



Environment Protection Authority

Regulatory Impact Statement

Protection of the Environment Operations (General) Regulation 2022



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The NSW Environment Protection Authority has carried out a comprehensive review of the Protection of the Environment Operations (General) Regulation 2009 and Protection of the Environment Operations (General) Regulation 2021 in accordance with the *Subordinate Legislation Act 1989*. That Act provides that a regulation must be reviewed every five years to ensure it remains relevant and effective.

This Regulatory Impact Statement (RIS) details the results of this review. It describes the amendments proposed for inclusion in the Regulation and considers alternative approaches and their costs and benefits. The RIS complies with the requirements set out in section 5 and Schedule 2 of the Subordinate Legislation Act.

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 delivery 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 subordinate to the POEO Act. It provides for the administration and implementation of legal frameworks established by and under the POEO Act and prescribes certain matters for the purposes of that Act. For further information on the POEO General Regulation 2021 please refer to Section 2.2 of the RIS or the EPA's [Regulation summaries](#) webpage.

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 propose more complex amendments through this subsequent regulation.

The POEO General Regulation 2021 is due for repeal on 1 September 2022. It is proposed that the POEO General Regulation 2021 be replaced by the Protection of the Environment Operations (General) Regulation 2022 (POEO General Regulation 2022).

The POEO General Regulation 2022 should support the operation of the POEO Act at least cost to the community and assist the EPA (and other appropriate regulatory authorities) to achieve the objectives of the POEO Act.

The EPA proposes to make a number of amendments to the POEO General Regulation 2021 and Schedule 1 of the POEO Act. The proposed amendments seek to:

- ensure the provisions of the POEO Act can be implemented in an efficient and effective manner
- recover the costs of administering the POEO Act and the POEO General Regulation 2021 through applying the user pays and polluter pays principles
- improve the operability of the POEO General Regulation 2021
- clarify and simplify the POEO General Regulation 2021
- refine definitions and improve operation of Schedule 1 of the POEO Act.

The following three proposed amendments are considered significant under the NSW Government Guide to Better Regulation (January 2019)¹:

- introducing a new licence application fee (section 19)
- amending the definition of 'extractive activities' (Schedule 1, POEO Act)
- adding a new upper licence fee threshold for bird accommodation (Schedule 1, POEO Act).

¹ The guide is available on the NSW Commissioner for Productivity's [Guidance on Regulatory Policy in NSW](#) webpage.

Many proposed amendments to the POEO General Regulation 2021 and Schedule 1 of the POEO Act are considered non-significant and are necessary to improve the functionality of the Regulation. They include:

- increasing some fees, such as vehicle test, vehicle inspection and environmental notice fees, to better reflect cost recovery
- indexing fee units to the Consumer Price Index (CPI) or Wage Price Index (WPI) to ensure the EPA's ability to recover its costs is not eroded over time
- testing of pollution incident response management plans (PIRMPs)
- changes to penalty notice provisions for two offences relating to the sale of building intruder alarms²
- removing pro rata provisions for fee refunds and waivers where environment protection licence variations change the licensed scale of activity during the licence period
- prescribing the financial capacity of a regulated party as an additional matter for consideration when assessing whether a financial assurance is justified
- clarifying the circumstances in which approved methods are to be used for pollutant testing
- clarifying National Pollutant Inventory reporting and emission estimation processes
- simplifying and aligning Schedule 1 of the General Regulation with the POEO Act
- amendments to some scheduled activities in Schedule 1 of the POEO Act, including:
 - creating two sub-activities within the 'petroleum products and fuel production' scheduled activity to better reflect environmental risk
 - removing the ambiguity around the scheduled activity 'marinas and boat repairs'
 - adding substances to the definition of 'shipping in bulk' that pose a similar environmental risk to those already prescribed
- removing below threshold fees to align with the POEO Act.

The proposed POEO General Regulation 2022 also includes minor amendments to ensure it is a contemporary regulation reflecting current technology, operations and processes.

Consultation

The draft POEO General Regulation 2022 and this Regulatory Impact Statement (RIS) are available for community and stakeholder comment and these documents and details about the consultation period are available on the [EPA's Have Your Say](#) website.

The EPA has started consultation with state government stakeholders, local councils, the Office of Local Government, Local Government NSW and other appropriate regulatory authorities (ARAs).

How to make a submission

Organisations, businesses and individuals are invited to provide a submission on any matter relevant to the proposed regulation, whether or not it is addressed in this RIS.

The draft regulation and the RIS are available on the [Have Your Say](#) website.

A survey with specific questions has been provided on the Have Your Say website. Any responses and information provided through this survey will be taken as a formal submission.

² This is in relation to section 41 of the Protection of the Environment Operations (Noise Control) Regulation 2017.

1. Introduction

The RIS has been prepared to satisfy the requirements of the *Subordinate Legislation Act 1989*, the NSW Government's Guide to Better Regulation 2019, and the Independent Pricing and Regulatory Tribunal (IPART) Guideline, *A best practice approach to designing and reviewing licensing schemes* (or Licensing Framework) (refer to Appendix E).

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 (the POEO General Regulation 2021) is subordinate to the POEO Act and gives effect to many of the powers provided by the POEO Act. Further information about the POEO Act and the POEO General Regulation 2021 is available on the EPA's website and the legislation is available on the [NSW Legislation](#) website.

This Regulatory Impact Statement (RIS) outlines proposed changes to the POEO General Regulation 2021 and Schedule 1 of the POEO Act.³ This RIS details the EPA's preferred amendment options, other significant alternatives considered and the potential impacts of those changes. Amendments are preferred where they offer the greatest net benefit and least net cost to the community, consistent with section 1(e) of Schedule 2 of the Subordinate Legislation Act.

The proposed amendments include the restructuring and consequential re-numbering of the POEO General Regulation 2021 to ensure it remains a modern and up-to-date regulation.

The EPA's review of the POEO General Regulation 2021 has determined that it requires amendments, and that amendments to Schedule 1 of the POEO Act are also required. The proposed amendments seek to:

- improve the operation of the POEO General Regulation 2021
- clarify and simplify the POEO General Regulation 2021
- refine scheduled activity definitions within Schedule 1 of the POEO Act and better align these to Schedule 1 of the POEO General Regulation 2021
- improve the EPA's cost recovery capability.

The Subordinate Legislation Act provides for the automatic repeal of regulations five years after they are made. This is to ensure regulations are regularly reviewed and fit for purpose. The EPA was conducting a comprehensive review of the POEO General Regulation 2009, which was set to repeal by 1 September 2021. Due to the complexity of the Regulation its review and reform was not going to be completed by 1 September 2021. The EPA sought a postponement but due to COVID-19 and Parliament not sitting the Regulation was not able to be postponed. The EPA implemented the POEO General Regulation 2021, which rolled over the 2009 provisions without any substantive changes to ensure the provisions (which are crucial to the licensing functions of the EPA) could continue and the EPA could continue to progress the significant reforms. The POEO General Regulation 2021 will repeal on 1 September 2022.

The comprehensive review concluded that some elements of the POEO General Regulation 2021 remain fit for purpose and require no changes and other elements are subject to reviews such as the load-based licensing (LBL) scheme review. Changes that are proposed to the POEO General Regulation 2021 are considered in this RIS.

³ Section 5(3) of the POEO Act permits amendments to Schedule 1 of the Act to be made by regulation.

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. The POEO General Regulation 2021 is subordinate to the POEO Act.

2.1. Protection of the Environment Operations Act 1997

The POEO Act came into force on 1 July 1999. One of the key objects of the Act is to achieve the protection, restoration and enhancement of the quality of the NSW environment.

The POEO Act establishes a regulatory framework to deal with activities that have an impact on the environment by making provision for the following:

- appropriate regulatory authorities (ARAs)
- environment protection licences to regulate certain activities
- environment protection notices
- duty to notify and prepare pollution incident response management plans (PIRMPs), for certain activities
- establishment of environmental offences
- 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 POEO 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
- establishes the Load-based Licensing Technical Review Panel
- 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 Air Quality Monitoring Network
- prescribes requirements in respect of PIRMPs
- prescribes the ARA for certain activities
- 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 establish the need for government action in relation to proposed amendments. Areas that support the need for government action include those described below. More details of the proposed amendments are provided in Sections 5–11.

Changes to improve the EPA's ability to recover its costs, and those of other regulators

The EPA is seeking to improve cost recovery within its licensing framework. Maintaining the current cost recovery status means the EPA will remain financially constrained in its ability to meet the objects of the POEO Act, including the object of protecting, restoring and enhancing the quality of the environment in NSW. Recovering costs from the regulated community is considered the most direct and efficient method of meeting that object and is consistent with the 'user pays' principle. Improved cost recovery is in the public interest. By recovering costs directly from businesses that benefit from the EPA's licensing system, the EPA will have increased financial resources to further implement strategies to benefit the environment and human health. Improving cost recovery is consistent with the Government's cost recovery principles.

Proposed amendments will change the licence fee structure by requiring applicants to pay a specific one-off application fee. Licensees will then pay the yearly administrative fee once a new licence is issued. This will replace the current regime where applicants pay the first year's licence administrative fee when lodging an application. The amended fee structure will better recover the EPA's costs of considering and processing licence applications and developing licences, including costs it incurs during the development assessment process as a consequence of considering conditions of approval that ought to be imposed for developments that will require a licence.

In addition, continued indexing of certain fees such as 'administrative fee units', 'pollutant fee units' and environment protection notice fees will improve the Government's cost recovery capability.

Minor changes to improve the operation of the Regulation

Minor administrative proposals include:

- specifying a process to allow the EPA to increase fees using the Wage Price Index (WPI) or Consumer Price Index (CPI) when prescribed annual increases to fees have run out (i.e. in circumstances where there are no further fee increases specified in the Regulation, but it remains in force until such time as it is remade)
- clarifying provisions for fee refunds and waivers where variations are made during a licence period.

Changes to refine definitions in Schedule 1 of the POEO Act

The proposed changes will clarify definitions and licensing requirements for some scheduled activities in Schedule 1 of the POEO Act including 'shipping in bulk', 'marinas and boat repairs' and 'extractive activities.' It is also proposed to create two sub-activities within the 'petroleum products and fuel production' scheduled activity to better reflect environmental risk.

Changes to prescribe financial risk as a consideration relevant to financial assurances

Changes are proposed to prescribe the financial risk of a regulated party as an additional matter for consideration when assessing whether a financial assurance is justified. This will reduce the risk of the NSW Government becoming responsible for environmental liabilities of a regulated party.

4. Changes to the General Regulation

The EPA has undertaken a thorough review of the POEO General Regulation 2009 and POEO General Regulation 2021, and has identified and evaluated a number of amendments to improve

the latter's operation and clarify and refine some scheduled activities as defined in Schedule 1 of the POEO Act.

There are three proposed amendments to the POEO General Regulation 2021 and Schedule 1 of the POEO Act that are considered significant based on the NSW Government Guide to Better Regulation.

They include:

- introducing a new licence application fee to replace the administrative fee required under section 8 of the current Regulation
- amending the definition of the 'extractive activities' scheduled activity in Schedule 1, POEO Act
- adding a new range of production capacity for bird accommodation in Schedule 1, POEO General Regulation 2021.

Most proposed amendments to the POEO General Regulation 2021 are considered non-significant. They are necessary to improve the functionality of the Regulation, and include:

- increasing some fees, such as vehicle test or inspection fees and environmental notice fees, to improve cost recovery
- indexing fee units to the CPI or WPI (where appropriate) to ensure the EPA's ability to recover its costs is not eroded over time
- clarifying National Pollutant Inventory reporting and emission estimation processes
- clarifying requirements for the testing of PIRMPs
- changes to penalty notice provisions for two offences relating to the sale of building intruder alarms⁴
- removing pro rata provisions for fee refunds and waivers where licence variations are made to a scheduled activity during the licence period
- prescribing the financial capacity of a regulated party as an additional matter for consideration when assessing whether a financial assurance is justified.

The EPA is also proposing to make non-significant amendments to scheduled activities in Schedule 1 of the POEO Act. The amendments include:

- creating two sub-activities within the 'petroleum products and fuel production' scheduled activity to better reflect environmental risk and allow additional load-based licensing-related changes in the future, where appropriate, such as assessable pollutants
- removing ambiguity around the scheduled activity 'marinas and boat repairs'
- adding materials to the definition of 'shipping in bulk' that pose a similar environmental risk to those already prescribed.

A list of the sections and the proposed amendments to the POEO General Regulation 2021 and Schedule 1 of the POEO Act can be found at Appendix B. The corresponding section in the RIS is also identified for ease of reference.

4.1. Analysis and assumptions

This RIS contains a cost-benefit analysis for significant new and amending proposals. Proposed amendments considered to be non-significant are assessed in accordance with the NSW Better Regulation Principles below.

⁴ This is in relation to section 41 of the Protection of the Environment Operations (Noise Control) Regulation 2017.

NSW 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.

Principle 2: The objective of government action should be clear.

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.

Principle 4: Government action should be effective and proportional.

Principle 5: Consultation with business and the community should inform regulatory development.

Principle 6: The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered.

Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.

This RIS assesses the costs and benefits of the proposed amendments to the POEO General Regulation 2021 as well as alternative options. The RIS evaluates, where possible, the social, environmental and economic costs and benefits (both direct and indirect) of the proposed amendments and their alternatives. This includes an evaluation of the impacts on resource allocation, administration and compliance with existing statutory requirements.

This RIS details the options considered for each significant and non-significant proposed amendment to the Regulation, including the base case (no change), and a cost–benefit analysis for significant proposals. Proposed minor amendments do not have options or costs and benefits presented.

The assessment of options is based on a mix of qualitative and quantitative analyses. Where impacts can be quantified, estimated costs and benefits are assessed over a five-year period to reflect the life of the proposed POEO General Regulation 2022.

Where an economic quantitative analysis has occurred, assumptions made in relation to the CPI, public sector WPI and private sector WPI can be found in Appendix A.

5. Significant regulatory proposals – cost-benefit analysis

This RIS contains a cost–benefit analysis for significant new and amending proposals. Proposed amendments considered to be non-significant are assessed in accordance with the NSW Better Regulation Principles in Section 4.

Before assessing the costs and benefits of each option, it is useful to distinguish between ‘financial’ and ‘economic’ costs. Economic costs are incurred by individuals and businesses when they use resources to achieve a given outcome (e.g. the use of electricity to operate a dust extraction unit, or a worker’s time to report pollution loads). In contrast, financial costs occur whenever money physically changes hands (e.g. paying a parking fine) and need not reflect the use of any economic resources.

The primary focus of a cost–benefit analysis is economic costs and benefits. The incidence of financial costs is normally assessed separately, as a secondary consideration. The analysis in this section focuses on economic costs and benefits. Where there are likely to be no significant resource allocation implications from proposed changes, financial costs (transfers) are noted.

A more qualitative cost–benefit analysis is detailed in Sections 6 to 10 for the non-significant regulatory proposals. These sections also consider cost recovery implications where relevant.

There are other proposed amendments to the POEO General Regulation 2021 that are very minor in nature. A cost–benefit analysis has not been undertaken for these; however, they are described in Section 11 of this RIS for completeness.

5.1. New licence application fee

This proposed amendment relates to section 8 of the current POEO General Regulation 2021 and section 19 of the draft POEO General Regulation 2022.

Background

Schedule 1 of the POEO Act prescribes a list of activities referred to as “scheduled activities”. They include premises-based and non-premises-based activities. A licence is required if a scheduled activity meets the threshold and definition in this schedule. A licence is required if work is to be done at premises that will enable a scheduled activity to be carried out; this is called scheduled development works (section 46 POEO Act). A licence may be issued to regulate water pollution from non-scheduled activities.

Any proposed development requiring both development consent and a licence will be integrated development if it is not otherwise state significant development. As an approval body for integrated development, the EPA is required under the *Environmental Planning and Assessment Act 1979* (EP&A Act) to consider the development application and provide general terms of approval (GTAs) for the development to the consent authority. Where approval is granted for the development, the development consent conditions are required to be consistent with the EPA’s GTAs, while the conditions of the licence granted by the EPA must be consistent with the consent.

In respect of proposed state significant development or state significant infrastructure, the EPA will be consulted by the Department of Planning and Environment on the development if carrying out the development will require a licence. Where consent or approval is subsequently granted for the development, the EPA will be required to grant a licence substantially consistent with that consent or approval.

The consideration the EPA gives to proposed developments as part of the planning approval process therefore has a direct bearing on the licensing application process and informs the EPA’s decision as to conditions to be imposed on a licence.

The holder of a licence must pay a yearly administrative fee, which covers the EPA’s costs in regulating scheduled activities for the licence and is based on the proposed scheduled activities and level of operation. Section 53(2)(c) of the POEO Act allows the General Regulation to prescribe a fee to be submitted with a licence application. Presently, this fee is simply the first year’s administrative fee for the licence.

Need for action

Improving cost recovery will assist the EPA in satisfying the objectives of the POEO Act.

By improving cost recovery within the EPA’s licensing framework, the EPA will have increased financial resources to further implement strategies to benefit the environment and human health.

The administrative fee currently paid by the applicant when they submit a licence application only covers the annual costs incurred by the EPA when administering a licence and regulating the scheduled activities the licence authorises. There is currently no fee to recover the EPA’s costs for informing the planning approvals process (which precedes the licence development process) or its costs in processing a licence application, or drafting and issuing a licence.

While development applications are subject to planning application fees paid to the consent authority, the EPA does not receive any of these monies to cover its costs, which were not factored into the fee schedule for development applications. For integrated development applications only, the EPA receives an ‘approval fee’ of \$320 under section 253 of the Environmental Planning and

Assessment Regulation 2000. This fee does not adequately recover the EPA’s costs incurred during the planning approvals process.

The EPA’s costs in informing and supporting planning processes are considerable. During the assessment of a planning application for development that will require a licence (the pre-development consent phase) the EPA:

- attends planning focus meetings or steering groups
- provides inputs into assessment requirements, such as Secretary’s Environmental Assessment Requirements
- assesses Statements of Environmental Effects, Reviews of Environmental Factors or Environmental Impact Statements
- assesses impacts and proposed management of air quality and odour, human health risks, waste, noise, land, water and hazardous materials
- advises the consent authority of any objections to the development, or otherwise provides GTAs (for integrated development) or recommendations in respect of conditions of consent or approval (where applicable).

Once development consent or approval has been issued the EPA can process a licence application and undertakes the further tasks below and outlined in Figure 1:

- reviews the licence application including any supporting documentation
- develops appropriate site-specific conditions (this may involve seeking expert technical advice)
- issues a draft licence for review
- after considering any comments received, issues a new licence (post-consent/approval phase).

Figure 1. Licence application stages



The EPA proposes to introduce a new application fee to better reflect the work it does during the development approval process (pre-consent/approval) and when processing a licence application (post-consent/approval). The proposed application fee would replace the administrative fee currently required at the time of application, with administrative fees to be charged only upon approval of the licence application.

Options considered

Option 1 – Base case (no change)

Under this option, the EPA (and hence the NSW community) would continue to incur costs in informing planning processes and developing a licence without any ability to recover those costs from those applying for a licence, who benefit from being issued with a licence.

Option 2 – Actual cost licence application fee

Option 2 involves charging a licence application fee based on actual EPA costs, when the licence is issued. This option would require the EPA to record data about all its licence processing activities for individual development applications it informs and the subsequent licence application, including time spent providing input during the development assessment process (pre-consent phase) and licence application assessment phase (post-consent phase). The licence applicant would have no certainty about the fee to be charged until the licence development process was complete and the invoice served.

This approach differs from the ‘efficient cost’ approach, which is based on recovery of the minimum costs needed to undertake the activity.

Option 3 – Project complexity licence application fee

Under this option, the licence application fee would be based on the complexity and size of an activity or project, which are good indicators of the amount of work that will need to be done by the EPA during the planning and licence application assessment. There would be seven different fee categories: five for premises-based licence applications and two for non-premises-based applications.

Note. Other options were assessed but are not detailed here, including licence fees based on a percentage of estimated project capital investment costs (with minimum and maximum caps), and a base fee with resubmission fees for each re-application. These options did not progress in the analysis as they did not meet cost recovery, transparency, and practical application criteria.

Premises-based licence application fee

Premises-based licence applications can be considered to be straightforward, moderate in complexity, or of state significance (and therefore complex), depending on the proposed activity. The criteria for each premises-based licence application type are set out below:

- **straightforward** licence application meets **all** of the following:
 - no more than two scheduled activities (under Schedule 1 POEO Act) are to be carried out at the premises, **and**
 - the highest administrative fee for any of these activities is **less than 50** administrative fee units, **and**
 - development to which the proposed scheduled activity relates was/is NOT being assessed as State Significant Development (SSD) or State Significant Infrastructure (SSI) under the EP&A Act.
- **moderate** licence application meets **either** of the first two criteria **and** the third criterion below:
 - three or more scheduled activities (under Schedule 1 POEO Act) are to be carried out at the premises, or
 - the highest administrative fee for any of these activities to be carried out on the premises is **50** administrative fee units **or more**, and
 - the development to which the proposed scheduled activity relates was/is **not** being assessed as SSD or SSI under the EP&A Act.
- **State significant** licence application meets **all** of the following:
 - the development to which the proposed scheduled activity relates is the subject of SSD consent or SSI approval, and
 - the highest administrative fee for any of the activities (Schedule 1 of the POEO Act) is **less than 135** administrative fee units, and
 - the development was/is **not** being assessed as Critical State Significant Infrastructure (CSSI) under the EP&A Act.
- **State significant (large)** licence application meets **all** of the following:

- the development to which the scheduled activity relates is subject to SSD consent or SSI approval, and
- the highest administrative fee for any of the activities (Schedule 1 of the POEO Act) is **135** administrative fee units **or more**, and
- development was/is **not** being assessed as CSSI under the EP&A Act.
- **Critical State significant infrastructure** licence application – the proposed development activity is the subject of a development consent that relates to CSSI.

Table 1 outlines the proposed licence application fees for premises-based licences for the 2020–21 financial year (the fee unit is \$139). The fees vary according to the complexity of the project.⁵

Table 1 Proposed licence application fees for premises-based licences

Straightforward	Moderate	State significant	State significant (large)	Critical State significant infrastructure
\$5,143	\$12,232	\$24,742	\$30,997	\$38,503
37 fee units	88 fee units	178 fee units	223 fee units	277 fee units

If the EPA receives an ‘approval fee’ of \$320 during the planning approvals process for an integrated development application, this cost would be deducted from the application fee to ensure no double-dipping of fees.

State Environment Protection Policies (SEPPs) can establish certain development as complying or exempt activities that would otherwise have been integrated or designated development. Any development that would have fallen into these fee categories but are now being assessed as complying or exempt development will remain in the original fee categories for licence application fee purposes to reflect the complexity of the considerations relevant to the licence application.

For the same reason, any development that would have fallen into SSD, SSI and CSSI planning categories but is now being assessed as complying or exempt development under a SEPP will remain in the original fee categories for licence application fee purposes.

Non-premises-based licence application fee/non-scheduled licenced activities

Licensees that apply for a non-premises-based licence will be required to pay an application fee based on the scheduled activity type – either ‘transport of trackable waste’ or ‘mobile waste processing’.

If you are not required to hold a licence under the POEO Act for the particular activity undertaken at the premises, you may choose to apply for a licence to regulate water pollution from that activity.

