

Department of Environment and Science

Regulator Performance Framework
2018–19 Performance Report

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Introduction

The Department of Environment and Science (the department) has a range of functions related to Queensland's natural environment, built heritage, science and the arts. It has a wide regulatory portfolio, encompassed in two principal regulatory divisions.

Environmental Services and Regulation (ESR) is Queensland's environmental regulator, with responsibility for a range of legislation that manages the impact of human activity on natural systems and processes, and on Queensland's built heritage. Queensland Parks and Wildlife Service and Partnerships (QPWS&P) is responsible for regulatory activities on Queensland's protected estate (including national parks and conservation areas), as well as the regulation of interactions between humans and native wildlife.

This report focuses on ESR and QPWS&P as the main regulators in the department (although some other regulatory functions are delivered elsewhere, such as administration of the *Biodiscovery Act 2004* in the Science and Technology division). Both divisions proactively manage and monitor environmental risks and sustainable development through modern and innovative regulation, investigation and enforcement programs.

Regulator Performance Framework

Regulation plays an important role in keeping Queenslanders safe and healthy, by ensuring business and individuals act in a way that is consistent with community expectations. Excessive regulation, however, can be an impediment to business growth and innovation, especially where the regulatory burden is out of proportion to the issues that regulation is trying to address.

To assist regulators in achieving their objectives while minimising unwarranted impacts on Queensland businesses, the Queensland Government has identified model practices that will lead to better interactions between regulators, their regulated community and other stakeholders, while reducing burden/costs for all parties. The model practices are consistent with similar principles adopted in other jurisdictions nationally and internationally.

The five model practices are:

1. ensure regulatory activity is proportionate to risk and minimises unnecessary burden
2. consult and engage meaningfully with stakeholders
3. provide appropriate information and support to assist compliance
4. commit to continuous improvement
5. be transparent and accountable in actions.

Each of these five practices has a number of supporting principles.

Regulator Performance Framework report for ESR

ESR is Queensland's environmental regulator. With a staff of approximately 550 people, it has offices in 13 locations across Queensland.

As Queensland's environmental regulator, ESR delivers targeted, consistent and transparent regulation that facilitates sustainable development in Queensland. It undertakes environmental compliance activities, State-wide proactive compliance and enforcement programs and regionally responsive compliance activities to ensure performance standards are consistent with legislative requirements.

During the reporting period ESR managed, administered and made statutory decisions under a range of legislation, including:

- *Environmental Protection Act 1994*
- *Waste Reduction and Recycling Act 2011*
- *Coastal Protection and Management Act 1995*
- *Environmental Offsets Act 2014*
- *Water Act 2000* (Chapter 3).

Regulator Performance Framework report for QPWS&P

QPWS&P works in partnership with First Nations peoples, other departmental divisions, government agencies, councils, scientists, partners, and volunteers to manage and protect Queensland's natural and cultural values, support sustainable use and provide recreation and ecotourism opportunities. QPWS&P aims to protect and conserve species and ecosystems, manage the interaction between people and wildlife, oversee World Heritage management of selected sites and manage the Queensland Indigenous Land and Sea Ranger Program. QPWS&P is responsible for:

- the co-stewardship and/or joint management of approximately 13 million hectares of protected areas and forests
- supporting the protection of over 4.45 million hectares of nature refuges and managing 12,000 square kilometres of declared fish habitat areas
- managing 356,000 square kilometres of Great Barrier Reef and state marine parks in collaboration with the Australian Government
- supporting 50 million domestic and eight million international visits to national parks and forests each year, including 1.35 million guests in overnight camper stays
- managing species listed under the *Nature Conservation Act 1992* and undertaking effective regulation within the bounds of the Acts subordinate legislation, with 955 species of animals and plants listed as threatened (extinct in the wild, endangered or vulnerable) in Queensland.

During the reporting period QPWS&P managed, administered and made statutory decisions under a range of legislation, including:

- *Forestry Act 1959*
- *Marine Parks Act 2004*
- *Marine Parks (Great Sandy) Zoning Plan 2017*
- *Marine Parks (Moreton Bay) Zoning Plan 2008*
- *Nature Conservation Act 1992*
- *Recreation Areas Management Act 2006*
- *Wet Tropics World Heritage Protection and Management Act 1993*.

