretion about whether to make any orders at all.²⁷ In addition to proving that a breach of the law has occurred, the applicant in the proceedings also needs to satisfy the court that it is appropriate to make the orders sought.

If a person fails to comply with an order of the court within the time specified in the order, then he or she may be in contempt of court and liable to a fine, sequestration of property, or even imprisonment.

Civil proceedings in the Federal Court

The Federal Court of Australia hears civil cases relating to breaches and enforcement of federal environmental laws, including proceedings arising under the EPBC Act. The Federal Minister for the Environment (through the [Department of Environment](#)) is responsible for bringing civil enforcement proceedings in the Federal Court for breaches of the EPBC Act.

In some cases, it is possible for individuals to bring civil enforcement action in the Federal Court.

An example of proceedings in this jurisdiction would include an ‘interested person’ seeking an injunction or challenging a decision made under the EPBC Act in the Federal Court.²⁸ The EPBC Act defines an ‘interested person’ for this purpose as an individual or organisation whose interests have been or would be affected by an action; or have been engaged in a series of activities for the protection, conservation or research into the environment in the preceding two years; or, in the case of an organisation, the objects or purpose of the organisation includes the protection, conservation or research into the environment.

The Federal Court can also impose significant civil penalties (fines) for individuals and corporations who breach legislation. Information relating to the penalties for a breach of the EPBC Act can be found on the [DCCEEW website](#).

Read: Our [EPBC Act Fact Sheet](#) for further information on the EPBC Act, including how to have your say on referrals.

²⁷ *Land and Environment Court Act 1979* (NSW), s. 23.

²⁸ *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 487.

Criminal prosecutions

What	Who	When	Examples
<p>May be commenced where the prosecutor alleges that a person or company has committed an offence against an environmental law</p>	<p>Usually commenced by the public authority responsible for that area of law, For example:</p> <ul style="list-style-type: none"> • Council may bring a range of criminal prosecution proceedings,²⁹ including if they are the ARA for an offence,³⁰ or if they obtain permission from the Court to be the prosecutor³¹ • The EPA can prosecute any offence under the POEO Act and its regulations³² • illegal clearing of native vegetation offences under the <i>Local Land Services Act 2013</i> (NSW) can be 	<p>Criminal prosecutions will generally be favoured where the severity of the offence warrants criminal sentencing</p> <p>If the prosecution successfully establishes an offence, the court has the power to impose sentences ranging from a small fine to imprisonment, depending on the seriousness of the offence</p> <p>In some circumstances, the court may have the power to make other orders, such as for restoration and the prevention of harm caused to the environment in connection with the offence,³⁵ or for the planting of new</p>	<p>Examples of offences which can be prosecuted include (but are not limited to):</p> <ul style="list-style-type: none"> • Pollution, such as water or land pollution • Littering • Unlawful transport or dumping of waste • Carrying out a scheduled activity without an environment protection licence • Carrying out development without the required development consent • Failure to comply with an environment

²⁹ However, there are some offences (excluded offences), such as those relating to scheduled activities, EPLs, activities carried on by the State or public authorities, which local councils cannot prosecute POEO Act, s. 218(6), although police can bring proceedings for excluded offences if they have permission (leave) from the Court, s. 219(1A).

³⁰ POEO Act, s. 217(2)

³¹ POEO Act, s. 219(1A). This provision was introduced to overturn the effect of the Court's decision in *Wyong Shire Council v Thomas Hughes Homes Pty Ltd* [2000] NSWLEC 234, where the Court dismissed a prosecution for unlawfully disposing of waste by a local council because the site was a scheduled premises.

³² POEO Act, s. 217(1).

³⁵ POEO Act, Part 8.3.

	<p>prosecuted by the Local Land Services</p> <ul style="list-style-type: none"> • Police officers can institute proceedings for a noise pollution offence, littering or an offence relating to the operation of a motor vehicle³³ • Any person can institute criminal proceedings in the NSW Land and Environment Court for an offence against the POEO Act or regulations with the permission (leave) of the Court³⁴ 	<p>trees and vegetation where the offence involves the destruction of a tree or vegetation³⁶</p> <p>Criminal prosecutions may be commenced when the prosecutor can establish the offence 'beyond a reasonable doubt'</p> <p>Criminal prosecutions for a breach of the environmental law must generally be commenced within the time limit imposed by the legislation, known as the 'statute bar date'</p>	<p>protection notice, such a clean-up notice or prevention notice</p> <ul style="list-style-type: none"> • Clearing native vegetation • Failure to comply with a management order issued under the CLM Act
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N.B. Under the POEO Act, proceedings for serious offences (prescribed offences) must be commenced within 3 years of the date on which the offence is alleged to have been committed, or of the date that the alleged offence came to the attention of an authorised officer.³⁷

For all other offences, the prosecution must be commenced within 12 months.

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³³ POEO Act, s. 218(4).

³⁴ POEO Act, s. 219(1) and (2).

³⁶ EPA Act, s 9.56.

³⁷ POEO Act, ss 216(1) and (2).

³⁸ POEO Act, ss. 216(1) and (2).

Which Court hears environmental prosecutions?