Table 2 details the application fees for non-premises-based licences and non-scheduled activity licences.⁶

⁵ The amount payable for each type of activity is based on the administrative fee unit (AFU) value at the time of application. Fees in this RIS are based on the AFU value for the 2020–21 financial year, which is \$139. As part of the remake of the General Regulation, AFU amounts increase annually.

⁶ The amount payable for each type of activity is based on the AFU value at the time of application. Fees in this RIS are based on the AFU value for the 2020–21 financial year, which is \$139. As part of the remake of the General Regulation, AFU amounts increase annually.

Table 2 Proposed application fee for non-premises-based licences and non-scheduled activity licences

Non-premises-based licences		Non-scheduled activity licences
Transport of trackable waste	Mobile waste processing	Non scheduled activities
\$556	\$5,699	\$5,143
4 fee units	41 fee units	37 fee units

Costs and benefits of the options

This proposed amendment is not expected to change the types, scope or number of applications submitted. For straightforward and moderate projects, the proposed application fee is not considered large enough to dissuade a potential licensee from seeking a licence or following through with a project or activity. Projects that fall within SSI, SSD or CSSI under the EP&A Act are generally required to have a capital investment value of more than \$30 million.⁷ The proposed application fees are insignificant compared to the magnitude and cost of these projects.

As a result, the options below are assessed against three key principles:

1. any fees charged should be transparent, such that an applicant could calculate their application fee in advance
2. any new licence application fee amount should allow the EPA to either partially or fully recover its costs of processing applications
3. any fees charged are done so on a fair and equitable basis.

The EPA will gather more data to review and evaluate the fee structure over the next five years.

Option 1 – Base case (no change)

Under Option 1, the POEO General Regulation 2021 would not be amended, and prospective licensees would continue to pay only the administrative fee when submitting a licence application.

Although applicants would continue to have certainty about fees, the EPA’s costs in informing the planning process and drafting and issuing a licence would not be recovered by the EPA and this cost would continue to be paid by the community. This undermines the Government’s cost recovery principles⁸ and is inconsistent with user pays and polluter pays principles. As a result, a licensee gains the benefits associated with holding a licence but does not have to pay the full cost of obtaining those benefits.

The EPA’s annual cost to process licences has been estimated at **\$1.64 million**⁹ over the period 2020 to 2026. This equates to a net present value (NPV; cost) of approximately \$8.39 million. Under Option 1, these costs would not be recovered.

This option is not the preferred approach.

Option 2 – Actual cost licence application fee

Under Option 2, prospective licensees would be charged for the actual cost of the EPA’s staff time and resources expended during the pre-development and post-development consent phases. The main benefit of this option is that prospective licensees would only pay for the actual costs incurred.

⁷ Refer to Schedules 1 and 3 of the State Environmental Planning Policy (State and Regional Development) 2011.

⁸ NSW Treasury’s draft ‘Economic Framework for Cost Recovery Policy and Guidelines Paper’, 2016

⁹ based on a breakdown of approximately 27% straightforward, 18% moderate, 46% State Significant and 9% State Significant (large) licence applications, as determined by the categorisation of surveys completed in the 2015–16 financial year and nine CSSI projects per annum.

This option is neither transparent nor predictable. Applicants would not know upfront the fees they were liable for. An actual cost recovery approach is also not recovery of the 'efficient cost', as actual costs do not necessarily equate to the minimum possible cost incurred to achieve the same result. This approach is potentially unfair and inconsistent as different application fees may be charged for similar activities, creating inequity and uncertainty about costs.

The EPA does not currently have a system to account for time spent on individual planning and licence applications. While the EPA has a system to track processing of planning applications, this system does not record enough information to assist the EPA to bill applicants. It also does not cover licensing tasks. The cost of establishing a system to implement this option would be substantial and no system built to enable this option could give applicants certainty about the fee they would be liable for. The EPA does not consider this option to be the preferred approach.

Option 3 – Project complexity licence application fee

Under this option, the EPA would prescribe fees for five categories of premises-based licence applications and two categories of non-premises-based licence applications. These categories have been developed as a proxy (a reasonable indication) for the EPA's effort and cost in assessing planning and licence applications.

Premises-based licence applications

The EPA processes around 70 premises-based licence applications per year. Table A1 in Appendix A compares the estimated annual costs incurred by the EPA for premises-based licence applications and the estimated revenue for the 2020–21 to 2025–26 period based on the EPA's proposed fee structure (see Table 1 above).¹⁰

Table A1 estimates an annual cost to the EPA of about **\$1.64 million**¹¹ over the period 2020 to 2026, with annual revenue predicted at \$1.58 million. This equates to a net present value (NPV; cost) of approximately \$8.39 million and NPV (revenue) of \$8.06 million. The actual cost and revenue will vary year to year depending on the number of licence applications and the proportion that fall into each licence application fee category; however, based on the figures above, the proposed fee structure would facilitate the EPA's cost recovery at approximately 96% of its conservatively estimated costs. The EPA's intention is to fully recover costs.

Note. For a sensitivity analysis of Table A1 refer to Appendix C. For cost and revenue analyses based on a different breakdown of project types, refer to Appendix D.

Non-premises-based licence applications/Non-scheduled activity licences

The EPA receives and assesses approximately 10 licence applications for 'mobile waste processing' and about 50 licence applications for 'transport of trackable waste' each year (non-premises-based licence applications).

The estimated annual costs incurred by the EPA for non-premises-based licence applications and the estimated revenue for the period from 2020 to 2026 are based on the EPA's proposed fee structure (i.e. 4 fee units for 'transport of trackable waste' applications and 41 fee units for 'mobile waste processing' applications).

¹⁰ WPI has not been factored into these figures in accordance with Treasury's *NSW Government Guide for Cost benefit Analysis* (NSW Treasury 2017).

¹¹ based on a breakdown of approximately 27% straightforward, 18% moderate, 46% State Significant and 9% State Significant (large) licence applications, as determined by the categorisation of surveys completed in the 2015–16 financial year and nine CSSI projects per annum

The annual cost to the EPA to complete 'mobile waste processing' applications is estimated at about \$57,500, while 'transport of trackable waste' applications cost about \$25,850. Over the 2020–21 to 2025–26 period, this equates to an NPV of \$293,261 and \$131,840, respectively.¹²

Under this option, annual revenue has been estimated at about \$57,000 for 'mobile waste processing' applications and about \$27,800 for 'transport of trackable waste' applications. Over the 2020–21 to 2025–26 period, this equates to an NPV of \$290,660 and \$141,785, respectively.¹³

The EPA currently has 73 licences for non-scheduled activities¹⁴. Assuming the EPA receives and assesses 10 applications for non-scheduled activity licences per year, based on the proposed fee structure outlined in Table 2, this equates to an annual revenue of approximately \$51,430. Over the 2020-21 to 2025-26 period, this equates to a NPV of \$262,303.

The cost to review and assess a non-scheduled activity licence is taken to be similar to a straightforward premises-based licence application. Based on 10 applications received and assessed per year, an annual cost of \$54,210 has been estimated. Over the 2021-21 to 2025-26 period, this equates to a NPV of \$276,482.

The EPA's intention is to fully recover costs. Cost recovery for licence application tasks will improve over time as cost information improves with monitoring and evaluation. The EPA considers this option to be the preferred approach.

Notes

For a sensitivity analysis of NPV refer to Appendix C.

Details on fee structure development have been provided to NSW Treasury and the Independent Pricing and Regulatory Tribunal as required.

Summary

The EPA considers Option 3 – Project complexity licence application fee to be the preferred option to recover the EPA's costs associated with assessing development and licence applications. The approach is administratively simple and provides certainty and transparency for applicants. This option represents a shift towards a fairer and better cost recovery approach.

5.2. Extractive activities

This proposed amendment relates to section 19, Schedule 1 of the POEO Act.

Background

Changes in 2019¹⁵ to the POEO General Regulation 2009 included a number of changes to the definition of the 'extractive activities' scheduled activity, as follows:

- only requiring a licence when extractive materials (including dredged materials) are to be sold
- removing the distinction between 'land-based' and 'water-based' extraction
- excluding cut and fill operations or the excavation of foundations ancillary to development that has development consent
- applying a single licensing threshold of 30,000 tonnes of extractive materials per year

In 2019 changes were also made to the definitions of 'road construction' (section 35, Schedule 1, POEO Act) and 'railway activities – railway infrastructure construction' (section 33, Schedule 1,

¹² The NPV is based on a 7% discount rate.

¹³ The NPV is based on a 7% discount rate.

¹⁴ As at 3 December 2021

¹⁵ Protection of the Environment Operation Legislation Amendment (Scheduled Activities) Regulation 2019

POEO Act) so that 'extractive activities' is no longer required to be listed separately on those licences, as extraction was included within the definitions of the activities.

Need for action

An unintended consequence of the 2019 changes to the definition of 'extractive activities' is that some activities presenting a moderate to high environmental risk no longer require a licence. These activities include:

- quarries operated by local councils where the extracted materials are used for their own infrastructure projects (that is, where the materials are not sold)
- dredging operations where the extracted material is disposed of rather than sold
- some bridge construction projects that do not require a licence to authorise road or rail infrastructure construction
- large water storage projects
- other types of large infrastructure construction projects.

The EPA is seeking to ensure a level playing field by regulating the extraction sector, regardless of the end-use of the extracted materials. Key potential environmental impacts associated with 'extractive activities' include:

- air quality (including dust emissions), e.g. from extraction or onsite truck movements
- noise and vibration, e.g. from extraction or onsite truck movements
- water quality, e.g. increased turbidity from dredging.

It is proposed to amend the definition to ensure all extractive activities that pose a moderate to high risk to the environment are licensed and regulated by the EPA. This will result in reduced harm to the environment and human health.

Note. There are circumstances where an activity does not meet the threshold or definition for 'extractive activities' but does meet the threshold or definition for the activity of 'shipping in bulk'. Namely, where dredged spoil is unloaded at a wharf or associated facility at less than 30,000 tonnes per year (i.e. below the existing threshold for 'extractive activities') but more than 500 tonnes per day (triggering the existing 'shipping in bulk' threshold). It is noted that neither of these thresholds would be amended as part of the proposed change in definitions. The threshold of 30,000 tonnes per annum has been in place since 2008 and was determined based on the scale at which environmental impacts that warrant regulation by the EPA start to emerge. The EPA also proposes to amend the definition of 'shipping in bulk' under Schedule 1 of the POEO Act, to include additional substances that have similar risk profiles to those already regulated as described in this section and Section 10.3.

Options considered

Option 1 – Base case (no change)

Under this option, the unintended consequences remain in place and some extractive activities that were licensed prior to 2019 would still not require a licence. The environmental risks and impacts from these activities will not be regulated by the EPA.

Option 2 – Remove reference to the primary purpose of material being for sale (preferred option)

Under this option, **all** activities that extract more than 30,000 tonnes of extractive materials would require a licence, regardless of whether the material is sold or reused.

This includes water-based extractive activities such as dredging, where the material extracted is often measured in cubic metres rather than tonnes. If this option is adopted, a conversion factor would be included to ensure consistent and simple conversion from cubic metres to tonnes.

Cut and fill operations or the excavation of foundations or earthworks would remain excluded from the definition. These types of projects would not require a licence for extractive activities.

If an activity is already licensed under ‘Road Construction’ or ‘Railway Activities – railway infrastructure construction’, there is no requirement to separately list ‘extractive activities’ on that licence. This will also be noted under the ‘extractive activities’ definition.

Option 3 – Remove reference to the primary purpose of material being for sale, with exclusions

Under this option ‘extractive activities’ scheduled activity would be amended to remove the primary purpose of material being for sale (as in Option 2), but with the following **exclusions**:

- maintenance dredging with offshore disposal under a Commonwealth permit for disposing of dredged or excavated material at sea
- maintenance dredging with disposal within the same sediment compartment as defined under Schedule 1 of the *Coastal Management Act 2016*
- beach nourishment where sand could be classed as suitable for placement on the receiving beach, and where extraction was less than 100,000 tonnes per year.

This option ensures higher-risk projects are required to hold a licence and excludes extractive activities with lower environmental risk.

Costs and benefits of the options

Option 1 – Base case (no change)

This option would retain the current unintended inequity and inconsistency in regulating activities with similar environmental impacts and risks. For example, quarries where the material is extracted for sale would be licensed; however, extractive activities where the material would be used by the same organisation for other projects would not require a licence. The key environmental risks associated with ‘extractive activities’ (e.g. water, noise and air pollution) are related to the extraction itself, not the end-use of extractive materials. This situation creates an uneven playing field and may result in poor environmental outcomes as activities posing the same or higher environmental risk are not regulated consistently. The EPA does not consider this option to be the preferred approach.

Option 2 – Remove reference to the primary purpose of material being for sale

Due to the nature of the activity, all extractive activities regardless of whether they are land or water based, pose an inherent risk to the environment. The sale of the excavated material has no relation to the environmental impact of its extraction. This option would ensure the EPA has appropriate regulatory oversight regardless of whether the extractive material is intended for sale.

After the 2019 change in definition, no ‘extractive activity’ licences were surrendered to the EPA based on the material extracted not being intended for sale. The EPA is expecting a small number of activities that were not previously licensed that would now require a licence; for example, dredging projects where the spoil is disposed of offshore or onshore rather than being sold or reused.

As a result, there will be a financial impact associated with licensing for those activities. Table 3 outlines the estimated cost impact for licensees in the first and second year under the new licensing requirements – for both a simple and small project, and a larger, more complex project.

Table 3 Extractive activities and associated regulatory costs – simple and complex projects

Fee type	Simple project		Complex project	
	Cost (Year 1)	Cost (Year 2)	Cost (Year 1)	Cost (Year 2)
Application fee (one off fee) ^a	\$5,143	N/A	\$38,503	N/A

Administrative fee (annual)	\$2,085	\$2,085	\$83,400	\$83,400
Monitoring costs	negligible	negligible	\$63,000	\$63,000
Management plan review	N/A ^b	N/A ^b	\$10,000 ^c	\$10,000 ^c
Annual return costs	\$375 ^d	\$375	\$700 ^g	\$700
PIRMP (Year 1 preparation, Year 2 annual testing/review)	\$6,200 ^e	\$600 ^f	\$11,600 ^h	\$1,100 ⁱ
TOTAL	\$13,803	\$3,060	\$197,203	\$158,200

^a Application fee is based on the proposal detailed in Section 5.1 of this RIS. For the 'simple' project, the fee is based on a 'straightforward' project and for the 'complex' project, the fee is based on a CSSI project.

^b N/A has been allocated under 'Management plan review' for a simple project as a simple project was considered to be either too short in duration to warrant a review or likely to incur only negligible costs.

^c This figure was determined based on operational and field experience.

^d Hourly rates of \$70 and \$95 determined from civil/structural engineers' (mid-level and senior) salaries sourced from the Hudson Engineering 2019 Salary Guide including on-costs rounded to the nearest dollar. Four hours preparation time with 1 hour review time.

^e Based on 3,840 minutes (64 hrs) of work @\$1.42 labour costs per minute, then multiplied by actual private sector WPIs to 2021 equivalent cost and rounded to the nearest \$100.

^f Based on 200 minutes (3.33 hrs) of work @\$1.42 labour costs per minute, then multiplied by actual private sector WPIs to 2021 equivalent cost and rounded to the nearest \$100.

^g Hourly rates of \$70 and \$95 determined from civil/structural engineers' (mid-level and senior) salaries sourced from the Hudson Engineering 2019 Salary Guide including on-costs rounded to the nearest dollar. Eight hours preparation time with 1.5 hours review time and rounded down.

^h Annual return percentage increase from simple to complex projects used and rounded to nearest \$100.

ⁱ Annual return percentage increase from simple to complex projects used and rounded to nearest \$100.

Table 3 outlines the most significant compliance costs associated with being licensed under the POEO Act. Minor compliance costs, such as uploading monitoring data onto a corporate website, or setting up a complaints line, have not been included.

The EPA recognises there will be continued compliance costs for existing licensees, and additional compliance costs for activities newly captured under the proposed changes. However, the EPA considers that the environmental benefits associated with increased regulation outweigh the costs borne by extractive activities licensees (as outlined in Table 3 above). By regulating the environmental impacts of all extractive activities that meet the proposed definition, the EPA will reduce the environmental risks associated with these activities. Option 2 will reduce the impact of air, water and noise emissions to the environment and have a positive benefit to human health. The changes will also promote a more equitable playing field (i.e. regulation of those activities that pose a high environmental risk regardless of whether the material is for sale). The EPA considers this option to be the preferred approach.

Option 3 – Remove reference to the primary purpose of material being for sale, with exclusions

The intent of this option is to ensure that only those dredging and beach nourishment operations that pose a moderate to high risk to the environment are required to hold a licence. The EPA evaluated numerous dredging and beach nourishment operations and concluded that there were no activities that extracted more than 30,000 tonnes that did not warrant licensing. All of these operations pose risks to water quality, air quality (e.g. odour from disturbed contaminated sediment) and aquatic organisms and other sensitive receivers (due to the movement of contaminated or clean spoil/sediment).

Dredging and beach nourishment pose significant environmental risks regardless of spoil disposal location or size of the project (where the amount extracted is greater than the licensing threshold of 30,000 tonnes). By ensuring these activities are regulated through a licence, site-specific controls can be mandated to mitigate against potential environmental risks. Conditions can also be varied over time to address changes in these risks.

The EPA concluded that no exclusions would be appropriate due to the inherent risks associated with extractive activities. As a result, the EPA does not consider this option to be the preferred approach.

Summary

Based on the analysis, Option 2 is the preferred option. It will result in a simplified definition, restore a level playing field for those conducting very similar activities, improve the environmental performance of those captured and re-captured under the proposed amendment, and improve the local human and environmental health and amenity.

5.3. Livestock intensive activities – bird accommodation

This proposed amendment relates to section 22, Schedule 1 of the POEO Act.

Background

'Bird accommodation' is listed as a scheduled activity within the 'livestock intensive activities' group of activities in section 22, Schedule 1 of the POEO Act. Schedule 1 of the General Regulation prescribes the annual administrative fee units (AFUs) for POEO licences based on type(s) and scale of activity. The administrative fee is paid by all licensees and seeks to recover the EPA's costs associated with administering and regulating the licence and activities at the premises.

Need for action

The nature of this industry has changed since the fee schedule was originally determined. Newer bird accommodation facilities can accommodate more birds than those of the past and the administrative fee schedule for bird accommodation did not envisage these very large facilities. Larger facilities have the potential for greater environmental risks from bird accommodation, including waste storage and handling, such as odour, water pollution associated with effluent management, noise and dust, primarily due to night traffic movements.

The Department of Primary Industry's NSW Poultry Meat Industry Overview 2015 stated that smaller farms are becoming increasingly economically unviable with typical farms having 16–32 sheds. Newer complexes can have over 70 sheds accommodating well over 2.5 million (equivalent to 2,272.7 tonnes live weight) to 5 million (4,545.5 tonnes live weight) broiler chickens. This is more than four times the lower limit of the current largest activity scale for a bird accommodation licence, which is "more than 1,000 tonnes live weight".

As facilities increase in size, the environmental and human health risks generally increase. Larger poultry farms with increased risks are expected to require more regulatory oversight. These risks include the greater potential for odour emissions due to increased effluent quantities and carcass handling. There may be an increase in transport movements on and off the site, which may cause an increase in noise and dust emissions. Regulating larger facilities may include the need to undertake more inspections to ensure pollution controls are effective, and potentially respond to a greater number of complaints. The proposed new scale of operation for bird accommodation will enable improved cost recovery for the EPA and is expected to be more commensurate with the environmental risks posed by larger premises.

It is proposed to introduce an additional activity scale and associated administrative fee to cover very large 'bird accommodation' facilities. The new threshold proposed is bird accommodation

activities with a live weight capacity to accommodate more than 3,000 tonnes. The current administrative fee structure for bird accommodation is outlined in Table 4.

Table 4 Current administrative fee structure for bird accommodation

Size of operation (tonnes live weight capacity)	AFUs	No. of current licences (as at 29/09/20)
Not more than 375 tonnes	5	10
More than 375 tonnes but not more than 1,000 tonnes	15	14
More than 1,000 tonnes	50	17
TOTAL		41

Options considered

Option 1 – Base case (no change)

Administrative fee arrangements would not change. The fee structure in Table 4 would remain.

Option 2 – Introduce a new upper administrative fee threshold

A new administrative fee threshold of 135 units (equates to \$18,765 – see Table 5) is proposed for facilities with over 3.3 million broiler chickens or 16.65 million layer chickens.

Table 5 Proposed administrative fee framework for bird accommodation

Size of operation (live weight capacity to accommodate)	AFUs	AFU per tonne (range)	Administrative fee*
Not more than 375 tonnes	5	N/A – 0.013	\$695
More than 375 tonnes but not more than 1,000 tonnes	15	0.04 – 0.015	\$2,085
More than 1,000 tonnes but not more than 3,000 tonnes	50	0.05 – 0.017	\$6,950
More than 3,000 tonnes	135	0.05	\$18,765

*based on the 2020–21 fee unit of \$139 as prescribed in section 9 of the General Regulation

Costs and benefits of the options

Option 1 – Base case (no change)

This option is not preferred as larger poultry farms (e.g. processing 4,000 tonnes) are subject to the same administrative fees as smaller ones (processing close to 1,000 tonnes). This leaves an inequitable fee structure in place. These fee levels do not recognise the increase in the regulatory effort and cost for the EPA.

Option 2 – Introduce a new upper administrative fee threshold

This option will ensure larger facilities pay higher administrative fees commensurate with the increase in environmental risk, level of environmental impact and the expected increase in the EPA’s regulatory effort and associated costs.

There are 42 poultry farms currently licensed under the 'bird accommodation' scheduled activity, with only one that would meet the proposed threshold of more than 3,000 tonnes live weight capacity. The proposed fee level responds to the projected trend of larger facilities expected to be developed. The proposed administrative fee of \$18,765 for a premise of this size is an increase in fees for this facility of \$11,815 (based on the 2020–21 AFU amount).

The EPA does not expect the new scale of activity and the associated fees to discourage the industry from building and operating very large bird facilities because the fee represents only a small percentage of overall operating costs and expenses, and only applies to exceptionally large facilities.

Similarly, many existing operators can expand their current operation without exceeding 3,000 tonnes and incurring a higher fee. For example, if a facility housed 1.5 million broiler chickens or 8 million layer chickens, it could double its chickens and still remain under the new fee threshold.

Table 6 provides a hypothetical revenue scenario for licence administrative fees if one new bird accommodation facility of more than 3,000 tonnes live weight capacity came into operation each year over the next five years. It also compares the fee revenue under the current framework with that under the proposed framework. Table 6 indicates revenue of \$420,255 over five years if one additional facility comes into operation each year. This equates to an NPV of \$316,135.¹⁶

Table 6 Hypothetical administrative fee revenue over five years^a

Year	No. of facilities >3,000 tonnes (cumulative)	AFUs (current)	AFUs (proposed)	Administrative fee ^b (\$)	Fee revenue (\$) (current)	Fee revenue (\$) (proposed)	Difference in fee revenue (\$)
2020–21	1	50	135	139	6,950	18,765	11,815
2021–22	2	50	135	143	14,300	38,610	24,310
2022–23	3	50	135	146	21,900	59,130	37,230
2023–24	4	50	135	150	30,000	81,000	51,000
2024–25	5	50	135	150	37,500	101,250	63,750
2025–26	6	50	135	150	45,000	121,500	76,500
TOTAL					155,650	420,255	264,605

^a does not include the proposed licence application fee

^b section 9 of the POEO General Regulation – fees indexed each year until 2023–24; does not assume proposed amendments to index administrative fees are in place

Due to the increase in environmental risk and regulatory effort associated with larger facilities, the EPA considers that the benefits of the proposed new upper fee threshold for bird accommodation outweigh the higher administrative fee incurred by larger facilities. The EPA considers this option to be the preferred approach.

