

ENVIRONMENTAL LEGISLATION AMENDMENT BILL 2025

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill amends a number of NSW Acts to ensure human health and the environment are better protected and that offences and enforcement powers available to the NSW Environment Protection Authority (EPA) are fit for purpose.

The Bill does this by modernising, updating and clarifying provisions to ensure the EPA's regulatory powers and tools continue to be effective and contribute to improved environmental outcomes. A number of changes are informed by recent cases and incidents.

The Bill makes minor changes to clarify the intention and operation of the Acts where these concern the EPA's existing powers, functions and administrative processes. The Bill proposes provisions that deal with the harassment of EPA officers that are or were exercising statutory functions or administering legislation. The Bill also makes minor amendments to the *Climate Change (Net Zero Future) Act 2023* to provide a stronger foundation for future Annual Reports.

Without this Bill, ambiguity, inconsistency or inefficiency in the legislation could undermine the effectiveness of the regulatory frameworks and their responsiveness to current concerns and issues.

The EPA has consulted with relevant government agencies and undertaken extensive consultation with Aboriginal communities on the proposed Respect for Country proposals in the Bill, which will bring NSW environmental legislation in line with other legislation in NSW. There was near unanimous support for the Respect for Country proposals across all consultation forums. The proposals support the NSW Government's commitment to recognising connection to Country under the national Closing the Gap Agreement and the NSW Closing the Gap Implementation Plan (2022-2024).

The proposed reforms are in the public interest and updates to existing regulatory and enforcement powers are unlikely to impact law abiding stakeholders familiar with current NSW environmental laws. A number of proposals have been informed by consultation with other agencies. As the Bill will not impose significant changes or unreasonable regulatory costs or impacts, the risk of unintended consequences is low.

Objectives: What is the policy's objective couched in terms of the public interest?

Environment protection legislation needs to be continuously improved to address emerging issues and evolving criminal behaviours to ensure it remains effective and modern. The proposals are informed by recent cases, compliance and enforcement information, EPA policies, and a comparison of similar legislation in NSW and other jurisdictions.

These legislative amendments will:

- recognise the importance of Aboriginal values and knowledges in Caring for Country and environment protection when the EPA exercises its functions,
- move further towards environmental stewardship by enabling broader scope for regulatory tools, including Protection of the Environment Policies,

- ensure the EPA remains a best practice environmental regulator with effective tools, powers and protections for staff when implementing the legislation, and
- make minor amendments to update reporting requirements, remove duplication, modernise legislation and close potential loopholes.

There is a strong public interest in ensuring the EPA can effectively regulate activities that may cause environmental harm and enforce or remedy non-compliance.

Options: What alternative policies and mechanisms were considered in advance of the bill?

Alternative options were considered including retaining the status quo and non-legislative approaches. The EPA has a range of policies and guidelines which provide information to enforcement officers and the public on requirements and obligations. However, these approaches do not adequately address evolving criminal behaviours, emerging environmental issues and identified gaps in the legislation.

The reforms include a new offence about harassing EPA officers, measures to support cost recovery, more consistent penalties, and updates to existing provisions, which can only be achieved through amendment of legislation.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Relying on the status quo or taking a non-legislative approach would be a benefit in the sense that government, industry or business would have no change to respond to and there would be potential for an increased emphasis on industry partnerships and education. However, this would leave NSW with outdated provisions that are inconsistent, unclear or no longer fit for purpose, resulting in some cases in potential loopholes.

The Bill takes a measured approach that is generally consistent with other jurisdictions or existing NSW legislation and many of the changes are administrative or clarify existing regulatory tools to deter and enforce environmental crimes. Changes that impact EPA functions will be implemented within the EPA's existing budget and resources.

The changes do not impose direct costs on the non-regulated community and will have negligible financial impact and regulatory burden on those who already comply with NSW environmental legislation. There will be a modest increase in cost for the very small number of operators who may require, by no later than 9 months after the changes, an environment protection licence for the first time, or those who are required to comply with certain notices or consider Protection for the Environment Policies. The changes to offences, increase in penalties and additional sentencing considerations could mean more significant penalties for offenders, depending on the seriousness of the offence committed. However, the reforms are consistent with the 'polluter pays' principle, which provides that those who generate pollution and waste should be responsible for the cost of its containment, avoidance or abatement. Not implementing these reforms could mean significant costs for the community, particularly in situations where the EPA is forced to take action to remediate pollution.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Most amendments will commence on proclamation to allow time for necessary system updates and communication of the changes.

The Acts amended via this Bill are mainly administered by the EPA and changes under those Acts will be implemented by the EPA. Stakeholders will be informed of relevant changes, including by updated information on the EPA website. The Department of Communities and Justice will arrange updates to

court systems and communicate information about changes to offences, court orders and penalties to judicial officers.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Consultations with Aboriginal communities were conducted on the Respect for Country reforms according to a consultation and communication plan co-designed by the EPA's Aboriginal Peoples Knowledge Group and the EPA. Consultations took place on Country across NSW, with Saltwater, Freshwater, Desert, and Rainforest communities represented. A total of 56 community members attended the nine face-to-face consultations and 165 registered participants attended one online session. A total of 288 survey responses were received, indicating strong support for the reforms.

The EPA also worked with Aboriginal Affairs NSW to ensure coordination and consistency of the reforms across government and will continue to work with them through implementation.

Relevant agencies have been consulted, including the Land and Environment Court.