<p>1. Ensure regulatory activity is proportionate to risk and minimises unnecessary burden</p> <p>Supporting principles:</p> <ul style="list-style-type: none"> • a proportionate approach is applied to compliance activities, engagement and regulatory enforcement actions • regulations do not unnecessarily impose on regulated entities • regulatory efforts are updated and informed by intelligence gathering so that effort is focused towards risk. 	
<p>Evidence and relevant information that demonstrates the extent to which DES’s regulatory practices aligned with the regulator model practices throughout 2018–19.</p>	<p>The department makes compliance and enforcement decisions in accordance with its Enforcement Guidelines, which are published on its website. These guidelines set out principles to ensure, amongst other things, that enforcement actions are proportionate to the harm caused or the level of risk, and that such actions take into account the circumstances of the offender where appropriate.</p> <p>To support this approach, the department has a range of compliance tools available - from formal warnings, through to penalty infringement notices and statutory notices, to prosecution. This ensures the enforcement response is matched to the seriousness of the conduct.</p>
<p>Examples and/or case studies that highlight the extent to which DES’s regulatory practices in 2018–19 aligned with the regulator model practices could be enhanced in line with the model practices.</p>	<p>The department’s compliance inspections of sites with environmental authorities under the <i>Environmental Protection Act 1994</i> are prioritised with the assistance of a compliance prioritisation model (CPM). The CPM assists officers in understanding the attributes of a licensed site allowing them to make informed decisions regarding which sites to inspect. Relevant attributes include the compliance history at a site, the compliance history of the site operator and the intensity or complexity of the activity taking place on the site. This ensures that, in deciding which sites to inspect, officers are focusing their efforts on the sites where the risk of serious consequences as a result of non-compliance are greatest. Lower risk sites are less frequently flagged by the CPM for possible inspection, ensuring that the regulatory burden on operators of such sites is reduced.</p> <p>In 2018, the department developed the Compliance Information Management System (CIMS) for use within QPWS&P. CIMS collects details of incidents that include failure to meet regulatory requirements. This data can be analysed to develop intelligence assessments to identify trends of non-compliance activities, locations and times of high volume or high-risk non-compliance activities. This intelligence is being used to inform strategic, operational and tactical compliance and enforcement programs.</p> <p>In 2018–19, QPWS&P also drafted a compliance risk matrix to be used as the assessment tool for calculating the overall risk level of non-compliance activities.</p> <p>The matrix identifies the environmental value of each park (through the Values Based Management Framework), the associated level of likelihood and impacts of non-compliant activities (determined by regional officers) and the appropriate level of compliance response/actions (based on the department’s Enforcement Guidelines).</p>

	<p>The ability to focus on the greatest level of risk or impact makes the risk matrix an efficient, transparent and cost-effective way to determine consistent standard levels for compliance responses.</p>
<p>Actions taken in 2018–19 or currently being taken by DES to improve regulatory activities and business practices to reflect the regulatory model practices.</p>	<p>In 2018–19, the department revised its CPM to better target inspections. It is anticipated that in 2019–20, relevant variables will be added to the model (such as proximity to sensitive environmental receptors) to enhance its ability to appropriately target inspections.</p> <p>Throughout 2018–19, the Odour Abatement Taskforce continued to respond to community concerns about odour in Swanbank and surrounding communities in the Ipswich area. The taskforce’s work is supported by intelligence analysis of community complaints, weather data and records from operators of waste and composting facilities to better target inspections and enforcement activity. In 2019–20, ESR will build on its intelligence capacity to support targeting of compliance activities in other sectors and parts of the State.</p> <p>The Wildlife Operations team in QPWS&P works to protect, conserve and manage the sustainable use of Queensland’s native wildlife. It currently manages more than 35,000 wildlife management authorities across 21 permit types issued under the <i>Nature Conservation Act 1992</i> and the wildlife management regulations. They include formal warnings, formal direction orders and penalty infringement notices. Auditing and inspection priorities are determined on a risk based decision-making model, as outlined in the Wildlife Operations Effective Regulation Plan.</p> <p>Under <i>Nature Conservation Act 1992 (Qld)</i> and relevant management plans, the department administers the implementation of legislation and policies relevant to the conservation of estuarine and freshwater crocodiles throughout Queensland.</p> <p>The sustainable farming of crocodiles in Queensland, including monitoring the compliance of crocodile farms is operationalised under the Wildlife Trade Management Plan – Queensland Crocodile Farming (2018-2022). Establishing and operating under a Wildlife Trade Management Plan is required under the Commonwealth’s <i>Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)</i> legislation.</p> <p>Oversight of the application of DES’s Enforcement Guidelines and Regulatory Strategy is provided by the department’s Compliance Steering Committee (CSC). The CSC seeks to ensure that the department’s enforcement approach is strategic, agile and consistent across the broader geographic community and political context. In 2018–19, the department presented 13 Formal Investigation Requests to the CSC for review and consideration.</p>