Summary

Based on analysis, Option 2 is the preferred option as it aligns fees with the scale of industry activities and regulatory costs associated with the scale of activity, and is in line with the NSW Government Guide to Cost Recovery.

¹⁶ based on a discount rate of 7%; in calculating the NPV, the increase in the AFU cost has not been taken into account in accordance with the *NSW Government Guide to Cost-benefit Analysis* (NSW Treasury 2017) as it is an inflationary item

6. Non-significant regulatory proposals – indexation of fees

This section details proposed amendments relating to the increase of various fees in line with appropriate inflation indexes. Indexing fees to inflation rates ensures the value of these fees is not eroded over time and the costs of delivering services can be recovered (either partially or fully).

Indexation is where a price, in this case fees, is linked to changes in another price or range of prices. By indexing the EPA's fees, the fees will adjust to influences and maintain a real value relative to other costs over time.

The prices fee amounts are linked to in these proposals are the NSW public sector Wage Price Index (WPI), the Consumer Price Index (CPI) and the private sector WPI.

The CPI has been used where the cost drivers for proposed amendments to the General Regulation are more directly related to goods and services (or non-labour costs). The CPI used throughout this RIS is 1.1%. This is based on the average of the 2019–20 financial year quarterly CPI data sourced from the Australian Bureau of Statistics (ABS 2020c).

The public sector WPI has been used where the cost drivers for proposed amendments to the POEO General Regulation 2021 are more directly related to public sector labour costs. The WPI used in this RIS is 2.3% in accordance with the 2019–20 financial year NSW public sector WPI (ABS 2020a).

The private sector WPI has been used where the cost drivers for proposed amendments to the POEO General Regulation 2021 are more directly related to private sector labour costs. The WPI used in this RIS is 1.9% in accordance with the 2019–20 financial year NSW private sector WPI (ABS 2020b).

6.1. Continuing the annual indexation of administrative fee units

This proposed amendment relates to section 9 of the current POEO General Regulation 2021 and section 16 of the draft POEO General Regulation 2022.

Background

All licence holders pay an administrative fee based on the type and size of the licensed activity. This annual administrative fee is aimed at recovering the cost associated with the EPA's ongoing regulatory oversight of a facility such as site inspections, provision of advice or compliance with licence conditions.

In 2009, the EPA introduced annual staged increases to the administrative fee in line with wage growth, to reflect increases in the EPA's labour costs. These fees are expressed in multiples of the AFU and the fee unit value (in dollars) is set in section 9 of the POEO General Regulation 2021.

Need for action

The Protection of the Environment Operations (General) Amendment (Fees and Native Forest Bio-material) Regulation 2019 extended the indexation of the AFU from 1 July 2019 to 1 July 2023 using the 2017–18 WPI of 2.4%. Annual increases are only prescribed up to 1 July 2023 and will end after this date.

Options considered

Option 1 – Base case (no change)

Under Option 1, the prescribed administrative fee unit amounts would remain until the POEO General Regulation 2021 is repealed on 1 September 2022.

Option 2 – Continue AFU indexation after 1 July 2023

Under Option 2, it is proposed to extend indexation of the annual administrative fee from 1 July 2023 to 1 July 2026 and remove outdated sections.

The fee is proposed to be indexed based on the 2019–20 NSW public sector WPI of 2.3% (ABS 2020a); that is, it is proposed to increase the AFU by 2.3% each year. The same approach was taken to determine the yearly increases in the value of AFUs that are currently prescribed in the POEO General Regulation 2021.

It is also proposed to prescribe a formula for calculating the yearly change (normally an increase) in the value of an AFU for 2026–27 and beyond. This formula would allow the EPA to calculate a fee and publish this in the NSW Government Gazette. This would be used only if the General Regulation is not amended to prescribe a fee; for example, where fees have been prescribed up to and including 2025–26, but the Regulation remains in-force and it is 2026–27 or later.

Table 7 shows the fee revenue received by the EPA from 2015–16 to 2019–20. It is indicative of the increase in administrative fee revenue realised each year with the indexation of the AFU included in the current POEO General Regulation 2021.

Table 7 Annual increase in total revenue

Period	AFU (\$)	Administrative fee revenue (\$million)	Difference in annual revenue (\$million)
2015–16	122	19.3	–
2016–17	125	20.6	1.3
2017–18	129	21.4	0.8
2018–19	133	21.7	0.3
2019–20	136	24.2*	2.5

*This administrative fee revenue includes new scheduled activities that commenced 5 July 2019 including 'road tunnel emissions'. This scheduled activity regulates air emissions from road tunnel ventilation stacks and includes a 2-year additional fee for new ventilation stacks. This increased the administrative fee revenue over this period.

The formula for fee calculation in each subsequent financial year is: $P \times (1+A)$

where:

- P is the amount of the administrative fee unit in the financial year immediately before the financial year for which the amount is to be calculated
- A is the annual percentage change expressed in decimals, in the Public Sector Wage Price Index for total hourly rates of pay excluding bonuses for the financial year immediately before the financial year for which the amounts to be calculated
- a financial year is the 12-month period commencing 1 July and ending 30 June.

Costs and benefits of the options

Option 1 – Base case (no change)

Under Option 1, the prescribed administrative fees would remain until the POEO General Regulation 2021 is repealed on 1 September 2022. If the Regulation is repealed, the EPA would not be able to recover its costs associated with annual licence administration and regulation. The EPA would have reduced financial resources to regulate the licensed community and this would impede the implementation of strategies to benefit the environment and human health. This is not the EPA's preferred approach.

Option 2 – Continue AFU indexation after 1 July 2023

Under Option 2 licensees would pay a slightly higher annual administrative fee each year as the indexation of fees increases them by 2.3% each year to reflect cost projections. This is the same approach the EPA used to determine the AFUs as currently prescribed in the POEO General Regulation 2021, and would set out fees until 2026. Introducing a formula enables the calculation of fees when the specified fees run out. This provides transparency, consistency and certainty for licensees. Continuing to index the annual AFU would ensure the EPA recovers the costs associated with administration and regulation of licences, and cost recovery is not eroded over time.

The proposed changes are based on annual public sector WPI projections of 2.3% for the EPA's 2,720 licences¹⁷ as well as the annual increase in total revenue as outlined above. The EPA considers this option to be the preferred approach.

Summary

Option 2 is the preferred option. Continuing to increase the AFU each year based on the WPI ensures the value of the administrative fee is maintained in real terms, ensures continuing cost recovery for the EPA's administration of the licensing system, and is transparent.

6.2. Continuing the annual indexation of assessable pollutant fees

This proposed amendment relates to section 22(7) of the current POEO General Regulation 2021 and section 43(1) of the draft POEO General Regulation 2022.

Background

The EPA's load-based licensing (LBL) scheme¹⁸ encourages cleaner industrial production through the polluter pays principle. It requires some licensees to pay part of their annual licence fees based on the load (the total mass in kilograms) of certain pollutants their activities release to the environment; the more they pollute the more they pay. The scheme provides an incentive for licensees to reduce their emissions and improve their environmental performance beyond what they are required to do to comply with their licence conditions or regulations alone.

Note. The EPA is currently undertaking a comprehensive review of the LBL scheme; there is potential for change to the LBL scheme and requirements as a result of that review.

¹⁷ number of EPA licences as at January 2020

¹⁸ For more information on load-based licensing please see the EPA's [Load-based licensing](#) webpage (EPA 2017a).

The polluter-pays principle

This principle requires those that generate pollution and waste to bear the cost of containment, avoidance or abatement¹⁹. It is a well-established principle, enshrined in legislation in NSW, Australia and many other jurisdictions. The concept underpins similar schemes in other states and overseas.

Pollutant load fees are calculated using formulae prescribed in the POEO General Regulation 2021, which considers the quantity and types of pollutants discharged and the location of the receiving environment. The pollutant fee unit (PFU) is the dollar value component of the LBL load fee calculation formula. Increasing PFU amounts are included in the POEO General Regulation 2021 to ensure the fee is not eroded over time by inflation.

Need for action

Annual increases by indexation of the PFU amount are only prescribed up to 1 July 2023 and will cease after this date. The intention of the LBL scheme is to provide an ongoing economic incentive for licensees to reduce their pollution loads. Annual indexation of the PFU amount for inflation using the CPI ensures the incentive is not eroded.

Options considered

Option 1 – Base case (no change)

Under Option 1, the prescribed pollutant fees would remain until the POEO General Regulation 2021 is repealed on 1 September 2022.

Option 2 – Continue PFU indexation after 1 July 2023

This option seeks to extend indexation of the PFU amount from 1 July 2023 to 1 July 2026 and remove outdated subsections. The proposed annual fee adjustments for the PFU from 1 July 2023 are based on the 2019–20 financial year CPI of 1.1% (ABS 2020c). The proposed indexing of the PFU amount will ensure it is updated for the years 2021–26; this is in line with the approach taken in 2019.

It is also proposed to prescribe a formula for calculating fee indexing for 2026–27 and beyond. This formula would allow the EPA to calculate the annual PFU amount and publish this in the NSW Government Gazette. This would be used only if the General Regulation is not amended to prescribe a fee. Table 8 shows the proposed fees up to July 2026 and the new fee formula.

Table 8 Proposed amendment to PFU amounts

Period	Proposed PFU (\$)
2020–21	51.54
2021–22	52.62
2022–23	53.73
2023–24	54.85
2024–25	55.45
2025–26	56.06

¹⁹ section 6(2)(d)(i) of the *Protection of the Environment Administration Act 1991*

In each subsequent financial year	$P \times (1+A)$
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The formula as shown in Table 8 includes letters to represent numbers:

- P is the amount of the pollutant fee unit in the financial year immediately before the financial year for which the amount is to be calculated
- A is the average of the percentage change, expressed in decimals and rounded to 2 decimal places, in the CPI for the September, December, March and June quarters from the financial year immediately before the financial year for which the amount is to be calculated
- a financial year is the 12-month period commencing 1 July and ending 30 June.

Cost and benefits of the options

Option 1 – Base case (no change)

Under Option 1, the prescribed pollutant fee unit amounts would remain until the POEO General Regulation 2021 is repealed on 1 September 2022. If the Regulation is repealed, there would be reduced incentive for licensees to lower their emissions and improve their environmental performance beyond what they are required to do to comply with their licence conditions or regulations alone. This is not the EPA’s preferred approach.

Option 2 – Continue PFU indexation after 1 July 2023

Under Option 2 the annual fee adjustments for the PFU amount for the financial years from 1 July 2023 onwards would be based on the 2019–20 financial year CPI of 1.1% (ABS 2020c). The proposed indexing of the PFU amount will ensure LBL is updated for the years 2021–26.

LBL licensees are only required to pay whichever is the greater of their administrative fee or their load-based fees. This means licensees whose administrative fee is greater than their load fees do not pay load fees at all and vice versa. In practice, all licensees pay an administrative fee at the beginning of their licence period, then at the end of the licence period; those that have a load-based fee greater than their administrative fee pay the difference between what has already been paid and the load fees owing. This makes it difficult to model the real effect on revenue the EPA receives, due to the increasing value of the PFU each year based on the 2019–20 CPI.

In 2019–20 the EPA received \$27.9 million in LBL fee revenue. Based on a 1.1% CPI increase, LBL fee revenue is estimated at approximately \$28.21 million for the 2020–21 financial year, an increase of approximately \$310,000. For simplicity, this estimation assumes there is no change in the loads of pollutants (and make-up of pollutants) being emitted by licensees subject to the LBL scheme.

Table 9 outlines the change in LBL fee revenue based on a 1.1% CPI increase, again with the assumption that pollutant loads do not change and no uptake occurs in emissions abatement or offset activities. The PFU adjustment via indexation applies to all licences subject to the LBL scheme.

Table 9 Change in LBL fee revenue

Period	Fee revenue (\$ million)	Year on year change in fee revenue* (\$ million)
2020–21	28.21	0.31
2021–22	28.52	0.31
2022–23	28.83	0.31
2023–24	29.15	0.32

2024–25	29.47	0.32
2025–26	29.79	0.32

* if all other parameters remain the same

Costs to government related to this proposal are minor and include simple changes to information management systems to facilitate the annual changes to PFU amounts, changes to guidance and changes to licence annual return documentation. The proposed amendment provides certainty for the next five years and documents a simple and transparent process for the following years.

Summary

Based on the cost–benefit analysis, the EPA considers Option 2 the preferred option. This provides all LBL licensees with a clear indication of the likely impact on their LBL fees over the next five years and maintains the value of the PFU in real terms by linking the fee to the CPI. This will ensure the incentive for licensees to reduce their pollutant emissions is not eroded over time by inflation.

6.3. Vehicle testing and inspection – annual indexation of fees

This proposed amendment relates to section 79 of the current POEO General Regulation 2021 and sections 77 and 78 of the draft POEO General Regulation 2022.

Background

Part 7.6 of the POEO Act prescribes powers with respect to vehicles, vessels and other articles to determine whether the article complies with the requirements of the POEO Act or its regulations, including the POEO General Regulation 2021. An officer authorised by the POEO General Regulation 2021 can require vehicles, vessels and other articles to be inspected or tested at a place approved by the EPA by a person approved by the EPA. Inspection or testing is often in relation to noise or air emissions and is intended to reduce impacts to the community and the environment.

In regard to vehicles, the POEO General Regulation 2021 prescribes the maximum fees for the test or inspection of a motorcycle or any other vehicle, \$40.15 and \$60.50 respectively. This fee must be paid to the approved inspection station by the individual issued with the vehicle inspection notice. The fee is intended to cover the costs associated with the vehicle test or inspection. The costs include labour (vehicle testing, preparing and issuing the Approved Mechanics Report), equipment maintenance, repairs and overheads.

Need for action

The fee associated with vehicle testing and inspection was introduced in 2007 and has not changed since that time. The fee is not currently indexed and is therefore not adjusted to reflect changes in the costs of goods and services over time.

Options considered

Option 1 – Base case (no change)

Under Option 1, the fees would remain unchanged. Cost recovery associated with vehicle testing and inspection would erode over time and this is inconsistent with the polluter pays principle. This is not the EPA’s preferred approach.

Option 2 – Index the fees associated with vehicle testing and inspection

The EPA is seeking to adjust the fees for motorcycle and other vehicle tests or inspections to better reflect the real cost of undertaking this work, as it changes over time. The fees have been increased by using the private sector WPI.

The EPA is also proposing to introduce an annual fee increase from 1 July 2020 to 1 July 2026. The proposed amendment would ensure the fee continues to recover the costs associated with vehicle testing and inspection for mechanics approved under the scheme.

The fee for the 2020–21 financial year of \$57.30 for motorcycles and \$86.35 for all other vehicles is the equivalent value of the 2007 fee – adjusted using actual private sector WPI. The proposed annual fee adjustments from 1 July 2021 are based on the 2019–20 financial year private sector WPI of 1.9% (ABS 2020b), rather than the 2007 private sector WPI. This rate has been applied for each annual indexation after 1 July 2021.

It is also proposed to prescribe a formula for calculating fee indexing from 2026–27 onwards. This would allow the EPA to calculate the PFU value and publish it in the NSW Government Gazette. This would be used only if the current General Regulation is not amended to prescribe a fee for a year when the Regulation remains in force; that is, when the year-specific fees prescribed in the current General Regulation expire. Table 10 shows the proposed fees up to July 2026 and the new fee formula.

Table 10 Proposed indexation of annual fees for vehicle testing and inspection

Period	Fee – motorcycle ^a	Fee – other ^a
2020–21	\$57.30 ^b	\$86.35 ^c
2021–22	\$58.40	\$88.00
2022–23	\$59.50	\$89.65
2023–24	\$60.65	\$91.35
2024–25	\$61.80	\$93.10
2025–26	\$62.95	\$94.85
1 July 2026 onwards	$P \times (1+A)$	$P \times (1+A)$

^a All fees have been rounded to the nearest 5 cents.

^b 2020 equivalent value of the 2007 fee of \$40.15 for a motorcycle inspection

^c 2020 equivalent of the 2007 fee of \$60.50 for any vehicle other than a motorcycle

The formula as shown in Table 10 includes letters to represent numbers:

- P is the amount of the maximum fee in the financial year immediately before the financial year for which the amount is to be calculated
- A is the annual percentage change in the Private Sector WPI for total hourly rates of pay excluding bonuses for the financial year immediately before the financial year for which the amounts to be calculated
- a financial year is the 12-month period commencing 1 July and ending 30 June.

Costs and benefits of the options

Option 1 – Base case (no change)

Under Option 1, the ability of approved inspection stations to recover the real costs associated with vehicle testing and inspection would continue to be increasingly eroded over time. This may result in fewer inspection stations willing to undertake this work as the fee does not allow them to recover

their real costs and the efficacy of the vehicle inspections framework could be reduced. This is inconsistent with the government's objective and policy of polluter pays.

Option 2 – Index the fees associated with vehicle testing and inspection

Under Option 2, the vehicle inspection notice fee would increase by 17% for motorcycles and 26% for all other vehicle types.

The private sector WPI has been used instead of the public sector WPI as the most significant cost for vehicle testing and inspection is private sector labour. This work is done by mechanics in the private sector who have been approved by the EPA. Using a private sector WPI of 1.9% instead of the public sector WPI of 2.3% does not result in a significant impact to the proposed fee schedule, but better reflects the change in the real value of the associated costs.

The EPA does not consider that the fee increase would result in any unexpected behaviour from individuals issued with a vehicle inspection notice. This proposal is in line with the polluter pays principle and the EPA's improved cost recovery objectives.

Summary

Option 2 is preferred. It is consistent with the government's cost recovery objectives and polluter pays principle.

6.4. Environment protection notices – update and continuing indexation of fees

This proposed amendment relates to section 138 of the current POEO General Regulation 2021 and section 143 of the draft POEO General Regulation 2022.

Background

The POEO General Regulation 2021 prescribes fees for regulatory authorities to charge when issuing a clean-up notice, prevention notice or noise control notice in accordance with the POEO Act. Authorised officers of the EPA and local councils can issue these environment protection notices in response to actual or suspected pollution or harm to the environment. For more information regarding the type of notices please refer to the Powers and Notices Guideline for Authorised Officers and Enforcement Officers under the Protection of the Environment Operations Act 1997 (EPA 2021).

Environment protection notices are key tools available to councils and other ARAs under the POEO Act for regulating non-scheduled premises. The recipient of a clean-up, prevention or noise control notice must pay a prescribed fee representing the administrative costs of issuing the notice. The fee is paid to the ARA that issued the notice.

In 2009, the EPA introduced annual indexing of the administrative fee for these notices. The fee is indexed based on wage growth to reflect increases in the labour costs of the EPA, council or other ARA. This ensures the fee payable retains its value over time and adequately recovers administrative and regulatory costs. Annual increases are currently prescribed until 1 July 2023.

Need for action

Since the introduction of the POEO General Regulation, the fee for environment protection notices has not been comprehensively reviewed. In 1998, when the POEO General Regulation was introduced, the EPA's average costs for preparing an environment protection notice were calculated at \$327, so the notice fee was set at \$320. At the time the EPA's costs were used as a proxy for costs borne by other ARAs that also issue environment protection notices, for example councils.

Recent EPA analysis indicates the current fee falls below the EPA's average costs for preparing and issuing environment protection notices (refer to Appendix A for a more detailed analysis). The EPA estimates the average cost to draft and issue an environment protection notice in 2020 was \$731. This is a 26.7% increase on the current 2020–21 notice administrative fee of \$577.

Options considered

Option 1 – Base case (no change)

Under Option 1, the provisions in the POEO General Regulation 2021 would be repealed on 1 September 2022.

Option 2 – No change to the current base fee, apply WPI indexing for each subsequent year and introduce a fee formula

Under Option 2 there would be no change to the existing base notice fee or fees already prescribed in the Regulation (up to 2023–24) and annual fee increases based on WPI indexing would be prescribed for 2024–25 and 2025–26.

Option 2 proposes to use the same approach as the one used when this section was amended in 2013 and 2019; that is, indexing the environment protection notice fee based on changes in labour costs as this is the main cost in preparing these notices. Accordingly, indexing has been applied to the adjusted base fee using the 2019–20 financial year NSW public sector WPI of 2.3% (ABS 2020a).

It is also proposed to prescribe a formula for calculating fee indexing for 2026–27 and beyond. This formula would allow the EPA to calculate the environment protection notice administrative fee value and publish this in the NSW Government Gazette. This would be used only if the General Regulation does not prescribe a fee, when the year-specific prescribed fees have run out.

Option 3 – No change to the current base fee for year one, thereafter apply WPI indexing and introduce a fee formula

Option 3 retains the existing 2020–21 fee as the base notice fee. The existing prescribed fees for 2021–22 to 2023–24 would be removed and replaced with indexed fees based on and applied to the 2020–21 base notice fee. Indexation would then continue to 2025–26. Indexation would be based on a WPI of 2.3%.

It is also proposed to prescribe a formula for calculating fee indexing for 2026–27 and beyond. This formula would allow the EPA to calculate the environment protection notice administrative fee value and publish this in the NSW Government Gazette. This would be used only if the current General Regulation does not prescribe a fee.

The fees and annual revenue for clean-up, prevention and noise control notices under Option 3 are outlined in Table 12. The fees and annual revenue are based on an annual average of 146 notices issued by the EPA per year.²⁰ The proposed fee calculation formula is also shown.

Option 4 – Revise base fee for cost recovery, apply WPI indexing for the remaining four years and introduce a fee formula

In Option 4, the EPA proposes to increase the base fee for clean-up, prevention and noise control notices to bring it in line with current costs, and to index fees annually until 2025–26. Fee indexing would be based on the 2019–20 public sector WPI of 2.3%. The proposed base fee was developed in consultation with local councils and other ARAs that issue environment protection notices.

²⁰ based on average number of clean-up, prevention and noise control notices (both licensed and non-licensed) issued between 1 July 2015 and 30 June 2020 (5-year period)

It is also proposed to prescribe a formula for calculating fee indexing for 2026–27 and beyond. This formula would allow the EPA to calculate the environment protection notice administrative fee value and publish this in the NSW Government Gazette. This would be used only if the General Regulation does not prescribe a fee.

The fees and annual revenue for clean-up, prevention and noise control notices under Option 4 are outlined in Table 13.

Costs and benefits of the options

Option 1 – Base case (no change)

Under Option 1, the provisions in the POEO General Regulation 2021 would be repealed on 1 September 2022. The EPA would be unable to recover its costs from issuing environment protection notices. The EPA would have reduced financial resources to meet the objects of the POEO Act. This is not the EPA’s preferred approach.

Option 2 – No change to the current base fee, apply WPI indexing for each subsequent year and introduce a fee formula

This option is not favoured as it undermines recovery of costs by the EPA and other ARAs, as the value of labour costs associated with drafting and issuing environment protection notices is not maintained over time.