The more serious offences are generally heard in the NSW Land and Environment Court as higher penalties may be imposed for offences in this court.

Less serious environmental offences are generally heard in the relevant Local Court.

For example, in the case of *EPA v Feodoroff*,³⁹ the EPA elected to prosecute offences relating to waste transport under the POEO Act in the Local Court at Ballina. The Local Court has criminal and civil jurisdiction, however the maximum monetary penalty that a Local Court can impose is \$110,000.⁴⁰

N.B. If the Local Court hears the matter, the maximum fine that it can impose is \$110,000, even though a higher penalty may be permitted under the law.⁴¹

For more information visit the [NSW Local Court website](#).

For offences under the POEO Act:

- Tier 1 offences (most serious) are heard by the NSW Land and Environment Court or the Supreme Court.⁴²
- Tier 2 offences (mid-range offences) are heard by the NSW Land and Environment Court⁴³ or a Local Court.⁴⁴
- Tier 3 offences do not go to court, as they are enforced through penalty notices. However, if the person elects not to pay the fine, the matter can be heard either by the NSW Land and Environment Court⁴⁵ or a Local Court.⁴⁶

Visit:

- The EPA's [Prosecution Guidelines](#) which explain how it decides whether to prosecute a matter, and what sort of orders it will ask for.
- The EPA's [Guidelines](#) which concern sentencing options for environmental offences committed against the POEO Act.

³⁹ See <http://envlaw.com.au/feodoroff.html>

⁴⁰ EPA Act, s. 9.57.

⁴¹ POEO Act, s. 215(2); EPA Act, s. 9.57(3).

⁴² *Land and Environment Court Act 1979* (NSW), s. 21(a); POEO Act, s. 214.

⁴³ *Land and Environment Court Act 1979* (NSW), s. 21(a).

⁴⁴ POEO Act, s. 215.

⁴⁵ *Land and Environment Court Act 1979* (NSW), s. 21(a).

⁴⁶ POEO Act, s. 215.

The Federal Court of Australia hears criminal cases relating to breaches and enforcement of federal environmental laws, including proceedings arising under the EPBC Act. The Federal Minister for the Environment (through the [Department of Environment](#)) is responsible for bringing criminal enforcement proceedings in the Federal Court for breaches of the EPBC Act.

Read: Our [EPBC Act Fact Sheet](#) which explains standing in the Federal Court for EPBC Act matters.

The Federal Court can also impose significant criminal penalties (fines and imprisonment) for individuals and corporations who breach legislation.

Visit: The [Federal Court of Australia](#) for more information.

Penalties and Sentences

The sentence imposed depends on the seriousness of the offence, which is determined by the court having regard to a range of matters such as the extent of environmental harm caused by the offence, whether the offender has a history of offending, any financial benefit gained by the offender by committing the offence, and whether the offender tried to mitigate the harm or shows remorse.⁴⁷

N.B. The court that finds an offence under the POEO Act to be proved can order the convicted offender to take certain steps, including (but not limited to):⁴⁸

- Prevent, control, abate or mitigate any harm to the environment caused by the offence⁴⁹
- Make good any resulting environmental damage to land (restoration order)⁵⁰
- Publicise the offence and its environmental and other consequences and any other orders made against the person⁵¹
- Carry out a specified project for the restoration or enhancement of the environment in a public place for the public benefit⁵²
- Pay a specified amount to an environmental organisation, either for a project or for general environmental purposes⁵³

⁴⁷ POEO Act, s. 241; *Crimes (Sentencing Procedure) Act 1999*, s 21A.

⁴⁸ POEO Act, s 244.

⁴⁹ POEO Act, s. 245(a), (c).

⁵⁰ POEO Act, s. 245(b).

⁵¹ POEO Act, s. 250(1)(a).

⁵² POEO Act, s. 250(1)(c).

⁵³ POEO Act, s. 250(1)(e).

- Pay the prosecutor's legal costs, pay a specified amount to the Environmental Trust or a specified organisation for a specified project for the restoration or enhancement of the environment or for general environmental purposes⁵⁴

In extreme cases, the court may order a term of imprisonment if this is provided for by the relevant legislation.

Case study: Court orders polluter to pay for weed management at Towra Point

[EPA v Caltex Refineries NSW Pty Ltd \[2008\] NSWLEC 194](#)

In 2008, the EPA prosecuted Caltex Refineries for releasing odour from its oil refinery in Kurnell, NSW. The odour incident occurred over a few days during December 2006. About 35 complaints were made by residents of a very strong, unpleasant odour like sulphur.

Caltex pleaded guilty to the charge of failing to operate its plant in a proper and efficient manner, as required by the conditions of its pollution licence.

Instead of imposing a fine of \$78,000, the Court ordered Caltex to pay the Parks and Wildlife Group (part of the then NSW Department of Environment and Climate Change) \$78,000 to be used for the implementation of the Weed Management Strategy for Towra Point Nature Reserve.

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⁵⁴ *Criminal Procedure Act 1986 (NSW)*, ch. 4, pt. 5. The Environmental Trust is established under the *Environmental Trust Act 1998 (NSW)*.