2. Consult and engage meaningfully with stakeholders

Supporting principles:

- formal and informal consultation mechanisms are in place to allow for the full range of stakeholder input and government decision-making circumstances

- engagement is undertaken in a way that helps regulators develop a genuine understanding of the operating environment of regulated entities
- cooperative and collaborative relationships are established with stakeholders, including other regulators, to promote trust and improve the efficiency and effectiveness of the regulatory framework.

Evidence and relevant information that demonstrates the extent to which DES's regulatory practices aligned with the regulator model practices throughout 2018–19.

The department conducts regular discussions with industry peak bodies including the Queensland Resources Council, the Australian Petroleum Production and Exploration Association, Cement, Concrete and Aggregates Australia and *qldwater*. These meetings provide opportunities to discuss operational matters and for two-way feedback between the department and its regulated community and stakeholders.

In addition, all significant regulatory documents (such as new statutory guidelines) are available for public comment through the department's website.

The Australasian Environmental Law Enforcement and Regulators network (AELERT) is a well-respected and internationally recognised professional network for environmental regulators across Australia and New Zealand. DES is a [member agency](#) of AELERT, along with other local, state and federal government agencies that implement and administer environmental legislation.

A senior executive is the jurisdictional representative for Queensland on the AELERT Steering Committee. Departmental officers also participate as members of a number of AELERT working groups. This representation provides the department with access to a range of opportunities to learn from other regulators and to gain exposure to best practice approaches to environmental regulation.

Wildlife Operations engages with stakeholders at a range of levels in order to improve the knowledge and compliant behaviour by authority holders. This is an important part of the department's commitment to work effectively with its stakeholders, to listen and learn, and to continue to improve performance. The department is liaising closely with other state agencies with similar regulatory functions and customer bases to develop cooperative arrangements for information sharing, joint operations and training. Local governments have also been engaged in supporting and streamlining processes. The primary focus of this stakeholder engagement is to raise awareness and support positive regulatory outcomes. All wildlife permits are issued and managed within the Connect platform to standardise permit conditions and is the repository for regulatory records.

For the most part, QPWS&P does not engage with applicants for permits or authorities regarding conditions as the delegate acts unilaterally on the information provided. In some instances dialogue with the applicant may be required to clarify application material. Applicants who receive a decision have a legal right to have the decision reviewed internally by QPWS&P before seeking any further external review.