The fees and annual revenue for clean-up, prevention and noise control notices under Option 2 are outlined in Table 11. The fees and annual revenue are based on the average annual number of environment protection notices the EPA has issued in the last five years (146 per year).²¹ The proposed fee calculation formula is also shown and described.

Table 11 Environment protection notice fees and annual revenue based on Option 2

Period	Existing notice fee (\$)	Proposed indexed fee at 2.3% WPI (\$)	Annual revenue (\$)
On or after 1 July 2020 and before 1 July 2021	577	–	84,242
On or after 1 July 2021 and before 1 July 2022	591	–	86,286
On or after 1 July 2022 and before 1 July 2023	605	–	88,330
On or after 1 July 2023 and before 1 July 2024	619	–	90,374
On or after 1 July 2024 and before 1 July 2025	–	633	92,418
On or after 1 July 2025 and before 1 July 2026	–	648	94,608
On or after 1 July 2026 and before 1 July 2027		663	96,798
On or after 1 July 2027		$P \times (1+A)$	

The formula as shown in Table 11 includes letters to represent numbers:

- P is the amount of the fee in the financial year immediately before the financial year for which the amount is to be calculated

²¹ based on average number of clean-up, prevention and noise control notices (both licensed and non-licensed) issued between 1 July 2015 and 30 June 2020 (5-year period)

- A is the percentage change, expressed in decimals, in the Public Sector WPI for total hourly rates of pay excluding bonuses for the financial year immediately before the financial year for which the amounts to be calculated
- a financial year is the 12-month period commencing 1 July and ending 30 June.

To ensure fee increases continue beyond the table of prescribed notice fees in the current POEO General Regulation 2021, in circumstances where the date of repeal of the Regulation may be extended, the EPA proposes to insert a fee calculation formula as outlined in Table 11.

Option 3 – No change to the current base fee for year one, thereafter apply WPI indexing and introduce a fee formula

The fees and annual revenue for clean-up, prevention and noise control notices under Option 3 are outlined in Table 12. The proposed fee calculation formula is also shown. The fees and revenue are based on the average annual number of environment protection notices the EPA has issued in the last five years (146 per year).²²

Table 12 Environment protection notice fees and annual revenue based on Option 3

Period	Existing notice fee (\$)	Proposed indexed fee at 2.3% WPI (\$)	Annual revenue (\$)
On or after 1 July 2020 and before 1 July 2021	577	–	84,242
On or after 1 July 2021 and before 1 July 2022	–	590	86,140
On or after 1 July 2022 and before 1 July 2023	–	604	88,184
On or after 1 July 2023 and before 1 July 2024	–	618	90,228
On or after 1 July 2024 and before 1 July 2025	–	632	92,272
On or after 1 July 2025 and before 1 July 2026	–	646	94,316
On or after 1 July 2026 and before 1 July 2027	–	661	96,506
On or after 1 July 2027	–	$P \times (1+A)$	

The fee calculation formula in Table 12 is described in further detail under Option 2.

This option does not facilitate the adequate recovery of costs by the EPA (and other ARAs) of labour costs associated with drafting and issuing environment protection notices. As such, it does not support the polluter pays principle by seeking to recover administrative costs from polluters.

Option 4 – Revise base fee for cost recovery, apply WPI indexing for the remaining four years and introduce a fee formula

The fees and annual revenue for clean-up, prevention and noise control notices under Option 4 are outlined in Table 13. This revenue is based on the average annual number of environment protection notices the EPA has issued in the last five years (146 per year).²³

²² based on average number of clean-up, prevention and noise control notices (both licensed and non-licensed) issued between 1 July 2015 and 30 June 2020 (5-year period)

²³ based on average number of clean-up, prevention and noise control notices (both licensed and non-licensed) issued between 1 July 2015 and 30 June 2020 (5-year period)

Table 13 Environment protection notice fees and annual revenue based on Option 4

Period	Current notice fee (\$)	EPA annual revenue (\$) ^a	Proposed notice fee (\$)	EPA annual revenue (\$)	Annual increase in total fee revenue (\$)
2020–21	577	84,242	731	106,726	22,484
2021–22	591	86,286	748	109,181	22,895
2022–23	605	88,330	765	111,692	23,362
2023–24	619	90,374	785	114,596	24,222
2024–25	619 ^b	90,374	803	117,232	26,858
2025–26	619	90,374	821	119,928	29,554
2026–27	619	90,374	840	122,640	32,266

^a based on current administrative fee times the average number of environment protection notices issues (146)

^b Section 99(o) of the General Regulation currently states “on or after 1 July 2023—\$619”.

In 2016, the EPA sent a survey to all NSW local councils (132 councils). The survey included a question about the number of environment protection notices issued in 2014–15. The EPA received 45 completed surveys (34% response). The results show five councils issued no environment protection notices, while 12 councils had issued over 20. The EPA also sent surveys to other ARAs to gather information about environment protection notices issued in 2014–15.

Any potential changes in revenue from environment protection notices issued by ARAs other than the EPA cannot be fully understood based on the limited data available. Based on the information in Table 14, there will be minimal change in revenue due to the small number of environment protection notices issued for many ARAs. For those ARAs that issue over 20 environment protection notices per year, the revenue change is outlined in Table 14.

Table 14 Non-EPA ARA potential increase in environment protection notice revenue

Period	Current notice fee (\$)	ARA annual revenue (\$) ^a	Proposed notice fee (\$)	ARA annual revenue (\$)	Annual increase in ARA total fee revenue (\$)
2020–21	577	11,540	731	14,620	3,080
2021–22	591	11,820	748	14,956	3,136
2022–23	605	12,100	765	15,300	3,200
2023–24	619	12,380	785	15,698	3,318
2024–25	619 ^b	12,380	803	16,059	3,679
2025–26	619	12,380	821	16,428	4,048
2026–27	619	12,380	840	16,800	4,420

^a based on current administrative fee and the average number of environment protection notices issued by ARA (20)

^b Section 99(o) of the General Regulation currently states “on or after 1 July 2023—\$619”.

The proposed changes under Option 4 would ensure the environment protection notice fee adequately covers the costs borne by the EPA or other ARAs when issuing environment protection notices. The proposal would result in an increase in costs for those that receive an environment

protection notice; however, the EPA considers that these costs are reasonable, as they represent the costs of issuing a notice and are in line with the polluter pays principle.

Summary

Option 4 is the preferred option.

7. Non-significant regulatory proposals – National Pollutant Inventory

The proposed amendments to the National Pollutant Inventory (NPI) scheme relate to:

- the addition of ‘annual substance usage’ to the collection of data from reporting facilities
- the introduction of alternative emission estimate techniques for facilities and industry sectors
- extending the timeframe for the EPA to consider an application for an approved estimation technique.

7.1. National Pollutant Inventory – addition of ‘annual substance usage’ to data collected by facilities

This proposed amendment relates to section 69(1) of the current POEO General Regulation 2021 and section 117(1) of the draft POEO General Regulation 2022.

Background

The NPI is part of a national scheme to provide the public, industry and government with annual and consistently formatted information on emissions of 93 pollutants released to the air, land and water or ‘transferred’ in waste from Australian facilities. All facilities that use NPI substances at levels above certain thresholds must report any emissions of those substances. In NSW the requirement to report emissions through the NPI is enforced through the General Regulation.²⁴

Need for action

Each year over 900 facilities in NSW from around 100 different industries report their emissions to the EPA. Reporting facilities must provide specified information where a reporting threshold for a substance is exceeded. The term ‘reporting facility’ in this document includes facilities that are required to report but do not.

However, in NSW there is no requirement for a reporting facility to provide data on the quantity of NPI substances used in a year, to allow compliance checks and ensure facilities are reporting as they should. This is referred to as ‘substance usage’ in the [NPI Guide](#).

As a result, additional information is often requested by the EPA to ensure the integrity of the NPI scheme. Approximately 10 requests for this data are made by the EPA per year. This process is administratively burdensome on the EPA and creates confusion for reporting facilities about what information they need to collect and report on.

The EPA proposes to require reporting facilities to collect and report on ‘substance usage’ over a year as part of their standard NPI reporting obligations. This amendment will improve clarity for NPI

²⁴ Further information on the NPI can be found on the EPA’s [National Pollutant Inventory](#) webpage (EPA 2017b).

reporting facilities about their reporting obligations and will remove the EPA's administrative burden from asking for this data.

Options considered

Option 1 – Base case (no change)

Under Option 1, section 69, 'Collection of data from reporting facilities' would remain unchanged.

Option 2 – Add reporting of NPI substances used over the year

Under Option 2, section 69(1) would be amended to include a subsection to require each facility to provide the quantity of NPI substances used annually or 'substance usage' to the EPA.

Costs and benefits of the options

Option 1 – Base case (no change)

Under Option 1, section 69(1) would remain unchanged. Facilities that do not currently provide this information do not have to spend the time and resources collecting and reporting the data, if they are not directed to do so by the EPA. However, without the proposed amendment, the EPA would continue to expend resources requesting data on annual 'substance usage' that is needed to verify NPI reporting data, on a facility by facility basis. This is inefficient. Each facility must then spend the time and resources responding to the EPA's information request. This will continue to confuse industry as to what information is required to be collected and reported on under the NPI scheme. This confusion may lead to industry dissatisfaction and refusal to provide the information requested. The EPA does not consider this to be the preferred option.

Option 2 – Add reporting of NPI substances used over the year

Under Option 2, the EPA proposes to amend section 69(1) of the POEO General Regulation 2021 to require each facility to provide the quantities of each NPI substances used annually or 'substance usage' to the EPA. Facilities should already have a reasonable idea about the amount of NPI substances they use, as they need to determine this to ensure they are complying with their NPI reporting obligations. Making these estimates is part of their NPI-related due diligence.

Under this option, each facility would be required to estimate and send this information to the EPA in addition to the data already provided. By doing so, the EPA expects to see improvement in the identification and accuracy of substance emissions reported under the NPI scheme. This improved data set would help compliance programs, inform relevant EPA policies and programs, and reduce the need to follow up data requests by the EPA.

For the occupier of the reporting facility, the process of annual data calculation and reporting would become part of their compliance data management system. Therefore, this proposal is intended to provide clarity for industry of the NPI scheme's data requirements. The added cost should be low as facilities should already understand their substance usage for their current reporting obligations.

Summary

Based on the analysis above, Option 2 is the EPA's preferred option. It will clarify the reporting requirements under the NPI scheme, improve the quality of NPI reporting, and better inform policies developed by the EPA. This would improve the overall effectiveness of the NPI scheme.

7.2. National Pollutant Inventory – alternative emission estimate techniques for industry sectors

This amendment relates to section 71 of the current POEO General Regulation 2021 and section 121 of the draft POEO General Regulation 2022.

Background

Section 71 of the POEO General Regulation 2021 outlines the emission estimation techniques to be used by reporting facilities when reporting information under the NPI. This includes techniques that are:

- set out in industry reporting materials applying to the facility
- methods provided in the EPA's load calculation protocol
- another estimation technique approved by the EPA for the facility.

The Commonwealth Government provides emission estimation techniques for reporting facilities; there are currently 94 emission estimation technique manuals covering a range of industries. The EPA is authorised to use other emission estimation techniques in [section 15a\(ii\)](#) of the National Environment Protection (National Pollutant Inventory) Measure 1998.

Need for action

The Commonwealth emission estimation technique manuals are not updated regularly to reflect current techniques, industry changes and improved pollution control practices. The NSW Load Calculation Protocol, which can be used for emission estimation, is currently out-of-date and may not be updated until the EPA's comprehensive review of the LBL scheme is completed.

The EPA can develop more reliable NPI emission estimation techniques but the creation, approval and maintenance of these site-specific emission factors (and techniques) for individual sites is onerous to administer and enforce and does not provide industry-wide benefits. Site-specific emission estimation techniques may result in inconsistencies and delays for operators as the EPA reviews and processes individual techniques. To enable the EPA to respond more quickly to change, and create a level playing field for facilities subject to NPI reporting, the EPA proposes to introduce broader-scale emission estimation techniques, such as industry-wide or multi-site emission estimation techniques; that is, techniques that are approved and available for multiple facilities to use, avoiding the need for each relevant facility to seek approval.

Options considered

Option 1 – Base case (no change)

Leave the current regulation in place that allows premises to use existing Commonwealth emission estimation techniques, the NSW Load Calculation Protocol and individual facility emission estimation techniques only.

Option 2 – Introduce emission estimate techniques for industry sectors

Option 2 proposed to allow alternative emission estimation techniques to be used by more than one facility, enabling the EPA to create and approve emission estimation techniques for multiple facilities or industry sectors.

Costs and benefits of the options

Option 1 – Base case (no change)

Continuing with the current approach does not allow the EPA to address issues with out-of-date estimation techniques in a straightforward way. It continues the potential for NPI reporting delays, as estimation techniques are reviewed and approved. It is also more resource intensive for industry and government. This is not the EPA's preferred outcome for appropriate regulatory management.

Option 2 – Introduce emission estimate techniques for industry sectors

Enabling the EPA to develop and approve emission estimation techniques for multiple facilities or industry sectors will support improved estimation and provide more accurate data sets. The inclusion of industry-wide emission estimation techniques will prevent onerous administration and regulation of site-specific emission estimation techniques. Costs associated with the development of emission estimation techniques are likely to be lower than site by site approvals, as they can be used by multiple facilities and are expected to have a reasonable lifespan. This option provides industry-wide benefits, lower costs for industry and government, greater transparency, and enables the emission estimation techniques to be developed or updated more quickly to respond to change. This is the EPA's preferred approach.

Summary

Option 2 is the preferred approach as it provides benefits both to reporting facilities and the EPA.

7.3. National Pollutant Inventory – extend timeframe for application determination

This amendment relates to sections 73(5)(a) and (b) of the current POEO General Regulation 2021 and sections 123(6)(a) and (b) of the draft POEO General Regulation 2022.

Background

The POEO General Regulation 2021 includes a timeframe of 60 days for the EPA to determine (approve or refuse) an application for an emission estimation technique. If the applicant has not received written notice of a determination from the EPA during the 60 days, the application is deemed to be refused, if challenged. This period also acts as a quasi-service guarantee, in that it sets an expectation that the EPA should always be able to determine these applications within 60 days.

Need for action

The 60-day timeframe is inadequate as the assessment of emission estimation techniques can be very time-consuming, especially if cross-agency consultation within NSW and nationally is needed.

Options considered

Option 1 – Base case (no change)

Option 1 leaves the 60-day assessment and determination timeframe in place.

Option 2 – Extend the timeframe for the EPA's determination of applications

Option 2 is to amend the timeframe from 60 days to 90 days, providing an additional 30 days for the EPA's assessment and determination.

Costs and benefits of the options

Option 1 – Base case (no change)

Keeping the 60-day assessment and determination period keeps an unrealistic expectation within the POEO General Regulation that emission estimation applications can always be determined within that time. As a result, emission estimation techniques may be deemed to be refused when in practice they could have been approved within another 30 days. This could also result in a deemed refusal for an estimation technique being escalated to the courts, using industry and EPA resources unnecessarily.

Option 2 – Extend the timeframe for the EPA’s determination of applications

Option 2 provides an additional 30 days for the EPA to complete the assessment and provide a response to an applicant. The emission estimation technique assessment is time-consuming, particularly when cross jurisdictional collaboration is required. The extended timeframe provides a more realistic period to complete the assessment. It is expected there will be no significant costs to the occupier of the reporting facility as a result of the timeframe being extended by 30 days. However, it may reduce or avoid future costs of industry commencing a challenge, and the EPA responding, because the time has lapsed and the application is deemed to be refused. In practice this has not happened to date.

Summary

Option 2 is the preferred approach as it provides appropriate timeframes for assessments and better manages expectations about how long it is likely to take for an application to be determined.

8. Non-significant regulatory proposals – other

This section assesses the following proposed amendments to the General Regulation:

- remove pro-rata adjustments to the administrative fee
- align the POEO Act and POEO General Regulation 2021 for industry-related waste generation activities
- increase the penalty amount for failure to pay a notice fee
- ensure the EPA is the ARA for all non-scheduled light rail activities
- clarify requirements for testing of PIRMPs
- add financial capacity as an additional matter for consideration when requiring financial assurances
- amend Schedule 6 of the POEO General Regulation 2021 to prescribe a penalty notice amount for breaches of section 41 of the Protection of the Environment Operations (Noise Control) Regulation 2017
- clarify the circumstances in which approved methods are to be used for pollutant testing.

8.1. Removing pro-rata adjustments for administrative fees

This proposed amendment relates to section 43 of the current POEO General Regulation 2021 and section 26 of the draft POEO General Regulation 2022.

Background

Where a change is made to the classification or scale of a scheduled activity, the administrative fee for the licence is required to be adjusted to reflect the change of scale. This adjustment in the fee amount happens in proportion to the change of scale, i.e. the fees increase or decrease in line with increases or decreases in the operating scale. The adjustment may also be applied for any timeframe within the licence fee period of 12 months, e.g. six months at scale 1 and six months at scale 2. These adjustments are commonly referred to as pro-rata adjustments. The fee is arrived at by adding the AFUs at each scale for the number of months the facility operated at that scale.

For example, a licence is required for the scheduled activity of ‘dairy processing’ where a premise has the capacity to process more than 30 megalitres of dairy produce per year. There are three fee categories for this activity, listed in Table 15.

Table 15 Dairy processing fee categories

Administrative fee (annual production capacity)	AFUs	Scale
Not more than 30 megalitres	5	1
More than 30 but not more than 100 megalitres	15	2
More than 100 megalitres	50	3

If a licensee operates at a capacity of 50 megalitres per year, then six months into the licence fee period increases its production capacity to 150 megalitres per year, it moves into the next fee category based on the increased scale of activity (increase from 15 to 50 fee units).

Under the current pro-rata fee adjustment procedure, the licensee would pay 15 fee units at the beginning of the fee period, and then a pro-rata amount when the scale of activity is changed on the licence. The additional fee is calculated based on the time left in the fee period and the difference between the fee already paid and that payable based on the new scale.

i.e. $6 / 12 \text{ months} \times (50 - 15) \text{ fee units} = 17.5 \text{ fee units}$ is the pro rata increase

$17.5 \text{ fee units} + 15 \text{ fee units} = 32.5 \text{ total fee units}$ paid for the year

Similarly, if the licensee reduced its fee scale during the year, it would receive a financial benefit.

Need for action

The ability to receive a pro-rata fee adjustment can sometimes provide a financial advantage to a licensee over other licensees that remain within one classification all year. Consider in the example above if the licensee operates at an annual capacity of 'more than 100 megalitres' for the remainder of the annual licence fee period. This licensee would have paid 32.5 fee units to operate at this fee scale, effectively for the entire year, while a licensee at the 'more than 100 megalitres' fee scale for the entire year would pay 50 fee units. However, they are both authorised to process the same volume of dairy products by the end of the year.

This effectively provides a discount to the licensee that increased their authorised capacity part way through the year in comparison to a licensee that operated at a higher classification for the entire year.

There are also additional complexities since the introduction of risk-based licensing²⁵ that make calculation of adjustments difficult.

Options considered

Option 1 – Base case (no change)

Under Option 1, there would be no change in the way that adjustments to the administrative fee are made. The current opportunities for licensees to be given unfair discounts would remain and the EPA's calculation of adjustments would continue to be difficult.

Option 2 – Remove pro-rata fee adjustment

Under Option 2, it is proposed to remove pro-rata fee adjustments and replace them with reporting period fee adjustments. Annual fee adjustments mean that the licensee would be required to pay the difference between the existing fee for the authorised scale and the fee for the new scale as if they had operated at that scale for the entire licence fee period.

²⁵ For more information on risk-based licensing please see the EPA's [Risk-based licensing](#) webpage (EPA 2020).

Example

In the scenario where a licensee changes scale during the licence fee period and the resulting administrative fee is **lower** than the fee paid, the licensee will:

- pay the reduced administrative fee at the start of the next licence fee period
- be entitled to seek a partial refund as per section 27 of the draft Regulation (section 15 in the POEO General Regulation 2021), once the licence period is finished, based on their actual production over the whole fee period. For further information about refunds refer to Section 11.2.

The EPA will retain the general power to issue refunds or waivers: when a licensee surrenders their licence; where they did not achieve the level of production they were authorised for; or in extenuating circumstances on compassionate grounds.

This proposal also retains the threshold of two administrative units for administrative fee adjustments. Licensees will not be able to apply for adjustments less than this.

The current requirements for payment of interest on unpaid administrative fees are proposed to be retained and will apply to any additional amount of the fee owed.

Example

Based on the example provided above, under Option 2, if the licensee increased production capacity from 50 to 150 megalitres per year six months into the licence fee period, the licensee would be required to pay an additional 35 fee units when the scale of activity is changed (rather than 17.5 fee units as currently required).

If the licensee reduced capacity from 150 to 50 megalitres per year six months into the licence fee period, the licensee's fee would change from 50 fee units to 15 fee units, which would apply at the start of the next licence fee period. The licensee would no longer be entitled to a pro-rata fee refund; however, a refund may be available under section 15 of the Regulation when the fee period is finished, based on actual production carried out over the period.

Costs and benefits of the options

Option 1 – Base case (no change)

The current fee discount given to some licensees would remain, allowing an unfair advantage for some licensees. The complexities of calculating adjustments and the administrative burden would remain for the EPA. The EPA does not consider this option to be the preferred approach.

Option 2 – Remove pro-rata fee adjustment

Option 2 clarifies and simplifies the fee charging process for any licensee considering changing their authorised fee scale.

The proposed amendment improves equity among licensees by ensuring those operating at the same activity scale pay the same fee. While there is a small increase in cost to some licensees, this is proportional to the increase in activity and provides the benefit of a balanced fee adjustment framework. Licensees can still seek a partial refund to recoup the fees for unused portions of their authorised capacity in accordance with section 27.

Summary

Option 2 is the preferred option as it removes the unfair financial benefit and simplifies the administrative fee adjustment process.

8.2. Industry-related waste generation activities – aligning thresholds, terms and definitions

Background

Schedule 1 of the POEO Act prescribes a number of waste-related activities as scheduled activities for which a licence is required. These activities involve storing, processing, transporting and disposing of waste, and recovering resources from the waste stream.

Need for action

There are seven fee-based activities where the licensing threshold in Schedule 1 of the POEO Act is based on a prescribed amount of certain types of waste ‘on site at any time’, while the fee threshold in the General Regulation is based on the ‘annual volume of waste generated or stored’ (see Table 16). This inconsistency between the scheduled activity threshold and the fee threshold came about when definitions for the ‘waste generation’ activities were changed in the POEO Act in 2008 but the fee threshold definitions in the POEO General Regulation were not updated.

The following issues also need to be addressed:

- the use of ‘annual volume of waste generated or stored’ is problematic as storage cannot be considered in annual terms, the cumulative amount of waste stored is very difficult to measure and is often not routinely measured by licensees
- these inconsistent metrics used in the POEO Act and POEO General Regulation 2021 may cause confusion
- misalignment of scheduled activity titles with fee units for these activities; for example, the title within Schedule 1 of the Act is ‘On site generated chemical storage waste storage’ while in Schedule 1 of the Regulation it is ‘Chemical storage waste generation’.