	<p>Clients also have the right to negotiate terms and conditions included in statutory Agreements administered by QPWS&P (e.g. commercial activity agreements under the <i>Nature Conservation Act 1992</i> and the <i>Marine Parks Act 2004</i>). These documents are signed by both parties and hence necessitate cooperation and collaboration.</p> <p>QPWS&P engages with partner agencies regarding authority conditions (e.g. Great Barrier Reef Marine Park Authority, Department of Agriculture and Fisheries) when assessing applications.</p> <p>To gain a cultural understanding when assessing applications the department consults with First Nations peoples. In addition to acknowledging First Nations peoples contribution to the Queensland community, this consultation seeks to ensure the right people who can speak for country and cultural knowledge are directly involved in providing free, prior and informed consent. The involvement of First Nations peoples in assessing applications also aligns with elements of the <i>Native Title Act 1993 (Cth)</i>.³</p>
<p>Examples and/or case studies that highlight the extent to which DES's regulatory practices in 2018–19 aligned with the regulator model practices could be enhanced in line with the model practices.</p>	<p>In 2018–19, in response to research into effective regulatory approaches and industry feedback, the department engaged in a co-design process with the quarrying industry to develop a trial of a reward-and-recognition scheme. Two co-design workshops were held with a range of stakeholders from large and small quarry operators, peak bodies, community groups and environmental consultants. While the scheme did not proceed past the trial stage, the process was a valuable learning and engagement exercise and received positive feedback from participants.</p>
<p>Actions taken in 2018–19, or currently being taken by DES to improve regulatory activities and business practices to reflect the regulatory model practices.</p>	<p>The department works closely with the Department of Natural Resources, Mines and Energy which has a co-regulatory role for the resources sector. The two departments meet regularly to discuss operational matters, and exchange information as needed (and as permitted by privacy and confidentiality considerations) to ensure that each regulator has as complete a picture as possible to better inform its activities.</p>

3. Provide appropriate information and support to assist compliance

Supporting principles:

- Clear and timely guidance and support is accessible to stakeholders and tailored to meet the needs of the target audience
- Advice is consistent and, where appropriate, decisions are communicated in a manner that clearly articulates what is required to achieve compliance
- Where appropriate, regulatory approaches are tailored to ensure compliance activities do not disproportionately burden particular stakeholders (e.g. small business) or require specialist advice

<p>Evidence and relevant information that demonstrates the extent to which DES’s regulatory practices aligned with the regulator model practices throughout 2018–19.</p>	<p>The department publishes information to assist environmental authority holders to understand their obligations and support compliance. For activities regulated by the <i>Environmental Protection Act 1994</i> for which the department has developed model operating conditions (such as composting, quarrying and sewage treatment), information on the intent of each model condition, as well as how an operator can comply with it, is contained in documents on the Queensland Government’s Business and Industry Portal.</p> <p>Documents include:</p> <ul style="list-style-type: none"> • technical guidelines to assist applicants apply for an environmental authority and provide all the necessary information to the department • information to assist operators in managing their environmental risks and comply with their obligations. <p>The department also publishes online, information concerning how to lodge an application for a permit or authority it administers. Applicants for an environmental authority may request a 'pre-lodgement' meeting to discuss proposed activities that may require approval in DES managed lands or waters. This provides all parties with a sound understanding of the nature of the activity, where and when it is to be conducted and be in a position to assess the risk of proposed activities on park values.</p> <p>Wildlife Operations have been publishing the assessment guidelines and reviewing assessment templates to reflect the requirements under relevant legislation, regulations, codes or practice and departmental policies. These documents are published to the departmental website and promoted through general and social media.</p>
<p>Examples and/or case studies that highlight the extent to which DES’s regulatory practices in 2018–19 aligned with the regulator model practices could be enhanced in line with the model practices.</p>	<p>Risk assessment is integral to the application decision process whereby any risks identified against statutory criteria might require conditions to mitigate such risks to natural or cultural values. The regulations do not waive the requirement for a permit if risks are negligible. A permit must still be issued albeit with few conditions such as a statutory requirement to hold public liability insurance and indemnity and release conditions.</p>