Table 16 Industry-related waste activities where fees are based on ‘annual volume of waste generated or stored’

Scheduled activity	Generic industry related waste activity criteria in Schedule 1 of the POEO Act	Generic fee based activity criteria in Schedule 1 of the General Regulation
1. Ceramic works – ceramic waste generation	...involves having on site at any time more than 5 tonnes of prescribed waste, not including excluded material	Annual volume of waste generated or stored
2. Chemical production – chemical production waste generation		
3. Chemical storage – on-site generated chemical waste storage		
4. Metallurgical activities – metal waste generation		
5. Mineral processing – mineral waste generation		
6. Paper or pulp production – paper or pulp waste generation		
7. Printing, packaging and visual communications – printing, packaging and visual communications waste generation		

Options considered

Option 1 – Base case (no change)

Under Option 1, the General Regulation would remain unchanged. Inconsistencies and impractical metrics would remain, continuing the potential for confusion and additional administration (such as responding to enquiries).

Option 2 – Align the POEO Act and POEO General Regulation for industry-related waste generation activities

Under Option 2 it is proposed to align the thresholds and terminology in the POEO General Regulation 2021 with Schedule 1 of the POEO Act for the seven scheduled activities in Table 16 for consistency and clarity. This alignment would remove the reference to the ‘annual volume of waste generated’ and base the fee on ‘volume of waste stored at any one time’. The fee scales and amounts would remain unchanged.

The EPA also proposes to amend the title ‘Chemical storage waste generation’ in Schedule 1 of the POEO General Regulation 2021 to be the same as that in Schedule 1 of the POEO Act, which is ‘On-site generated chemical waste storage’.

Costs and benefits of the options

Option 1 – Base case (no change)

By retaining the existing administrative fee threshold descriptions, existing licensees will continue to use the same methodology to calculate their annual storage of waste, with no changes to existing costs for facilities. The issues with the current fee-based activity descriptions and titles would remain. As a result, there could be varied and inaccurate measures to determine volumes of waste generated. This option is not the EPA’s preferred approach.

Option 2 – Align the POEO Act and POEO General Regulation for industry-related waste generation activities

Aligning the terminology in the POEO General Regulation 2021 with Schedule 1 of the POEO Act would improve clarity for existing and prospective licensees. The criteria for licensees to determine their fees would be straightforward.

As there are no changes to the scheduled activity description, no new premises would be required to hold a licence; however, it is possible that some existing licensees may move into a higher fee category (16 AFUs) or drop to the lower fee category (eight AFUs). This could occur when fees:

- are calculated using annual storage of waste rather than daily storage – sometimes premises that store more than 100 tonnes of waste annually store significantly less on a daily basis
- are calculated using the annual volume of waste generated – removing ‘volume of waste generated’ means licensees that generate a high volume of waste but do not store a high volume on site may fall into the lower fee scale.

Analysis of 2021 fee data shows that 47 licensees paid their licence administrative fee based on industry-related waste activity scheduled activity.²⁶ Out of these 47 licensees:

- 18 pay the lowest fee category – 8 fee units or \$1,112
- 29 pay the highest fee category – 16 fee units or \$2,224.²⁷

²⁶ as of May 2021

²⁷ based on the 2020–21 AFU amount of \$139

Based on this, if the EPA assumes all licensees paying a fee based on the higher fee category drop to the lower category, each would receive an approximately \$1,000 decrease. If all the licensees paying a fee move to the higher category, each would receive an approximately \$1,000 fee increase. In reality, a combination of increased and decreased fees is more likely.

Summary

Option 2 is the EPA's preferred option as it aligns the POEO Act and the POEO General Regulation 2021, removes confusion, and aligns waste generation fee calculations with industry practice.

8.3. Penalty notice offence fees

This proposed amendment relates to Schedule 6 of the current POEO General Regulation 2021 and Schedule 6 of the draft POEO General Regulation 2022.

Background

The EPA and other ARAs may issue an environment protection notice to address environmental harm that has occurred or is about to occur. The notice directs a person, a public authority carrying out an activity, or an owner or occupier of a premises to meet requirements and conditions specified in the environment protection notice within certain timeframes. Environment protection notices include clean-up, prevention, prohibition and compliance cost notices. Section 6.4 provides further background information about these types of notices. The EPA and other ARAs are also able to issue noise control notices for the regulation of noise.

Under the POEO Act the ARA that prepares and issues environment protection notices and noise control notices can recover the administrative costs of preparing the notice from the notice recipient. The fee for clean-up, prevention, prohibition and compliance cost, and noise control notices is prescribed in the POEO General Regulation 2021 and is currently set at \$577²⁸ for all penalty notice types.

It is an offence under the POEO Act to fail to pay the fee for a clean-up, prevention or noise control notice.²⁹ These offences are prescribed by the POEO General Regulation 2021 to be penalty notice offences for the purposes of section 224 of the POEO Act. As provided by section 6 and Schedule 6 of the POEO General Regulation 2021, the amount payable under a penalty notice for each of these penalty notice offences is \$500 for an individual and \$1,000 for a corporation.

Need for action

The penalty notice amount for an individual (\$500) is less than the current administrative fee (\$577). The administrative fee is also proposed to be indexed annually, so will continue to increase over time. Once the penalty notice is paid, the ARA is often unable to recover the administrative fee. A notice recipient may therefore elect to pay the lower penalty notice amount rather than the administrative fee. This means a penalty notice may not be an effective or appropriate enforcement mechanism for an individual who fails to pay the prescribed administrative fee for a notice because the current penalty is too low to encourage compliance.

²⁸ POEO General Regulation, section 99 (l) Fee for clean-up, prevention and noise control notices, for the period "on or after 1 July 2020 and before 1 July 2021"

²⁹ POEO Act offences: failure to pay fee for clean-up notice (s. 94); failure to pay fee for prevention notice (s. 100); and failure to pay fee for noise control notice (s. 267A)

Options considered

Option 1 – Base case (no change)

Under Option 1, the penalty notice amount remains unchanged at \$500 (less than the environment protection notice fee of \$577).

Option 2 – Increase the penalty amount for failure to pay a notice fee

Under Option 2, the penalty notice amount for failure to pay the cost of an environment protection notice by an individual would increase to \$850. This is higher than the environment protection notice fee, which is proposed to be indexed annually (see Section 6.4). Under this proposal, the fee will increase to \$731 for the 2020–21 financial year and incrementally increase to \$821 by 2025–26.

Costs and benefits of the options

Option 1 – Base case (no change)

Retaining the existing penalty notice amount would not remove the temptation for some operators to reduce their costs by simply paying the penalty, and would continue to hamper the EPA's and other ARA's ability to recover costs. This option could also reduce or potentially delay the notice recipient from complying with the environment protection notice conditions.

This option is not the preferred approach.

Option 2 – Increase the penalty amount for failure to pay a notice fee

Between 2015–16 and 2019–20 (financial years), an average of 146 environment protection notices were issued by the EPA. Over this period an average of 11 individuals per year (8%) failed to pay the environment protection notice administrative fee by its due date. As a result, they were issued with a penalty notice to the amount of \$500; a total of \$5,500 was paid by these offenders. Penalty revenue is retained by local councils when they issue a penalty notice (to cover their administrative costs); however, it is not retained by the EPA when the EPA issues penalty notices. The revenue from the EPA's penalty notices is directed to NSW Consolidated Revenue. Therefore, while this penalty is principally intended as a deterrent from non-compliance, because the EPA does not retain the revenue, it in no way compensates the EPA for lost cost recovery.

The EPA considered a number of fee amounts and concluded that the penalty notice amount should be greater than the notice administrative fee. The administrative fee is proposed to be increased to \$731 for the 2020–21 financial year (increasing by WPI to \$821 by the 2025–26 financial year – see Section 6.4). The proposed penalty fee represents an increase of 70% in relation to the existing penalty notice fee of \$500. This increase ensures the penalty is significant enough to be a deterrent, is higher than the administrative fee and will remain higher for at least five years. The EPA also considered whether the penalty notice amount for corporations should be increased, as the penalty notice amount for corporations is double that for individuals for all other offences. The EPA decided the fee for corporations would remain unchanged, as it is in line with other similar offences.

Summary

The EPA considers Option 2 the preferred option. The aim is to improve the POEO General Regulation's effectiveness in ensuring timely compliance with fee deadlines in accordance with environment protection notices and this is also consistent with the objectives of the Better Regulation Principles outlined in Section 4.1.

8.4. Testing of pollution incident response management plans

This proposed amendment relates to section 133 of the current POEO General Regulation 2021 and section 73 of the draft POEO General Regulation 2022.

Background

A pollution incident response management plan (PIRMP) is prepared by a licensee to ensure the licensee identifies risks, implements mitigations and has clear procedures in place to manage a pollution incident if one occurs. It includes having clear and effective notification, response and communication procedures, accurate and helpful maps, and clear roles for nominated staff. This ensures the incident is dealt with safely, and all relevant people and authorities are notified and kept informed throughout the incident. Section 153F of the POEO Act requires a PIRMP to be implemented immediately if a pollution incident occurs in a way that causes or threatens material harm to the environment.³⁰ All licensees must prepare a PIRMP in accordance with s. 153A of the POEO Act. Under the General Regulation, licensees must complete a routine test of a PIRMP at least once every 12 months and a post-incident test within one month of **any** pollution incident occurring, regardless of the seriousness or magnitude of the incident. PIRMPs must also be tested regularly to ensure the information in them is current, accurate and can be effectively implemented.

Need for action

The EPA is proposing to amend these provisions.

The EPA proposes to clarify when a PIRMP must be tested to better align requirements with the objects of the POEO Act. The current post-incident testing requirement means a licensee must test a PIRMP following any incident. This is being interpreted by some licensees as including incidents where the PIRMP did not need to be implemented.³¹ This is unnecessary, as the purpose of a post-incident PIRMP test is to ensure the PIRMP appropriately dealt with the incident and to make any necessary improvements. The EPA considers post-incident testing of a PIRMP should only be mandated for pollution incidents that cause or threaten material harm to the environment, which would align with the PIRMP implementation requirements in the General Regulation.

Options considered

Option 1 – Base case (no change)

Under Option 1, the testing requirements of PIRMPs will remain the same, which means licensees are required to test their PIRMPs after every pollution incident, even when the PIRMP has not been implemented because there was no threat or material harm to the environment.

Option 2 – Refine testing requirements for pollution incident response management plans

Under Option 2, the EPA proposes to only require post-incident testing of PIRMPs to be done within one month after a pollution incident that actually causes or threatens material harm to the environment. This would align with requirements to implement the PIRMP and ensure testing is only required if a PIRMP has been implemented.

³⁰ Material harm to the environment is defined in section 147 of the POEO Act.

³¹ as a PIRMP must be implemented only where a pollution incident occurs in a way that causes or threatens material harm to the environment

Costs and benefits of the options

Option 1 – Base case (no change)

Post-incident testing of PIRMPs after any pollution incident can be unnecessary and inappropriate. It is also burdensome and resource intensive for licensees, with very little benefit as the PIRMP has not been activated

This option is not the preferred approach.

Option 2 – Refine testing requirements for pollution incident response management plans

The proposed amendments to post-incident PIRMP testing will ensure testing is only required after implementing a PIRMP. Testing will be practical and valuable and will ensure licensees' resources are used more judiciously.

Summary

Option 2 is the EPA's preferred option as it clarifies when a PIRMP needs to be tested.

8.5. Additional restriction on requiring financial assurances

This proposed amendment relates to section 145 of the current POEO General Regulation 2021 and section 146 of the draft POEO General Regulation 2022.

Background

A financial assurance is a type of security provided by the responsible person or company, like a security deposit or bond. This gives the EPA access to money to cover costs it incurs where the responsible person or company fails to carry out actions required under their licence and the EPA has to complete the actions. Under Part 9.4 of the POEO Act, the EPA or other ARA may, via a condition on a licence, "secure or guarantee funding for or towards the carrying out of works or programs (such as remediation work or pollution reduction programs)".³² A financial assurance can be in the form of a bank guarantee, a bond or other form of security the EPA considers appropriate.³³

Financial assurances reduce the risk of the NSW Government becoming responsible for environmental liabilities of a licensee party and are in line with the polluter pays principle. The POEO Act requires that the EPA must be satisfied the imposition of the requirement for a financial assurance is justified having regard to a number of matters, such as the degree of risk of environmental harm associated with the activities under the licence, or the remediation work that may be required because of activities under the licence.³⁴ These matters are referred to as 'restrictions on requiring financial assurances'. Additional matters may also be prescribed by the regulations, and the General Regulation currently includes the adequacy of financial assurances (if any) already provided or required to be provided by the same person.

Need for action

The financial capacity of a licensee is an important consideration when determining whether a financial assurance is justified; however is not included in the current list of considerations in the POEO Act. A licensee's financial capacity is relevant to the risk of the licensee failing to carry out works or programs required under a licence.

³² section 296 of the POEO Act

³³ section 298(2) of the POEO Act

³⁴ section 299 of the POEO Act

Options considered

Option 1 – Base case (no change)

Under Option 1, the considerations for whether a financial assurance is justified would remain unchanged.

Option 2 – Include financial capacity as an additional restriction on requiring financial assurances

Under Option 2, it is proposed to amend section 145 to include a licensee's financial capacity as an additional matter for consideration when assessing whether a financial assurance is justified.

Costs and benefits of the options

Option 1 – Base case (no change)

If the current situation continues the EPA will be unable to consider a licensee's financial capacity when determining whether a financial assurance is required. The potential for environmental liabilities from regulated premises falling to the NSW Government will remain higher, as a regulated party experiencing financial difficulty may not be able to meet the costs of its potential liabilities and the EPA will be unable to require financial security against this risk. This could result in the NSW Government spending time and resources cleaning up pollution or remediating contamination. These are costs that should be borne by the licensee under the polluter pays principle. This option is not the EPA's preferred approach.

Option 2 – Include financial capacity as an additional restriction on requiring financial assurances

A financial assurance can impose a significant financial burden on a licensee; however, the POEO Act allows the EPA to consider another form of security and the EPA may accept financial assurance in instalments if the licensee can demonstrate financial hardship in meeting their financial assurance requirements. A licensee that is experiencing financial difficulty and is unable to provide financial security for their licensed obligations poses a significant financial risk because they may not be able to meet the costs of their potential liabilities. In such cases, the licensee may also not be a fit and proper person or company to hold a licence.

There may be an increase in the number of financial assurances required due to the additional consideration of financial capacity. No information is available on the potential change as financial security of licensees has not been assessed. The additional consideration of financial capacity will enable the EPA to justify the requirement for a financial assurance on financial capacity even when other considerations are not met. Minor costs would be incurred by the EPA initially, to update guidance materials reflecting the proposed change and communicating this to existing and future licensees. There could also be an increase in time and resources spent by the EPA when assessing the need for a financial assurance and requiring financial assurances.

However, the proposed amendment will strengthen the polluter pays principle ensuring the EPA can draw on funds set aside by the licensee to pay for any remedial costs, if required. It would strengthen the EPA's regulatory powers for activities that pose a high environmental risk and reduce the risk that the NSW Government becomes responsible for substantial environmental liabilities caused by a licensee.

Summary

Option 2 is the EPA's preferred option as it addresses the risks presented by licensees with low financial capacity by including financial capacity as a consideration in assessing the need for financial assurance.

Please note: This proposed amendment may no longer be needed if the Environment Legislation Amendment Bill 2021 is passed prior to the making of the POEO General Regulation 2022.

8.6. Protection of the Environment Operations (Noise Control) Regulation 2017

This proposed amendment relates to Schedule 6 of the current POEO General Regulation 2021, where penalty amounts from the Protection of the Environment Operations (Noise Control) Regulation 2017 (the Noise Control Regulation) are provided, and to section 41 of the current Noise Control Regulation.

Background

Under Part 5.5 Noise Pollution of the POEO Act it is an offence to sell an article that emits noise in excess of the prescribed level. Under section 41 of the Noise Control Regulation it is an offence to sell a new building intruder alarm by retail unless it meets certain requirements in relation to the length of time the alarm may sound and how the alarm can be reactivated. A court may impose a maximum penalty of 100 penalty units for a corporation and 50 penalty units for an individual.

Section 224 of the POEO Act states that the regulations may prescribe certain offences as penalty notice offences as well as a penalty notice amount. Offences identified as penalty notice offences are identified as Tier 3 offences under the POEO Act. Schedule 6 of the General Regulation lists the offences for which a penalty notice may be issued and the penalty amount under the Noise Control Regulation.

Need for action

The EPA and local councils are unable to issue a penalty notice and fee for the offence of selling a new building intruder alarm by retail that does not meet requirements of the Noise Control Regulation. Section 41 of the Noise Control Regulation is not listed in Schedule 6 of the General Regulation, which means a penalty notice cannot be issued for this offence. The EPA considers it appropriate to designate this offence as a Tier 3 or minor offence, thereby allowing the ARA to issue a penalty notice as an alternative to commencing court proceedings. Tier 3 offences are considered minor breaches where a penalty notice is likely to be a viable deterrent. They allow the person served with the notice to pay a fine rather than have the alleged offence dealt with in court and are designed primarily to deal with one-off breaches that can be remedied easily.

Options considered

Option 1 – Base case (no change)

Under Option 1, there would be no amendment to Schedule 6 of the General Regulation. The inability of the EPA and local councils to issue penalty notices for this offence would continue.

Option 2 – Prescribe a penalty notice amount for selling building alarms that do not meet requirements

Under Option 2, Schedule 6 would be amended to allow the EPA and local councils to issue penalty notices for this offence. The penalty notice amounts of \$300 for an individual and \$600 for a corporation are in line with penalty notice amounts for other similar offences.

Costs and benefits of the options

Option 1 – Base case (no change)

If the EPA cannot issue a penalty notice for this offence, its only option is to prosecute offenders in court. This approach is inflexible because the EPA cannot issue penalty notices for less serious

offences. Prosecutions take a significant amount of time and resources for the EPA and offender. For less serious offences, a penalty notice is a more appropriate use of time and resources. The EPA may also be reluctant to prosecute an offender for a less serious offence as it may be seen as an unreasonable regulatory response. With no penalty notice available, offences could potentially go without penalty, removing the deterrent for reoffending and other potential offenders, leading to continuing noise impacts on the community. This is not the EPA's preferred approach.

Option 2 – Prescribe a penalty notice amount for selling building alarms that do not meet requirements

A penalty notice amount of \$300 (for an individual) or \$600 (for a corporation) may be incurred for any persons breaching section 41. This is a new penalty amount as currently there is no penalty amount prescribed against this offence; however, these penalty amounts are likely to impose substantially less cost on the regulated community than the current arrangements, where the only regulatory option is prosecution. The regulatory response would also be faster, enhancing its deterrence effect.

The proposed amendment ensures the EPA and local council enforcement officers may take proportional and appropriate regulatory action for offences that do not warrant prosecution. It provides a deterrent to breaching sections of the Noise Control Regulation and supports the EPA's and local councils' reputations as credible regulators.

Summary

Option 2 is the EPA's preferred option as it provides a pathway for proportional regulatory action for the offence of selling non-compliant building alarms, provides a timely regulatory response and enhances the deterrence effect of the regulatory tools available to enforcement officers.

8.7. Approved methods for pollutant testing

This proposed amendment relates to section 64 of the current POEO General Regulation 2021 and section 127 of the draft POEO General Regulation 2022.

Background

The EPA's Approved Methods Publications prescribe the methodology for the testing, sampling, measurement and analysis of matter, including pollutant discharges and emissions. The POEO General Regulation 2021 requires the use of approved testing methods published by the EPA or the testing methods specified in the 'requirement for testing for the presence or concentration of matters in water'. The requirement for testing is either stipulated in legislation, a licence or an environment protection notice provided under legislation, such as clean-up notices (Part 4.2 POEO Act) or prevention notices (Part 4.3 POEO Act). Approved Methods Publications for water and air are also required to be used in LBL fee calculations for some pollutants. The requirement to use approved methods ensures the accurate and consistent sampling and analysis of pollutants that may impact human health or the environment.

Approved Methods Publications are currently referenced in the POEO General Regulation 2021, the Protection of the Environment Operations (Clean Air) Regulation 2010 and the Noise Control Regulation.

Need for action

Currently, the POEO General Regulation 2021 has a general provision regarding the methodology for testing for matters in waters. This provision clarifies when and how the approved methods for water should be used. It also allows the procedural details of the test methodology to be changed if the results of the test are not affected. The POEO General Regulation 2021 does not include the

same provision for testing air emissions, noise or any other matters relevant to environment and human health protection.

The variation process set out in the POEO General Regulation 2021 is unclear and not in alignment with current practices set out in the Approved Methods Publications for air and water. The Approved Methods Publications for water and air currently require written EPA approval for the use of modifications to the listed methods to ensure results are not affected. Changes are also needed to clarify whether the test methodology extends to other important testing components, including sampling, measuring, analysis and record-keeping requirements, as set out in the Approved Methods Publications.

Options considered

Option 1 – Base case (no change)

Under Option 1, there would be no change to the matter for which the POEO General Regulation 2021 prescribes a testing methodology, and the variations process would remain the same.

Option 2 – Include other media, introduce better processes for variations and clarify sampling and record-keeping requirements

Under Option 2 the testing methodology provision would be expanded to apply to the testing of any matter relevant to environment and human health protection and would refer to the associated Approved Methods Publication as defined in the General Regulation. This would enable the EPA to require industry to use recognised approved methods for additional media and pollutants as required, to manage risks to the environment and human health.

Under this option section 64(3), the subsection that allows the person conducting the test to vary the approved test methods if the variation cannot affect the results of the test, would be removed, so the approval requirements in the relevant Approved Methods Publication would apply instead.

This option would also clarify that the most recently gazetted version of the approved methods applies and that they include sampling and record-keeping requirements.

Costs and benefits of the options³⁵

Option 1 – Base case (no change)

Under Option 1 the current issues of lack of clarity about when and how approved methods are to be used for other media remain. The lack of transparency for variations to approved methods would also remain.

Option 2 – Include other media, introduce better processes for variations and clarify sampling and record-keeping requirements

Expanding of approved methods for materials other than water enables greater environment and human health protection and greater clarity for stakeholders required to sample and analyse pollutants.

Removing section 64(3) and clarifying the variation processes in individual Approved Methods Publications provides consistency, transparency and clarity as all parties have the same information and guidance. The removal of the minor variation section also provides the opportunity to introduce efficient approval processes, waiting times and associated costs in the Approved Methods Publications, where appropriate.

³⁵ The Approved Methods Publications themselves are consulted on and gazetted in a separate process. These costs and benefits relate solely to the amendments to the Regulation.

The addition of a clarification that the most recently gazetted version of the approved methods is to be used and specification of sampling and record-keeping requirements provides clarity about the EPA's expectations, reflects current industry practice and aligns with existing record-keeping requirements. There are no additional costs anticipated as a result of these administrative changes. This is the EPA's preferred option.

Summary

The EPA's preference is to make amendments as per Option 2 because this enables a testing methodology to be prescribed for any matter relevant to environment and human health protection in line with the EPA's objectives under the POEO Act. The preferred option will clarify expectations about approved methods and the processes for approved methods variations.

9. Amendments to fees in Schedule 1 of the POEO General Regulation

Under the POEO Act a licence is required for an activity where that activity is carried out at a scale that meets or exceeds the licensing threshold prescribed in Schedule 1 of the POEO Act. Schedule 1 of the POEO General Regulation 2021 sets the fees for scheduled activities based on the scale of the activity. Fees increase incrementally with each scale of increased capacity.

Background

There are some scheduled activities where the lowest fee scale in the POEO General Regulation 2021 is below the licensing threshold prescribed in the Act; these are called below threshold fees. This can happen for example where there is a daily capacity threshold as well as an annual capacity threshold. This means fees can be charged for activities operating below the annual licensing threshold (for example). The below threshold fees scale ensures fees can be specified and calculated for those activities required to hold a licence due to daily thresholds, where they do not exceed the annual threshold or the 'any capacity' thresholds.

Some operations have changing levels of production that may fall below the licensing threshold in some years. Licensees may decide to retain their licence during these lower production years to avoid the need to apply in for a licence at short notice.

Need for action

Some below threshold fees were created as unintended consequences of historic amendments to Schedule 1 of the POEO Act or the POEO General Regulation, where the needed consequential amendments were not identified and made. These need to be addressed to:

- ensure licensees do not mistakenly think they need a licence and are required to pay fees when they have not met any of the licensing thresholds
- clarify fee thresholds and ensure the minimum licence fee scale in the POEO General Regulation is based on the minimum capacity for which a licence is required.

Currently licensees can claim a refund for the difference between licence fees paid based on forecast capacity, and actual production (section 15(1)(b) General Regulation). They can request refunds if their actual production falls below the annual licensing threshold³⁶. This impacts the EPA's ability to recover costs for regulating that activity.

³⁶ Only those activities where there are a number of fees for different scales of capacity are eligible for a refund under this mechanism, rather than those where fees are charged based on 'any capacity'.

Options considered

Option 1 – Base case (no change)

Under Option 1 the current below threshold fees would remain in place for some scheduled activities and licensees would continue to be able to request refunds past the licensing fee threshold amount.

Option 2 – Remove below threshold fees

Under Option 2 instances of below threshold fee amounts would be removed from Schedule 1 of the POEO General Regulation 2021. The proposed scheduled activity fee scales are shown in Table 17.

Table 17 Scheduled activities with proposed changes to fee thresholds

Fee based activity	Annual licensing threshold (POEO Act)	Current lowest annual fee scale (General Regulation 2021)	Proposed lowest annual fee scale
Aluminium production (scrap metal)	>10,000 tonnes	≤10,000 tonnes	>10,000 tonnes
Carbon black production	> 5,000 tonnes	≤5,000 tonnes	>5,000 and ≤20,000 tonnes
Dairy processing	>30 megalitres	≤30 megalitres	>30 and ≤100 megalitres
General agricultural processing	>30,000 tonnes	≤30,000 tonnes	>30,000 tonnes and ≤100,000 tonnes
Grape processing	>30,000 tonnes	≤30,000 tonnes	>30,000 and ≤100,000 tonnes
Iron or steel production (scrap metal)	>10,000 tonnes	≤10,000 tonnes	>10,000 tonnes
Non-ferrous metal production (scrap metal)	>10,000 tonnes	≤10,000 tonnes	>10,000 tonnes
Paints/polishes/adhesives production	>5,000 tonnes	≤5,000 tonnes	>5,000 and ≤15,000 tonnes
Pesticides and related products production	>2,000 tonnes	≤2,000 tonnes	>2,000 and ≤10,000 tonnes
Plastic reprocessing	>5,000 tonnes	≤5,000 tonnes	>5,000 and ≤10,000 tonnes
Plastic resins production	>2,000 tonnes	≤2,000 tonnes	>2,000 and ≤10,000 tonnes
Rubber products/tyres production	>5,000 tonnes	≤5,000 tonnes	>5,000 tonnes
Soap and detergents production	>5,000 tonnes	≤2,500 tonnes (and >2,500 and ≤5,000)	>5,000 tonnes
Synthetic rubber production	>2,000 tonnes	≤2,000 tonnes	>2,000 and ≤5,000 tonnes
Wood preservation	>10,000 cubic metres	≤10,000 cubic metres	>10,000 and ≤30,000 tonnes

Costs and benefits of the options

Option 1 – Base case (no change)

Under Option 1 the current below threshold fees would remain in place for some scheduled activities. Licensees would continue to be able to request refunds for activities below the licensing fee threshold. This makes it difficult for the EPA to recover regulatory costs. The potential for confusion would continue due to the way fees are specified for premises that require a licence but produce less than the annual production capacity threshold.

Option 2 – Remove below threshold fees

Option 2 proposes to remove the below threshold fees and adjust the minimum administrative fee scale to match the minimum licensing threshold (detailed in Table 17). This simplifies the relationship between scheduled activity thresholds and the fee scales. Removing below threshold fees means activities that are currently licensed but may produce less than the amount needed to trigger a licence in any specific year, will be charged the lowest fee scale and will not be eligible for a refund below the minimum fee. This will change fee amounts for approximately 18 licensees out of the 176 licences for these activities. Costs for licensees increase if licensees retain the licence or reduce if licensees choose to operate at production levels below licensing thresholds (and do not require a licence) and surrender their licence.³⁷ If licences are surrendered operators' costs would reduce and the EPA's regulatory effort can be redirected. If the licences are retained by the operator (to avoid the need to apply for a new licence when their product activity increases) and fees are moved to the proposed lowest fee threshold, the EPA will recover costs in line with its anticipated amount of regulatory effort.

Summary

Option 2 is the preferred approach to simplify fee scales and enable better regulatory cost recovery.

10. Amendments to Schedule 1 of the POEO Act

Schedule 1 to the POEO Act lists activities for which operators must hold a licence. The Schedule can be amended by regulation.³⁸ Several changes are proposed to refine activity definitions and address existing operational issues.

10.1. Marina and boat repairs – boat construction/maintenance (dry/floating docks) and boat construction/maintenance (general)

This amendment relates to section 25, Schedule 1 of the POEO Act.

Background

Section 25, Schedule 1 of the POEO Act defines the following scheduled activities under the group 'marinas and boat repairs':

³⁷ 18 licensees identified as paying below threshold fees for scheduled activities where a daily or at any time capacity is not specified (June 2021)

³⁸ section 5(3) of the POEO Act

- **boat construction/maintenance (dry/floating docks)**, meaning the use of dry docks or floating docks for the construction, repair and maintenance of vessels
- **boat construction/maintenance (general)**, meaning the use of facilities (whether water-based or land-based) for the construction, repair and maintenance of vessels (other than dry docks, floating docks and facilities not having frontage to a waterway)
- **boat mooring and storage**, meaning the use of pontoons, jetties, piers or other structures (whether water-based or land-based) designed or utilised to provide moorings or dry storage (other than swing moorings and facilities not having frontage to a waterway).

Environmental impacts associated with marina and boat repair activities include water pollution, air pollution, land contamination and noise. Handling, storage and management of dangerous goods and waste also present risks to the environment.

Need for action

The proposed amendments are to better reflect the activities and environmental impacts the EPA considers warrant regulation via a licence to ensure an appropriate level of environmental protection. Some of the grammar and punctuation within the scheduled activities is ambiguous and open to interpretation, as follows:

- the '/' separating 'boat construction' from 'maintenance' is capable of being read as 'and,' 'or' or 'and/or' depending on the purpose of the provision
- the phrase 'construction, repair and maintenance' has three possible interpretations
 - 'construction AND repair AND maintenance' – only operations engaging in **all three** activities would require a licence
 - 'construction OR repair OR maintenance' – operations engaging in **any** (or any combination) of the three activities would require a licence
 - 'construction OR repair AND maintenance' – only those operations engaging in repair as well as maintenance would require a licence, or with a different interpretation, those undertaking construction operations engaging in only repair or maintenance would not require a licence.

No amendments are proposed to the scheduled activity 'boat mooring and storage'.

Options considered

Option 1 – Base case (no change)

Under Option 1, the current definitions of 'boat construction/maintenance (dry/floating docks)' and 'boat construction/maintenance (general)' would remain unchanged.

Option 2 – Amend the scheduled activities 'boat construction/maintenance (dry/floating docks)' and 'boat construction/maintenance (general)'

Under Option 2, the definitions of 'boat construction/maintenance (dry/floating docks)' and 'boat construction/maintenance (general)' would be amended as follows:

"Section 25 Marinas and boat repairs

This section applies to the following activities:

- *boat construction/repair/maintenance (dry/floating docks), meaning the use of dry docks or floating docks for the construction, repair **or** maintenance (or any combination of them) of vessels*
- *boat construction/repair/maintenance (general), meaning the use of facilities (whether water-based or land-based) for the construction, repair **or** maintenance (or any combination of*

them) of vessels (other than dry docks, floating docks and facilities not having frontage to a waterway)."

Costs and benefits of the options

Option 1 – Base case (no change)

By retaining the existing definition, there would be no impacts on the marina and boat repair industry and no additional regulatory requirements on the EPA; however, there would continue to be uncertainty and confusion about the types of activities captured under this section. There is the potential for an unequal playing field if varied interpretations of the section result in some premises being licensed and others not holding a licence even though they carry out the same activities and have the same potential for environmental impacts. This in turn may cause confusion as to whether local councils or the EPA is the correct ARA. This is not the EPA's preferred approach.

Option 2 – Amend the scheduled activities 'boat construction/maintenance (dry/floating docks)' and 'boat construction/maintenance (general)'

The proposed amendments may result in some facilities that were not previously licensed requiring a licence, and others that are currently licensed no longer being captured by the definition. This would result in an increase in costs for newly licensed premises and a decrease for those that can surrender their licence. This may result in minor changes in the numbers of licensed activities and EPA resources.

The proposed amendments will result in improved clarity and consistency around which facilities are required to hold a licence. It also ensures the EPA regulates those facilities with the potential for higher environmental risks.

Summary

Option 2 is the EPA's preferred option as it provides clearer expectations for the regulated community.

10.2. Petroleum products and fuel production

This amendment relates to section 31A of Schedule 1 of the POEO Act.

Background

Section 31A of Schedule 1 of the POEO Act prescribes 'petroleum products and fuel production' as a scheduled activity. It states:

*"(1) This section applies to **petroleum products and fuel production**, meaning the production of petroleum products (including aviation fuel, petrol, kerosene, mineral turpentine, fuel oils, lubricants, wax, bitumen, liquefied gas and the precursors to petrochemicals, such as acetylene, ethylene, toluene and xylene) by any means including by refining, fermentation, esterification or blending.*

Note— Refining may occur in the processing of crude petroleum or shale oil, fermentation in the production of ethanol, esterification in the production of biodiesel and blending in the production of lubricants and fuels.

(2) However, this section does not apply to –

(a) the activity of blending a fuel with ethanol or biodiesel if that activity is carried on at a petroleum fuel storage terminal, and the occupier of those premises is, at the time that activity is carried on, the holder of an environment protection licence that authorises the activity of petroleum products storage (within the meaning of section 9 of this schedule), or

(b) *the activity of blending additives with fuel to produce petroleum products if that activity is carried on at a service station and the petroleum products are sold only at that service station.*

(3) *The activity to which this section applies is declared to be a scheduled activity if there is capacity to produce more than 100 tonnes of petroleum products per year.”*

The EPA currently licenses 17 premises³⁹ for ‘petroleum products and fuel production’ activities including blending, waste oil refining, gas mixing and natural gas liquefaction. There are currently no premises refining crude oil to produce refined petroleum products; this activity ceased in NSW with the closure of NSW’s two major oil refineries (Shell Clyde in 2012 and Caltex Kurnell in 2014). The licence administrative fee for this activity is based on the scale of operation (see Table 18).

Table 18 Petroleum products and fuel production – current administrative fee structure

Annual production capacity	AFUs	Administrative fee (\$) ⁴⁰
More than 100 tonnes but not more than 10,000 tonnes	25	3,475
More than 10,000 tonnes but not more than 200,000 tonnes	65	9,035
More than 200,000 tonnes but not more than 500,000 tonnes	165	22,935
More than 500,000 tonnes	660	91,740

Scheduled activities are included in the LBL system when assessable pollutants are listed for that activity in the POEO General Regulation. The LBL system applies to petroleum products and fuel production with a production capacity over 10,000 tonnes. The LBL system is focused on the load of pollution released to the environment (the total mass in kilograms) and the associated load fee is calculated based on the potential environmental impact of that pollution, not on concentration levels at the point of discharge. The POEO General Regulation prescribes the air and water pollutants (if any) that attract a pollutant load fee for each scheduled activity (these are called assessable pollutants) and other information that enables the fee to be calculated. The assessable air and water pollutants under the LBL scheme for premises carrying out petroleum products and fuel production are outlined in Table 19.

For more information about the LBL system please see the EPA’s [Load-based licensing](#) webpage.

Table 19 Current assessable pollutants for petroleum products and fuel production

Medium	Assessable pollutants*
Air	Arsenic, benzene, benzo(a)pyrene (equiv.), fine particulates, fluoride, hydrogen sulphide, lead, mercury, NO _x and NO _x (summer), SO _x and VOCs and VOCs (summer)
Water	BOD, oil and grease, total suspended solids, total PAHs, total phenolics

* NO_x: nitrogen oxides, SO_x: sulfur oxides, VOCs: volatile organic compounds, BOD: biological oxygen demand, PAHs: polycyclic aromatic hydrocarbons

The EPA is currently undertaking a comprehensive review of the LBL scheme and there may be changes to the LBL scheme and requirements arising from that review.

³⁹ 17 premises are licensed under the POEO Act for petroleum products and fuel production as at 27 April 2021

⁴⁰ based on the 2020–21 AFU of \$139

Need for action

Activities captured under the scheduled activity description for 'petroleum products and fuel production' are highly diverse, have varying emissions and a broad range of potential environmental risks. The activities range from petroleum refiners (high risk) through to fuel blending activities (relatively low risk). The current single scheduled activity description and production threshold (more than 100 tonnes per year) applies to all activities within the scheduled activity, with no differentiation based on scale, complexity or environmental risk.

Currently fuel blenders, which are generally a lower risk activity, are subject to the same LBL requirements⁴¹ and licence administrative fees as higher environment risk activities such as petroleum refiners. Some fuel blenders have raised concerns about the current licensing framework for this activity, prompting the EPA to review the requirements.

Section 31A includes two exemptions from licensing requirements:

- blending a fuel with ethanol or biodiesel if that activity is carried on at a petroleum fuel storage terminal, where the operator holds an environment protection licence that authorises the activity of petroleum products storage (within the meaning of section 9)
- blending additives with fuel to produce petroleum products if that activity is carried on at a service station and the petroleum products are sold only at that service station.

Options considered

Option 1 – Base case (no change)

Under Option 1, the definition of 'petroleum products and fuel production', administrative fees, and the assessable pollutants for petroleum and fuel production would remain unchanged.

Option 2 – Split the scheduled activity 'petroleum products and fuel production' in two to align fees with risk and expand an exemption

The proposed amendment is not aimed at widening the scope of activities captured under the scheduled activity 'petroleum products and fuel production'. The purpose of the proposed changes is to differentiate the operations that fall under this section to better align their fees (both administrative and LBL-related) with the level of regulatory effort and environmental risk. The licensing threshold of 100 tonnes per year would remain the same for both new scheduled activities.

The proposed amendment would also make a minor extension to the exemptions listed in section 31A(2).

Under Option 2, the following changes would be made:

- definition – two new sub-activities within the current 'petroleum products and fuel production' scheduled activity
- expand the exemption for blending additives at 31A(2)(b) to include petroleum fuel storage terminals (that already hold an environment protection licence), as per the exemption at 31A(2)(a)
- introduce new annual administrative fees for each sub-activity
- LBL requirements will only apply to higher risk activities.

⁴¹ Refer to Section 7.25 of the [Load Calculation Protocol \(June 2009\)](#) for all the air and water sampling and analysis requirements.

Definition

Under Option 2, the current activities under ‘petroleum products and fuel production’ would be split into two new scheduled activities, as follows:

“Petroleum products and fuel production (general)’ means the production of petroleum products by–

- (a) *refining, distillation, fermentation, esterification, pyrolysis, cracking or hydrogenation, or*
Note– Refining may occur in the processing of crude petroleum or shale oil, fermentation in the production of ethanol and esterification in the production of biodiesel.
- (b) *another means, other than blending or mixing, involving the chemical transformation of hydrocarbons or the separation, purification or liquefaction of hydrocarbon mixtures.”*

‘petroleum products and fuel production (blending or mixing)’ means the production of petroleum products by blending or mixing.

Note– Blending may occur in the production of lubricants and fuels.”

To determine appropriate names for the new scheduled activities, the EPA considered terminology within the Commonwealth *Industrial Chemicals Act 2019*. Although not an exact reflection of the terminology in that Act, the EPA considers the approach is generally consistent with the Industrial Chemicals Act. The purposes of the Industrial Chemicals Act and the POEO Act scheduled activity definitions are different; it is therefore reasonable to have different, but not inconsistent, approaches.

Under this option, the exemptions outlined in section 31A(2) would be extended to include blending additives at a petroleum fuel storage terminal premises licensed for petroleum products storage. As a result, the blending of additives at these premises will not require a licence for either scheduled activity under ‘petroleum products and fuel production’.

Administrative fee units

Under Option 2, changes would be made to the current administrative fees to better align with the environmental risks of the proposed scheduled activities (see Table 20 and Table 21).

Load-based licensing

Under Option 2 the assessable pollutants for the ‘petroleum products and fuel production (general)’ sub-activity would remain the same, while the sub-activity of ‘petroleum products and fuel production (blending or mixing)’ would be excluded from the LBL system.

Table 20 Proposed administrative fee framework – ‘petroleum products and fuel production (general)’

Annual production capacity	AFUs	Administrative fee (\$)*
More than 100 tonnes but not more than 10,000 tonnes	25	3,475
More than 10,000 tonnes but not more than 200,000 tonnes	65	9,035
More than 200,000 tonnes but not more than 500,000 tonnes	165	22,935
More than 500,000 tonnes	660	91,740

* based on the 2020–21 AFU of \$139

Table 21 Proposed administrative fee framework – ‘petroleum products and fuel production (blending or mixing)’

Annual production capacity	AFUs	Administrative fee (\$)*
More than 100 tonnes but not more than 5,000 tonnes	5	695

Annual production capacity	AFUs	Administrative fee (\$)*
More than 5,000 tonnes but not more than 10,000 tonnes	15	2,085
More than 10,000 tonnes but not more than 50,000 tonnes	50	6,950
More than 50,000 tonnes	135	18,765

* based on the 2020–21 AFU of \$139

Costs and benefits of the options

Option 1 – Base case (no change)

As the current definition and AFUs would not change, there would be no change in the time and resources spent by industry or the EPA in compliance. Lower and higher risk activities will continue to be in one category, meaning continuing higher LBL monitoring and reporting costs for those undertaking lower risk activities. As a result, industry concerns regarding the current scheduled activity definition and its administration would continue unaddressed.

The industry would also continue to pay high annual administrative fees that may not be commensurate with the activity's risk profile. There may also be unnecessary waste of EPA resources providing higher than necessary regulatory oversight over premises with a low risk profile. This option is not the EPA's preferred approach.

Option 2 – Split the scheduled activity 'petroleum products and fuel production' in two to align fees with risk and expand an exemption

Option 2 is not intended to increase or decrease the number of licensees, but to split activities into two groups based on risk. This change would require industry resources to assess and implement changes, such as licence variations, which would be one-off costs rather than ongoing costs. The EPA expects that all facilities currently licensed under this activity will fall under the new scheduled activity 'petroleum products and fuel production (blending or mixing)', reducing administrative fees for this regulated community. The sub-activity 'petroleum products and fuel production (general)' is available for higher risk activities, should a refinery or other operations be established in NSW again.

Under option 2, the different risk profiles of the two sub-activities would be taken into account more transparently and a greater proportion of EPA resources would be allocated to higher risk facilities, in line with the EPA's risk-based licensing framework, compared to the lower-risk facilities.

Option 2 would better align LBL assessable pollutants to the environmental risk of the proposed new scheduled sub-activities. It is proposed that no LBL fees be attached to the scheduled activity of 'petroleum products and fuel production (blending or mixing)'. This is because the pollutant emissions of these activities are considered to be low and therefore suitable to be removed from the LBL system. The EPA retains the authority to require pollutant monitoring and reporting as part of environment protection licences or under other reporting schemes such as the NPI.

Some licensees will have reduced compliance and reporting costs from the removal of LBL requirements (annual monitoring and reporting costs). The estimated reduction in LBL fee revenue to government is \$24,185.⁴²

The proposal to expand the exemption for the blending of additives means this activity will not need to be listed on the licence when carried out at a licensed petroleum fuel storage premise. The activity of blending additives is considered to have the same low risk profile as blending ethanol and biodiesels (which are already exempt) and is taking place in a facility that is already regulated; therefore this activity can reasonably be included in the exemptions.

⁴² based on 2018–19 LBL fees for petroleum products and fuel production

Summary

Option 2 is the EPA's preferred option as it provides for a risk-based approach and a consistent regulation of activities within the petroleum products and fuel production scheduled activity.

10.3. Shipping in bulk

This amendment relates to section 37, Schedule 1 of the POEO Act.

Background

Section 37, Schedule 1 the POEO Act identifies 'shipping in bulk' as a scheduled activity, as follows:

- "(1) This section applies to **shipping in bulk**, meaning the operation of wharves and associated facilities for the bulk loading or unloading of agricultural crop products, rock, ores, minerals or chemicals into or from vessels (except where they are contained in shipping containers).*
- (2) The activity to which this section applies is declared to be a scheduled activity if the facilities have a capacity to handle:*
- (a) more than 500 tonnes of agricultural crop products, rock, ores, minerals or chemicals per day, or*
 - (b) more than 50,000 tonnes of agricultural crop products, rock, ores, minerals or chemicals per year."*

Note. Refer to Section 5.2 regarding the relationship between the scheduled activities 'shipping in bulk' and 'extractive activities'.

Need for action

The current scheduled activity definition does not include all materials being shipped in bulk that present risks to the environment and human health. Currently an environment protection licence is required for shipping in bulk of 'agricultural crop products, rock, ores, minerals or chemicals', while one is not required for similar materials such as sand, soil, clay, sandstone or gravel. All these substances have the potential to negatively impact:

- air quality, particularly during windy conditions
- water quality if spilt during loading, unloading or handling
- by generating noise.

Bulk shipping of any product has the potential to impact on communities including air and noise emissions from the vessel and equipment used in the loading/ unloading operations. This is particularly the case in areas where sensitive receivers are close to the shipping operations.

The proposal to amend the 'shipping in bulk' scheduled activity to include a broader range of materials would better manage potential impacts on the environment and communities. Licensing similar activities with similar risks such as shipping and handling bulk sand and bulk minerals provides a consistent regulatory approach across NSW and a level playing field for operators, especially where the operations are taking place in the same berth or port.

Options considered

Option 1 – Base case (no change)

Under Option 1, the definition of 'shipping in bulk' would remain unchanged. Challenges of different licensing approaches for similar activities (e.g. licensing shipping and handling of bulk minerals but not sand), remain in place, creating unequal regulatory conditions for shipping operators and continued risk of under-regulated impacts to the environment and community.

Option 2 – Expand the list of materials in the activity definition

Option 2 is to expand the list of materials included in the scheduled activity to cover materials with similar risk profiles to the materials currently listed, as follows:

- agricultural crop products (existing)
- rock (existing)
- ores (existing)
- minerals (existing)
- chemicals (existing)
- sand (new)
- soil (new)
- clay(new)
- sandstone (new)
- gravel (new)
- stone (new), or
- similar substances (new).

Option 3 – Remove rock from the list of materials and replace with extractive materials

Option 3 includes removing 'rock' from the list of materials and replacing it with 'extractive materials' as defined in section 19(5) of Schedule 1 of the POEO Act, which is 'clay, sand, soil, stone, gravel, rock, sandstone or similar substances that are not minerals within the meaning of the *Mining Act 1992*'. Option 3 is to include the following materials in the definition:

- agricultural crop products (existing)
- ores (existing)
- minerals (existing)
- chemicals (existing), or
- extractive materials: clay, sand, soil, stone, gravel, rock, sandstone or similar substances that are that are not minerals within the meaning of the Mining Act (new).

Option 4 – Remove the list of materials from the 'shipping in bulk' activity definition

This option would remove the list of materials for 'shipping in bulk'. Shipping any type of material in bulk at a scale exceeding the capacity thresholds of 500 tonnes of product or material per day or 50,000 tonnes of product or material per year would require an environment protection licence.

Costs and benefits of the options

Option 1 – Base case (no change)

Under Option 1 there would be no additional costs to industry as operators currently shipping sand, soil and other similar materials would remain unlicensed. The unlevel playing field would remain. Some shipping in bulk activities would require EPA licensing and other shipping in bulk-type activities would not. Unregulated activities of this nature have the potential to negatively impact the environment and local community and these impacts are difficult to manage outside of the licensing framework. In addition, if an incident does occur with shipping sand or soil in bulk, the EPA has limited regulatory tools to address the incident and it would become local councils' responsibility as ARA. This is not the EPA's preferred approach.

Option 2 – Expand the list of materials in the activity definition

Including additional substances under the definition of 'shipping in bulk' will create a more level playing field for 'shipping in bulk' activities, provide consistency in regulatory approach and better environmental outcomes. This option provides clarity on the materials captured in the activity, although guidance on the meaning and application of 'similar substances' is required.

Option 2 would capture new licensees and there would be associated compliance costs for the operators and the EPA; however, those costs are borne by operators through licensing fees in line

with the polluter pays principle and the potential benefits from additional regulatory oversight to the environment and community outweigh the costs for operators.

Option 3 – Remove rock from the list of materials and replace with extractive materials

Option 3 provides consistency in the regulatory approach across bulk shipping operations, better environmental outcomes and a more level playing field for operators. By capturing a greater number of materials there would be an increase in the number of activities requiring a licence, increased regulatory oversight and associated costs for the EPA and industry. This also brings expected improvements in environmental outcomes and a positive effect on the local community.

However, using the definition of extractive materials to include the additional materials adds a layer of complexity that may cause confusion. This is because the definition uses a reference to the Mining Act definition of minerals which directs to Schedule 1 of the Mining Regulation to identify minerals that are **not** listed here. By using this list of minerals, the number of materials captured by the scheduled activity is reduced and is inconsistent with materials currently captured in this scheduled activity. This is not the EPA's preferred approach.

Option 4 – Remove the list of materials from the 'shipping in bulk' activity definition

This option removes any uncertainty about the materials that require a licence, as shipping of all bulk materials would require a licence. It would result in a more level playing field for shipping in bulk activities. Increased regulatory oversight across all 'shipping in bulk' activities may result in improved environmental outcomes and in turn may have a positive effect on the local community.

However, removing the list of materials may make the types of materials that require a licence too broad and capture low risk materials that do not justify the additional regulatory oversight or burden that licensing imposes (e.g. cars that are shipped in bulk). This would cause the need for additional EPA resources to regulate a broader range of shipping in bulk activities, as well as increase the costs to industry captured under the amended definition. This is not the EPA's preferred option.

Summary

Option 2 is the EPA's preferred option as it provides a clear definition, a consistent regulatory approach and follows the polluter pays principle.

11. Minor changes to the POEO General Regulation

The EPA proposes to make some minor amendments to the POEO General Regulation 2021 that are either consequential to other more substantial amendments as described above, updates in response to changes in legislation or agency names or roles, or to correct errors. Because they are minor, these amendments are simply described. No cost–benefit analysis has been done.

11.1. Licence application fee-related amendments

Minor consequential amendments are required to ensure the proposed new application fee (see Section 5.1) is integrated throughout the POEO General Regulation 2021 as a whole, such as clarifying the annual licence fee payment period, administrative fee calculations, refunds and waivers for application and administrative fees.

Annual licence fee

This proposed amendment relates to section 7(2) of the current POEO General Regulation 2021 and section 21 of the draft POEO General Regulation 2022. Under proposed amendments to

introduce a new licence application fee (Section 5.1) the annual licence fee would be payable for the first licence fee period following the issue of a licence. It is proposed to amend this section to reflect this.

Calculating amount of administrative fee

This proposed amendment relates to section 10(2)(b) of the current POEO General Regulation 2021 and section 22(2) of the draft POEO General Regulation 2022.

Section 10(1) of the POEO General Regulation 2021 describes the method for calculating the administrative fee amount for a licence. Currently a licensee is not required to calculate or apply the 'environmental management factor' for a licence for the first year of operation, i.e. to calculate the fee that currently comprises the licence application fee. This is because it is not possible to calculate the 'environmental management factor' until a licence has been held for one year of operation, as it is calculated based on retrospective environmental performance. The EPA proposes to amend section 10(2)(b) to reflect proposed amendments to the licence application fee, to remove reference to the administrative fee that accompanies a licence application and replace it with reference to the first licence fee period administrative fee.

Refunds if application refused or withdrawn

This proposed amendment relates to section 14 of the current POEO General Regulation 2021 and section 20 of the draft POEO General Regulation 2022.

Section 14 specifies that the EPA may refund the payment of all or any part of an administrative fee that accompanies a licence application if a licence application is withdrawn or refused. Under the proposed amendments an application fee will be introduced. It is therefore proposed to amend section 14 to remove reference to the administrative fee and replace it with reference to the new licence application fee.

Refunds and waivers for licence administrative fees

This proposed amendment relates to section 15 of the current POEO General Regulation 2021 and section 27 of the draft POEO General Regulation 2022.

Section 15 specifies the circumstances in which the EPA may refund or waive payment of licence administrative fees. Section 15(2) specifies that a licensee must submit a request (notification) for a fee refund or waiver within 90 days after the end of the licence fee period.

Licence administrative fees are payable for the coming fee period and are not paid retrospectively. When a licensee determines and reviews their fee for the coming period, they often review their operations from the previous period. It is at this point that many licensees determine that they are eligible to submit an application for a refund or waiver for the previous period.

In 2016 the payment period for annual licence fees was extended from 60 to 120 days as part of the risk-based licensing framework. The time limit for submitting a refund or waiver application was not updated and no longer aligns with fee payment timeframes. In reality, the current 90-day deadline for a refund or waiver may have expired by the time a licensee realises they are eligible to apply. The different timeframes are also confusing for licensees.

To provide consistency, the EPA is proposing to update the administrative fee refund or waiver time limit from 90 days to 120 days. This aligns with the payment of licence administrative fees.

While this does not provide additional time between the payment deadline and submission of an application for a refund or waiver, this timing is considered sufficient.

11.2. Calculating the fee for each assessable pollutant – step 4 of the load-based fee calculation

This proposed amendment relates to section 22(8) of the current POEO General Regulation 2021 and section 42(b) of the draft POEO General Regulation 2022.

The EPA proposes to correct the following errors that relate to the calculation of LBL fees:

- Section 22(8)(b)(i) incorrectly references the heading of Column 3 in Table 2 in Schedule 2 – enclosed waters; this should read open coastal waters.
- Section 22(8)(b)(iii) incorrectly references the heading of Column 5 in Table 2 in Schedule 2 – open coastal waters; this should read enclosed waters.

11.3. Road tunnel emissions

This amendment relates to section 35A, Schedule 1 of the POEO Act.

Section 35A specifies and describes the road tunnels in NSW that are required to hold a licence. The descriptions of some existing tunnels require minor amendment, such as the correct reference to the M8 tunnel, to ensure the tunnels are correctly described. The following new tunnels have also been added:

- The Western Harbour Tunnel, being the tunnel that forms part of the Western Harbour Tunnel and Warringah Freeway Upgrade Project, connecting the M4–M5 Link at Rozelle to the Warringah Freeway at North Sydney.
- The M6, being the tunnel connecting the M8 Motorway at Arncliffe to President Avenue, Kogarah.

11.4. Vehicle testing and inspection – vehicle inspection report

This proposed amendment relates to sections 76 and 80 of the current POEO General Regulation 2021 and sections 74 and 79 of the draft POEO General Regulation 2022.

The EPA has a compliance and enforcement program in place to minimise the number of non-compliant and noisy vehicles operating on NSW roads. The Noise Testing and Anti-Tampering Inspection Scheme has been developed as part of the program.

Under the scheme, the EPA has established approved inspection stations across NSW. Vehicles reported to the EPA as being excessively noisy may be issued with a vehicle inspection notice (section 207 of the POEO Act). A vehicle inspection notice requires the registered owner to present the vehicle for inspection at an EPA approved inspection station to determine if the vehicle's exhaust noise level, noise control equipment and pollution control equipment comply with legal requirements. An outcome of the inspection is a report issued by the approved mechanic. This report has previously been referred to as a 'vehicle inspection report'; however, this term has not been used for some time. The report is now commonly referred to by both the EPA and mechanics as an 'approved mechanic's report.' The EPA proposes to amend sections 76 and 80 of the POEO General Regulation 2021 to be consistent with current terminology. This would result in clarity for the community, inspection stations, vehicle owners and regulators.

11.5. Exemptions from reporting requirements - commercial confidentiality

This proposed amendment relates to section 75(9) of the current POEO General Regulation 2021 and section 120(6) of the draft POEO General Regulation 2022.

If an occupier of a facility believes that information required to be reported to the EPA is sensitive, they can make a claim to the EPA requesting an exemption from reporting requirements on the grounds of commercial confidentiality.

Currently, if the EPA receives written notice of a commercial confidentiality claim, the EPA is taken to have refused the claim if 60-days has passed and written notice of its decision has not been provided. This is also applicable if 60 days has passed and, at the EPA's request, further information has been provided by the occupier.

If the EPA refuses the application, either by written notice or by failing to respond within 60-days, the occupier is required to comply with the reporting requirements under the Regulation.

The proposed amendments are to extend the timeframes from 60-days to 90-days before the commercial confidentiality claim is taken to be refused. This allows the EPA more time to assess the claim, where needed, before it is taken to be refused.

12. Bibliography

- ABS (Australian Bureau of Statistics) 2020a, *6345.0 Wage Price Index, Australia*, Table 4a. Total Hourly Rates of Pay Excluding Bonuses: Public Sector by State, Original (Financial Year Index Numbers for year ended June 2020).
- ABS (Australian Bureau of Statistics) 2020b, *6345.0 Wage Price Index, Australia*, Table 3a. Total Hourly Rates of Pay Excluding Bonuses: Private Sector by State, Original (Financial Year Index Numbers for year ended June 2020).
- ABS (Australian Bureau of Statistics) 2020c, *6401.0 Consumer Price Index Australia Dec 2019*, Time Series Spreadsheet, 'Tables 1 and 2: CPI: All Groups, Index Numbers and Percentage Changes (Sydney).
- DECC (Department of Environment and Climate Change) 2009, *Final Regulatory Impact Statement: Protection of the Environment Operations (General) Regulation 2009*, NSW Department of Environment and Climate Change, Sydney, available from www.environment.nsw.gov.au/resources/legislation/09209poeoregfinalRIS.pdf (PDF 665KB).
- Department of the Environment 2015, *National Pollutant Inventory Guide*, Australian Government Department of the Environment, Canberra, available from www.npi.gov.au/resource/national-pollutant-inventory-guide.
- EPA (Environment Protection Authority) 1998, *Regulatory Impact Statement: Protection of the Environment Operations (General) Regulation 1998*, NSW Environment Protection Authority, Sydney.
- EPA (Environment Protection Authority) 2009, *Load Calculation Protocol (June 2009): For use by holders of NSW environment protection licences when calculating assessable pollutant loads*, NSW Environment Protection Authority, Parramatta, www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/load-based-licensing/load-calculation-protocol.
- EPA (Environment Protection Authority) 2017a, *Load-based licensing*, NSW Environment Protection Authority, Parramatta, www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/load-based-licensing.
- EPA (Environment Protection Authority) 2017b, *National Pollutant Inventory*, NSW Environment Protection Authority, Parramatta, www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/national-pollutant-inventory.
- EPA (Environment Protection Authority) 2020, *Risk-based licensing*, NSW Environment Protection Authority, Parramatta, www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/risk-based-licensing.
- EPA (Environment Protection Authority) 2021, *Powers and Notices Guideline for Authorised Officers and Enforcement Officers under the Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority, Parramatta, www.epa.nsw.gov.au/licensing-and-regulation/authorised-officers-and-enforcement-officers/powers-and-notices-guideline.
- NSW Treasury 2017, *NSW Government Guide for Cost Benefit Analysis, Policy and Guidelines Paper TPP 17-03*, NSW Treasury, available from www.treasury.nsw.gov.au/nsw-economy/economic-frameworks.
- 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.
- PwC (PricewaterhouseCoopers) 2013a, *A best practice approach to designing and reviewing licensing schemes*, final report and licensing framework prepared for the Independent Pricing and Regulatory Tribunal (IPART), available from www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Licence-Design/Licence-Rationale-and-Design/22-May-2014-Final-licensing-framework/PWC-A-best-practice-approach-to-licensing-schemes-Conceptual-Framework-March-2013.
- PwC (PricewaterhouseCoopers) 2013b, *A best practice approach to designing and reviewing licensing schemes – Guidance material*, report prepared for the Independent Pricing and Regulatory Tribunal (IPART), available from www.ipart.nsw.gov.au/Home/Industries/Special-Reviews/Reviews/Licence-Design/Licence-Rationale-and-Design/22-May-2014-Consultants-final-licensing-guide/PWC-A-best-practice-approach-to-licensing-schemes-Guidance-Material-March-2013.

Appendix A – Licence application fee cost vs revenue

As outlined in Section 5.1 New licence application fee (refer to page 6), this appendix compares the estimated annual costs incurred by the EPA for premises-based licence applications and the estimated revenue for the 2020–21 to 2025–26 period based on the EPA’s proposed fee structure.

Table A1 Premises-based EPA costs, estimated revenue and NPV 2020–21 to 2025–26

NPV (at 7%)	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958
Present value of cost	\$1,644,958	\$1,537,344	\$1,436,770	\$1,342,775	\$1,254,930	\$1,172,832
NPV (cost)	\$8,389,609					
Revenue	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986
Present value of revenue	\$1,580,986	\$1,477,557	\$1,380,894	\$1,290,556	\$1,206,127	\$1,127,221
NPV (revenue)	\$8,063,341					

NPV – net present value

Environment protection notice costs

An analysis of the costs associated with drafting and issuing environment protection notices concluded that the current fees were inadequate to recover the EPA’s costs.

Table A2 shows how the EPA calculated the average hourly rate for drafting and issuing an environment protection notice in 2020. Table A3 shows a comparison of the average cost of preparing a notice in 1998 and 2020.

Table A2 Calculating the average hourly rate to draft/issue an environment protection notice in 2020

Environment officer classification/year	Hourly rate ^a	% total effort ^b	Calculations to determine average cost per hour
5.4	\$60.25	20	\$12.02
8.4	\$78.76	50	\$39.27
10.4	\$89.36	30	\$26.73
	Total	100	\$78.01
	TOTAL (rounded)		\$78

^a EPA salary rates in 2020–21 for environment officers, which includes on-costs of 25%

^b % total effort breakdown is based on the proportion of time spent on actions associated with a notice averaged for each grade of officer who may potentially be involved

Table A3 The EPA's average costs for issuing a notice in 1998 compared with 2020–21

	Hours	Average cost per hour (\$)	Total cost range (\$)	Average cost per hour (\$)	Total cost range (\$)
Draft notice	6 – 8	\$32	\$192 – \$256	\$78 ^a	\$468 – \$624
Review and authorisation	0.5 – 0.75	\$44	\$22 – \$33	\$101 ^b	\$51 – \$76
Total labour costs			\$214 – \$289		\$519 – \$700
Overhead costs			\$64 – \$86 ^c		\$104 – \$140 ^d
Total costs			\$278 – \$375		\$622 – \$840
Calculated average administrative fee			\$327		\$731

^a based on calculations in Table A2

^b based on the hourly rate for an Environment Officer grade 12.4 at the EPA for the 2020–21 financial year

^c 30% of total labour costs, POEO General Regulation 1998 Regulatory Impact Statement

^d 20% of total labour costs

Appendix B – Section comparison table and RIS reference

All proposed amendments listed in Table B1 are planned to commence on the date the POEO General Regulation 2022 comes into force. All proposed amendments listed in Table B2 are planned to commence 9 months after the date the POEO General Regulation 2022 comes into force.

Table B1 Index of section numbers and the proposed amendments to the General Regulation and Schedule 1 of the POEO Act

Current section number	Draft Regulation section number	Section name	Description	Proposed amendment	RIS reference
Section 7(2)	Section 21	Annual licence fee	Section 7(2) states that an administrative fee is only payable as part of the annual licence fee in respect of the second and subsequent licence fee periods for a licence.	Currently under section 8 an applicant pays the administrative fee in the first year as an application fee. As the EPA is proposing the new application fee, section 7 would need to be amended to require payment of the administrative fee for the first licence fee period once the licence is issued	Section 11.1
Section 8	Section 19	Administrative fees	Section 8 sets the application fee for an environment protection licence. The current fee is the annual licence administrative fee.	The EPA is proposing to introduce a new application fee to improve its cost recovery in not only processing a licence application but also its involvement in development assessment processes and developing a new licence.	Section 5.1
Section 9(1)	Section 16	Amount of AFU	Section 9(1) prescribes the dollar amount of the AFU with annual increases up to 2023.	The EPA is proposing to extend the annual increases to the AFU beyond 2023 to facilitate cost recovery of the EPA’s regulatory oversight of licences. The proposed increase is based on a 2.3% public sector WPI. A fee calculation formula is also proposed to enable ongoing increases in AFUs.	Section 6.1
Section 10(2)(b)	Section 22(2)	Calculating amount of administrative fee	Section 10 lists 3 steps to calculate the amount of an administrative fee.	The EPA is proposing an amendment to section 10(2)(b) such that Steps 2 and 3 are not required to be calculated for the	Section 11.1

Current section number	Draft Regulation section number	Section name	Description	Proposed amendment	RIS reference
				first licence fee period administrative fee as this fee will no longer accompany the licence application.	
Section 14	Section 20	Refunds if application refused or withdrawn	Section 14 specifies the circumstances in which the EPA may refund the payment of all or part of an administrative fee if a licence application is withdrawn or refused.	Under the proposed new licence application fee regime set out above in relation to section 8, the application fee will no longer be the administrative fee. Accordingly, the EPA is proposing consequential amendments to section 14 to replace reference to the administrative fee with reference to the new licence application fee.	Section 11.1
Section 15(2)	27	Refunds and waivers – licence holders	Section 15 specifies the circumstances in which the EPA may refund or waive payment of licence administrative fees.	It is proposed to increase the time limit for applying for administrative fee refunds from 90 days to 120 days to align the timeframes for both payment and refund of licence administrative fees.	Section 11.1
Section 22(7)	Section 43(1)	Calculating the fee for each assessable pollutant – step 4 of load-based fee calculation (PFUs)	Section 19(7) prescribes the dollar amount of the PFU with annual increases up to 2023.	The EPA is proposing to extend the annual increases to the PFU beyond 2023 to facilitate cost recovery in line with inflation. The proposed increase is based on 1.7% CPI. A fee calculation formula is also proposed to enable ongoing increases in PFUs.	Section 6.2
Sections 22(8)(b)(i) & (iii)	Sections 42(b)(i) & (iii)	Calculating the fee for each assessable pollutant – step 4 of load-based fee calculation	Section 22(8)(b) identifies weightings for water pollutants to calculate load-based fees.	The EPA is proposing to correct referencing errors that relate to the calculation of load-based fees for water pollutants.	Section 11.2
Section 43	Section 26	Adjustment of administrative fee	If a licensee changes the classification or scale of its licensed activities, it is entitled to a pro-rata discount on the licence administrative fee, if the annual	The EPA is proposing to amend section 43 so facilities that change fee scales part-way through the year do not get a financial advantage over other licensees	Section 8.1

Current section number	Draft Regulation section number	Section name	Description	Proposed amendment	RIS reference
			administrative fee decreases, or is required to pay an additional pro-rata amount if the administrative fee increases.	that remain within one classification all year.	
Section 64	Section 127	Approved methods for pollutant testing	Currently, the General Regulation prescribes approved methods for the testing, sampling, measurement and analysis of matter, including pollutants and emissions for water only.	The EPA is proposing to expand the Approved Methods Publication to include other media or substances that convey pollutants, such as air pollutants and noise emissions.	Section 8.7
Section 69(1)	Section 117(1)	Collection of data from reporting facilities	Section 69 contains a requirement for reporting facilities to provide the EPA with certain specified information where a reporting threshold for a substance is exceeded.	The EPA is proposing to specifically require reporting facilities that exceed a reporting threshold for a substance to collect and report on the kilograms of each substance 'used' as part of their NPI reporting obligations.	Section 7.1
Section 71	Section 121	Alternative emission estimate techniques	Section 71 contains a requirement for reporting facilities to use emission estimation and transfer techniques when reporting information under the NPI.	The EPA is proposing to introduce broader scale emission estimation techniques, such as industry-wide or multi-site emission estimation techniques.	Section 7.2
Sections 73(5)(a) and (b)	Sections 123(6)(a) and (b)	Extend timeframe for application determination	The current sections detail a 60-day timeframe for the EPA to determine (approve or refuse) an application for an estimation technique.	The EPA is proposing to extend the assessment and determination timeframe to 90 days.	Section 7.3
Section 75(9)	Section 120(6)	Commercial confidentiality	Section 75(9) details that if the EPA does not respond to a commercial confidentiality claim within 60-days, it is taken to be refused.	The EPA is proposing to extend the timeframes to 90-days.	Section 11.5
Sections 76 and 80	Sections 74 and 79	Definitions – vehicle inspection reports	An approved mechanic who carries out a test or inspection must, in accordance with conditions of the mechanic's approval, complete a vehicle inspection report in the form approved by the EPA.	The EPA is proposing to change the name of a 'vehicle inspection report' to an 'approved mechanic's report' to reflect current terminology used by industry and the EPA.	Section 11.4

Current section number	Draft Regulation section number	Section name	Description	Proposed amendment	RIS reference
Section 79	Sections 77 and 78	Maximum fee for test or inspection	Section 79 is aimed at recovering the costs involved in testing and inspecting vehicles.	The EPA is proposing an increase in the base fee and annual increases thereafter based on the private sector WPI to ensure the fees continue to recover the costs for approved mechanics to test and inspect vehicles. A fee calculation formula is also proposed to enable ongoing increases in fees.	Section 6.3
Section 133	Section 73	Testing of plan	All licence holders are required to test a PIRMP within one month of any pollution incident occurring.	<p>It is proposed to amend section 133 to specify that testing of PIRMPs is only required within one month of a pollution incident that causes or threatens to cause material harm to the environment, rather than for all pollution incidents (as 'pollution incident' is broadly defined in the POEO Act).</p> <p>It is also proposed to amend section 133 to create explicit powers for the EPA to require licensees to test their PIRMPs in a specified time frame via a written direction from the EPA.</p>	Section 8.4
Section 138	Section 143	Fee for clean-up, prevention and noise control notices	Section 138 prescribes the fee for preparing and issuing clean-up, prevention and noise control notices.	The EPA is proposing an increase in the base fee and annual increases thereafter based on 2.3% WPI to ensure the fees continue to recover the costs for preparing and issuing these notices. A fee calculation formula is also proposed to enable ongoing increases in fees.	Section 6.4
Section 145	Section 146	Additional restriction on requiring financial assurances	The POEO Act allows the EPA to require a licence holder to provide a financial assurance. The Act lists a number of matters that must be considered to be satisfied that a financial assurance is justified.	It is proposed to amend section 145 to prescribe the financial capacity of a licensee when assessing whether a financial assurance is justified.	Section 8.5

Current section number	Draft Regulation section number	Section name	Description	Proposed amendment	RIS reference
Various	Various	Industry-related waste generation activities	There are seven fee-based activities where the licensing threshold in the Act is based on the amount of waste ' <i>stored on site at any time</i> ', while the fee thresholds in the General Regulation are based on the ' <i>annual volume of waste generated or stored</i> '.	The EPA is proposing to amend sections to ensure licensing thresholds in the Act and fee thresholds in the Regulation align.	Section 8.2
Schedule 1	Schedule 1	Various administrative fee amounts	Schedule 1 of the General Regulation prescribes fee categories and amounts that apply to scheduled activities listed under Schedule 1 of the POEO Act.	The EPA is proposing to make various amendments required to Schedule 1 of the General Regulation to ensure the fee categories and amounts that apply to activities are not below the thresholds for which a licence is required in Schedule 1 of the Act.	Chapter 9
Schedule 6	Schedule 6	Penalty notice offences	There are certain notices collectively called 'environment protection notices' that the EPA and local councils can prepare and issue under the POEO Act. They include clean-up notices, prevention notices and noise control notices. It is an offence not to pay the prescribed fee within 30 days, and the regulatory authority is able to issue a penalty notice for non-payment	The EPA is proposing to update the penalty notice amount for individuals for non-payment of fees for clean-up and prevention notices to ensure the penalty notice amount is greater than the notice fee.	Section 8.3
Schedule 6 (Noise Control Regulation)	Schedule 6 (Noise Control Regulation)	Protection of the Environment Operations (Noise Control) Regulation 2017	Section 41 of the Protection of the Environment Operations (Noise Control) Regulation 2017 creates an offence relating to the noise requirements for new building intruder alarms.	The EPA is proposing to add a penalty notice amount for section 41 of the Protection of the Environment Operations (Noise Control) Regulation 2017 for both individuals and corporations and nominate officers of the EPA and local councils as enforcement officers in relation to this offence.	Section 8.6

Table B2 Schedule 1 amendments to the POEO Act

Current section number	Draft Regulation section number	Section name	Description	Proposed amendment	RIS reference
Section 19	Section 19	Extractive activities	A premise undertaking extractive activities (either land-based or water-based) for which the primary purpose of extraction is for sale and meets the 30,000 tonnes per annum threshold must hold a licence.	It is proposed to amend the extractive activities definition to remove the 'primary purpose for sale' requirements to ensure that council quarries, extraction undertaken as part of large infrastructure projects, and some forms of dredging are captured when they meet the licensing threshold.	Section 5.2
Section 22	Section 22	Livestock intensive activities – bird accommodation	Operators of scheduled activities, which includes those premises that meet the threshold for bird accommodation, pay an annual administrative fee which seeks to recover the EPA's annual cost of administering and regulating the licence and premises.	The EPA is proposing to introduce another upper administrative fee threshold for the scheduled activity 'bird accommodation'.	Section 5.3
Section 25	Section 25	Marinas and boat repairs	A premise that meets the thresholds of boat construction/maintenance (dry/floating docks/general) and boat mooring and storage must hold a licence.	It is proposed to make minor changes to the grammar and phrasing of the section to clarify its meaning. Amendments are not intended to alter the type of activities captured under section 25.	Section 10.1
Section 31A	Section 31A	Petroleum products and fuel production	An environment protection licence is required for a highly diverse range of activities and environmental risk related to petroleum products and fuel production.	It is proposed to amend section 31A to create two subcategories of activity within this scheduled activity. The definitions of each will be based on the different levels of environmental risk and will maintain the current coverage of premises.	Section 10.2
Section 35A	Section 35A	Road tunnel emissions	The 'road tunnel emissions' scheduled activity describes specific tunnels to which the scheduled activity applies. Tunnel descriptions are based on descriptions included in the initial development consents.	It is proposed to amend section 35A(1) to correctly describe some tunnels subject to this scheduled activity and to add any newly approved road tunnels.	Section 11.3

Current section number	Draft Regulation section number	Section name	Description	Proposed amendment	RIS reference
Section 37	Section 37	Shipping in bulk	An environment protection licence is required for shipping in bulk activities that meet the thresholds under section 37.	It is proposed to amend section 37 to ensure all materials that pose a similar environmental risk to those currently included in the definition require a licence for 'shipping in bulk.'	Section 10.3

Appendix C – Sensitivity analysis

Sensitivity analysis

The tables below provide a sensitivity analysis of the EPA's estimated annual costs for premises-based licence applications and estimated revenue outlined in Table A1.

Discount rates

The discount rate reflects the degree to which people value current versus future income. It is primarily based on the return people could have earned on the money had it been invested elsewhere. In keeping with guidance from NSW Treasury, this analysis has been undertaken using a real discount rate of 7% (NSW Treasury, March 2017). The sensitivity of these results is gauged by using discount rates of 3% and 10%. Tables C1–C3 below detail the net present value (NPV) of costs the EPA has calculated during the period 2020–21 to 2025–26 in providing advice and dealing with premises-based licence applications. In addition, the tables indicate the NPV of revenue to the EPA of the new proposed application fee using discount rates of 3%, 7% and 10%.

Tables C4–C9 detail the NPV of costs the EPA has calculated between 2020–21 and 2025–26 in providing advice and dealing with non-premises-based licence applications. In addition, the tables indicate the NPV of revenue to the EPA of the new proposed application fee using discount rates of 3%, 7% and 10%.

Table C1 Premises-based licence applications – cost, revenue and NPV at 7% discount rate

NPV at 7%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958
Present value of cost	\$1,644,958	\$1,537,344	\$1,436,770	\$1,342,775	\$1,254,930	\$1,172,832
NPV (cost)	\$8,389,609					
Revenue	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986
Present value of revenue	\$1,580,986	\$1,477,557	\$1,380,894	\$1,290,556	\$1,206,127	\$1,127,221
NPV (revenue)	\$8,063,341					

Table C2 Premises-based licence applications – cost, revenue and NPV at 3% discount rate

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958
Present value of cost	\$1,644,958	\$1,597,046	\$1,550,530	\$1,505,369	\$1,461,524	\$1,418,955
NPV (cost)	\$9,178,382					
Revenue	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986	\$1,580,986
Present value of revenue	\$1,580,986	\$1,534,938	\$1,490,231	\$1,446,826	\$1,404,686	\$1,363,772
NPV (revenue)	\$8,821,439					

Table C3 Premises-based licence applications – cost, revenue and NPV at 10% discount rate

NPV at 10%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958	\$1,644,958
Present value of cost	\$1,644,958	\$1,495,416	\$1,359,469	\$1,235,881	\$1,123,528	\$1,021,389
NPV (cost)	\$7,880,642					
Revenue	\$1,508,986	\$1,508,986	\$1,508,986	\$1,508,986	\$1,508,986	\$1,508,986
Present value of revenue	\$1,508,986	\$1,437,260	\$1,306,600	\$1,187,818	\$1,079,835	\$981,668
NPV (revenue)	\$7,574,167					

Table C4 Non-premises-based licence applications – NPV at 7% discount rate (revenue)

NPV at 7%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Waste processing – revenue	\$56,990	\$56,990	\$56,990	\$56,990	\$56,990	\$56,990
Transportation of trackable waste – revenue	\$27,800	\$27,800	\$27,800	\$27,800	\$27,800	\$27,800
Waste processing – present value of revenue	\$56,990	\$53,262	\$49,777	\$46,521	\$43,477	\$40,633
Transportation of trackable waste – present value of revenue	\$27,800	\$25,981	\$24,282	\$22,693	\$21,208	\$19,821
NPV – waste processing	\$290,660					
NPV – transportation of trackable waste	\$141,785					

Table C5 Non-premises-based licence applications – NPV at 3% discount rate (revenue)

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Waste processing – revenue	\$56,990	\$56,990	\$56,990	\$56,990	\$56,990	\$56,990
Transportation of trackable waste – revenue	\$27,800	\$27,800	\$27,800	\$27,800	\$27,800	\$27,800
Waste processing – present value of revenue	\$56,990	\$55,330	\$53,719	\$52,154	\$50,635	\$49,160
Transportation of trackable waste – present value of revenue	\$27,800	\$26,990	\$26,204	\$25,441	\$24,700	\$23,981
NPV – waste processing	\$317,988					

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
NPV – transportation of trackable waste	\$155,116					

Table C6 Non-premises-based licence applications – NPV at 10% discount rate (revenue)

NPV at 10%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Waste processing – revenue	\$56,990	\$56,990	\$56,990	\$56,990	\$56,990	\$56,990
Transportation of trackable waste – revenue	\$27,800	\$27,800	\$27,800	\$27,800	\$27,800	\$27,800
Waste processing – present value of revenue	\$56,990	51,809	47,099	42,817	38,925,	35,286
Transportation of trackable waste – present value of revenue	\$27,800	\$25,273	\$22,975	\$20,887	\$18,988	\$17,262
NPV – waste processing	\$273,027					
NPV – transportation of trackable waste	\$133,184					

Table C7 Non-premises-based licence applications – NPV at 7% discount rate (cost)

NPV at 7%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Waste processing – cost	\$57,500	\$57,500	\$57,500	\$57,500	\$57,500	57,500
Transportation of trackable waste – cost	\$25,850	\$25,850	\$25,850	\$25,850	\$25,850	25,850
Waste processing – present value of cost	\$57,500	\$53,738	\$50,223	\$46,937	\$43,866	\$40,997
Transportation of trackable waste – present value of cost	\$25,850	\$24,159	\$22,578	\$21,101	\$19,721	\$18,431
NPV – waste processing	\$293,261					
NPV – transportation of trackable waste	\$131,840					

Table C8 Non-premises-based licence applications – NPV at 3% discount rate (cost)

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Waste processing – cost	\$57,500	\$57,500	\$57,500	\$57,500	\$57,500	57,500
Transportation of trackable waste – cost	\$25,850	\$25,850	\$25,850	\$25,850	\$25,850	25,850

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Waste processing – present value of cost	\$57,500	\$55,825	\$54,199	\$52,621	\$51,088	\$49,600
Transportation of trackable waste – present value of cost	\$25,850	\$25,097	\$24,366	\$23,656	\$22,967	\$22,298
NPV – waste processing	\$320,833					
NPV – transportation of trackable waste	\$144,235					

Table C9 Non-premises-based licence applications – NPV at 10% discount rate (cost)

NPV at 10%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Waste processing – cost	\$57,500	\$57,500	\$57,500	\$57,500	\$57,500	57,500
Transportation of trackable waste – cost	\$25,850	\$25,850	\$25,850	\$25,850	\$25,850	25,850
Waste processing – present value of cost	\$57,500	\$52,273	\$47,521	\$43,201	\$39,273	\$35,703
Transportation of trackable waste – present value of cost	\$25,850	\$23,500	\$21,364	\$19,421	\$17,656	\$16,051
NPV – waste processing	\$275,470					
NPV – transportation of trackable waste	\$123,842					

Appendix D – Alternative development application mixes

The tables below outline the EPA's estimated costs, revenue and NPV associated with alternative mixes of development applications received by the EPA. The EPA generally receives 70 licence applications per year. Three licence application scenarios are outlined below:

- Scenario 1: Government infrastructure
 - Demonstrates the estimated cost, revenue and NPV if there is a strong weighting on government infrastructure projects, i.e. a higher proportion of State Significant, State Significant (large) and CSSI projects.
- Scenario 2 – Industry applications
 - Demonstrates the estimated cost, revenue and NPV if there is a strong weighting on industry projects, i.e. straightforward or moderate licence applications.
- Scenario 3 – Variation on existing figures
 - Demonstrates a slight change in variability of the licence applications submitted from the breakdown provided in Section 5.1 of this RIS.

Tables D1–D9 below outline the costs, revenue and NPV based on the scenarios outlined above.

Table D1 Scenario 1 – Premises-based licence applications – cost, revenue and NPV at 7% discount rate

NPV at 7%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552
Present value of cost	\$1,816,552	\$1,697,712	\$1,586,647	\$1,482,848	\$1,385,839	\$1,295,176
NPV (cost)	\$9,264,774					
Revenue	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369
Present value of revenue	\$1,747,369	\$1,633,055	\$1,526,220	\$1,426,374	\$1,333,059	\$1,245,850
NPV (revenue)	\$8,911,927					

Table D2 Scenario 1 – Premises-based licence applications – cost, revenue and NPV at 3% discount rate

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552
Present value of cost	\$1,816,552	\$1,763,643	\$1,712,274	\$1,662,402	\$1,613,983	\$1,566,974
NPV (cost)	\$10,135,828					
Revenue	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369
Present value of revenue	\$1,747,369	\$1,696,475	\$1,647,063	\$1,599,090	\$1,552,515	\$1,507,296
NPV (revenue)	\$9,749,807					

Table D3 Scenario 1 – Premises-based licence applications – cost, revenue and NPV at 10% discount rate

NPV at 10%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552	\$1,816,552
Present value of cost	\$1,816,552	\$1,651,411	\$1,501,283	\$1,364,802	\$1,240,729	\$1,127,936
NPV (cost)	\$8,702,713					
Revenue	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369	\$1,747,369
Present value of revenue	\$1,747,369	\$1,588,517	\$1,444,107	\$1,312,824	\$1,193,477	\$1,084,979
NPV (revenue)	\$8,371,272					

Table D4 Scenario 2 – Premises-based licence applications – cost, revenue and NPV at 7% discount rate

NPV at 7%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231
Present value of cost	\$1,071,231	\$1,001,150	\$935,655	\$874,444	\$817,237	\$763,773
NPV (cost)	\$5,463,490					
Revenue	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044
Present value of revenue	\$1,028,044	\$960,789	\$897,933	\$839,190	\$784,290	\$732,981
NPV (revenue)	\$5,243,227					

Table D5 Scenario 2 – Premises-based licence applications – cost, revenue and NPV at 3% discount rate

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231
Present value of cost	\$1,071,231	\$1,040,030	\$1,009,738	\$980,328	\$951,775	\$924,053
NPV (cost)	\$5,977,155					
Revenue	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044
Present value of revenue	\$1,028,044	\$998,101	\$969,030	\$940,806	\$913,404	\$886,800
NPV (revenue)	\$5,736,184					

Table D6 Scenario 2 – Premises-based licence applications – cost, revenue and NPV at 10% discount rate

NPV at 10%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231	\$1,071,231
Present value of cost	\$1,071,231	\$973,846	\$885,315	\$804,832	\$731,665	\$665,150
NPV (cost)	\$5,132,039					
Revenue	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044	\$1,028,044

NPV at 10%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Present value of revenue	\$1,028,044	\$934,585	\$849,623	\$772,385	\$702,168	\$638,334
NPV (revenue)	\$4,925,140					

Table D7 Scenario 3 – Premises-based licence applications – cost, revenue and NPV at 7% discount rate

NPV at 7%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520
Present value of cost	\$1,498,520	\$1,400,486	\$1,308,865	\$1,223,239	\$1,143,214	\$1,068,424
NPV (cost)	\$7,642,748					
Revenue	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040
Present value of revenue	\$1,440,040	\$1,345,832	\$1,257,787	\$1,175,502	\$1,098,600	\$1,026,729
NPV (revenue)	\$7,344,488					

Table D8 Scenario 3 – Premises-based licence applications – cost, revenue and NPV at 3% discount rate

NPV at 3%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520
Present value of cost	\$1,498,520	\$1,454,874	\$1,412,499	\$1,371,358	\$1,331,416	\$1,292,637
NPV (cost)	\$8,361,303					
Revenue	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040
Present value of revenue	\$1,440,040	\$1,398,097	\$1,357,376	\$1,317,841	\$1,279,457	\$1,242,191
NPV (revenue)	\$8,035,002					

Table D9 Scenario 3 – Premises-based licence applications – cost, revenue and NPV at 10% discount rate

NPV at 10%	2020–21	2021–22	2022–23	2023–24	2024–25	2025–26
Cost	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520	\$1,498,520
Present value of cost	\$1,498,520	\$1,362,291	\$1,238,446	\$1,125,860	\$1,023,509	\$930,463
NPV (cost)	\$7,179,090					
Revenue	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040	\$1,440,040
Present value of revenue	\$1,440,040	\$1,309,127	\$1,190,116	\$1,081,923	\$983,567	\$894,152
NPV (revenue)	\$6,898,925					

Appendix E – IPART assessment

This document assesses the Environment Protection Authority’s (EPA) proposed amendments to its environment protection licensing scheme against the NSW Independent Pricing and Regulatory Tribunal’s (IPART) Licensing Framework.⁴³

The proposed changes to the EPA’s licensing scheme, the need for the changes and impact on stakeholders is outlined in Sections 5.1–5.3, 8.2, 9 and 10.2–10.3 of this RIS.

Stage 1 – Appropriate licensing

The NSW Government has comprehensive legislation in place to protect public health and the environment from potential harm. A major component of this legislation is the *Protection of the Environment Operations Act 1997* (POEO Act).

The EPA operates an existing, effective and robust environment protection licensing scheme. The POEO Act establishes the NSW environmental regulatory framework and includes a licensing requirement for certain activities. Licences provide a way to control risks to the environment and human health, access to information about pollution through public registers, and improve operations over time through pollution prevention and cleaner production approaches – supporting key objectives of the POEO Act.

If licensing under the POEO Act was not in place, the EPA believes there would be a greater risk of irreversible harm to the environment and harmful impacts to human health. The review of the POEO General Regulation and this licence framework assessment have determined that making targeted refinements to the current licensing scheme to address the issues identified is the best approach.⁴⁴ No generic rules or other pieces of legislation are able to be applied to sufficiently address these environmental risks. As a result, adjusting the existing licensing scheme is the preferred approach.

Stage 2 – Licensing design

The EPA considers its licensing framework to be effective in meeting the objectives of the POEO Act. It also supports the EPA’s Regulatory Strategy⁴⁵ of focusing our regulatory activities to achieve the best outcomes. The licensing system’s coverage is the minimum necessary, as only operators carrying out scheduled activities on or above a production or operating capacity threshold, are required to hold a licence.

The EPA has cost recovery mechanisms for licensed operators to ensure ‘user pays’ and ‘polluter pays’ policy objectives are met. This means that operators benefitting from holding a licence are paying for the service of the regulatory oversight the EPA provides and related services, such as licence administration. This is achieved through an annual administrative fee. The EPA is also proposing the introduction of a new application fee to enhance its cost recovery capabilities.⁴⁶

Some licences also attract an annual load-based fee.⁴⁷ The load-based fee is based on the amount of assessable pollutants the activity releases into the environment, as well as the conditions of the receiving environment. This is consistent with the polluter pays principle and applies to a subset of scheduled activities. This scheme provides a financial incentive for licensees

⁴³ Independent Pricing and Regulation Tribunal: *A best practice approach to designing and reviewing licensing schemes*

⁴⁴ Issues are recorded in the ‘Need for action’ section of each proposed amendment in the RIS.

⁴⁵ Environment Protection Authority: *Regulatory Strategy, 2021–2024*

⁴⁶ Refer to Section 5.1 of the RIS

⁴⁷ Environment Protection Authority: [Load-based licensing](#)

to reduce emissions, which supports the EPA's objective to protect the environment and human health.

The EPA's licensing system permits various activities over prescribed thresholds. In this case an environment protection licence permits a specific scale of activity (or activities) and includes conditions relating to pollution prevention and management, monitoring, reporting, incident notification, planning requirements and the implementation of best practice (amongst other matters).

The licensing scheme includes annual and ad hoc reporting requirements. The intent of the reporting requirements is to self-monitor performance and provide accountability and transparency of licensed operations. It also provides information and data to enable the EPA to improve regulatory approaches and develop or refine policy.

Two mandatory criteria must be met before the EPA may issue a licence (premises-based or non-premises-based) to an applicant. Firstly, the applicant must be a 'fit and proper' person. Secondly, the person must hold a planning consent or approval for the proposed activity (wherever planning consent or approval is required). Consent or approval under the *Environmental Planning and Assessment Act 1979* means the appropriate level of environmental impact assessment has been undertaken, submitted and approved by the planning authority.

A licence also contains standard licence conditions that outline minimum operating requirements expected from a licensee. It may also include site-specific conditions designed to manage risks in a specific location or operating context. Each licence covers conditions relating to air (noise and vibration where applicable), water and application to land, where appropriate, and are often specific to each facility and its activity. These mandatory attributes are the minimum necessary to protect the environment and human health and provide transparency and accountability through the provision of information to the EPA and community.

Stage 3 – Effective and efficient licence administration

The EPA considers its overall licensing system and tools to be effective and efficient in meeting the objectives of the POEO Act.

The EPA's [eConnect](#) online system allows an applicant to apply for a licence online. The applicant is prompted to provide all the information necessary for the EPA to assess its licence application. EPA contact details are also provided to enable the applicant to ask questions and get clarification where necessary. The EPA's risk-based licensing system aims to ensure that all environment protection licence holders receive an appropriate level of regulation based on the level of risk the licensed activity poses to human health and the environment.

Licence details are entered and maintained in the EPA Permitting and Licensing Management System (PALMS). This system is also used for a variety of other EPA issued licences including radiation licences, pesticide licences and dangerous goods licences, allowing for efficiencies in system development and maintenance. The system is well maintained and reliable and has processes to ensure data integrity.

For licensees, there are several ways of contacting the EPA's licensing administration area including phone and email. The EPA manages and operates its own Environment Line for licensees or members of the public to call. It is available 24 hours 7 days a week. Each call is logged and allocated to the appropriate Operations Officer who follows up on the issue/complaint. All further action must be noted in the EPA's system.

The EPA's Regulatory Policy informs how the EPA makes regulatory decisions, including the decision-making principles that guide the EPA and the factors that are considered when responding to an environmental or human health issue, including an individual event or circumstance of non-compliance. It provides an overview of the diverse regulatory tools the EPA uses under each element of its regulatory approach (listen, educate, enable, act, influence, require,

monitor and enforce) and supports the EPA in applying its regulatory approach consistently across all the areas it regulates. The EPA takes a fit for purpose approach to regulation.

The EPA's licensing regime undergoes review via regulatory review (which is dictated by the legislative framework), licence review and policy review, and this ensures it is fit for purpose and reflects best practice.

Stage 4 – Licensing scheme is the best response

The proposed amendments are consistent with the aims of the EPA's existing licensing scheme and support the POEO Act objectives. Alternative options have been considered and documented in the RIS and a cost–benefit analysis undertaken. The analysis determined that the preferred way forward is to amend the existing provisions in the POEO General Regulation 2021, as proposed in the RIS.