<p>Actions taken in 2018–19, or currently being taken by DES to improve regulatory activities and business practices to reflect the regulatory model practices.</p>	<p>For some low-risk activities that do not require a licence under the <i>Environmental Protection Act 1994</i> but are still subject to the general environmental duty in the Act, the department has worked with stakeholders to develop codes of practice. Compliance with these codes is a way for businesses to demonstrate that they have complied with their general environmental duty. Codes exist for concrete batching, motor vehicle workshops and various other activities.</p>
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<p>4. Commit to continuous improvement</p> <p>Supporting principles:</p> <ul style="list-style-type: none"> • Regular review of the approach to regulatory activities, collaboration with stakeholders and other regulators, to ensure it is appropriately risk-based, leverages technological innovation and remains the best approach to achieving outcomes • To the extent possible, reform of regulatory activities is prioritised on the basis of impact on stakeholders and the community • Staff have the necessary training and support to effectively, efficiently and consistently perform their duties 	
<p>Evidence and relevant information that demonstrates the extent to which DES’s regulatory practices aligned with the regulator model practices throughout 2018–19.</p>	<p>The department’s membership of AELERT provides it with ongoing opportunities to learn from other regulators and to gain exposure to best practice approaches to environmental regulation.</p> <p>To ensure regulatory tools and activities leverage off technological innovation, a representative from QPWS&P is a member of the department’s Digital Investment Sub-committee (DISC). DISC seeks to provide strategic leadership and ongoing governance of the department’s digital investments and strategies, assuring that all investments support the departmental strategic plan, digital strategy and are aligned with whole-of-government priorities and the Digital 1st Strategy.</p>
<p>Examples and/or case studies that highlight the extent to which DES’s regulatory practices in 2018–19 aligned with the regulator model practices could be enhanced in line with the model practices.</p>	<p>The department has a training program for its officers covering all aspects of the regulatory process. This includes training in the lawful use of statutory powers held by officers authorised under its administered legislation, and in-depth training for assessment and compliance officers using interactive, scenario-driven online training modules developed specifically for the division.</p> <p>In 2018–19, as part of its training program, QPWS&P delivered:</p> <ul style="list-style-type: none"> • ten Authorised Officer Refresher training courses to over 100 officers • three Authorised Officer training courses for appointment of 29 Queensland Police Services Officers. <p>To allow internal training capacity to be re-directed towards greater specialisation and emerging compliance and enforcement related training subjects, the department is developing and delivering an authorised officer training course through an external provider. To ensure training remains relevant and effective, a QPWS&P officer is a Subject Matter Expert on the working group developing this training.</p>

	<p>QPWS&P officers are supported by an internal information site which provides the required tools, policies and contacts needed to perform their duties.</p> <p>With a view for continuous improvement the Compliance Optimisation unit of QPWS&P is tasked with identifying new and innovative ways by which the compliance and enforcement function can be delivered more efficiently and effectively in the field.</p> <p>Furthermore, as part of the Wildlife Management Regulatory Strategy, a mentoring program and a system of coordinated compliance activities is being rolled out to increase the professionalism and consistency of compliance activity by Wildlife Officers.</p>
<p>Actions taken in 2018–19, or currently being taken by DES to improve regulatory activities and business practices to reflect the regulatory model practices.</p>	<p>The department has a range of resources available to support its staff, including procedural guides, guidelines, forms and templates. Officers in central teams are available to provide advice to frontline officers in relation to questions associated with the execution of powers and delegations under our legislation, and a Litigation Branch provides legal advice for complex compliance matters.</p> <p>As a result of training and support work undertaken in 2018–19, QPWS&P was responsible for managing and delivering an online portal providing direct access to vehicle and driver licence information held by the Department of Transport and Main Roads. This portal allows officers a timely and cost-effective method of accessing data required to perform investigations into alleged breaches.</p> <p>QPWS&P accesses this portal through an Memorandum of Understanding with DTMR and associated procedures which take into account privacy considerations.</p>

<p>5. Be transparent and accountable in actions</p> <p>Supporting principles</p> <ul style="list-style-type: none"> • Where appropriate, regulatory frameworks and timeframes for making regulatory decisions are published to provide certainty to stakeholders • Decisions are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions • Indicators of regulator performance are publicly available 	
<p>Evidence and relevant information that demonstrates the extent to which DES’s regulatory practices aligned with the regulator model practices throughout 2018–19.</p>	<p>The department’s Enforcement Guidelines and Regulatory Strategy are publicly available on the DES website, providing the regulated community and stakeholders with an understanding of how decisions related to enforcement and regulation are made.</p> <p>Most of the enforcement decisions made under the <i>Environmental Protection Act 1994</i> require reasons for the decision to be provided to the person affected by the decision. The Act also provides a statutory right to have most enforcement actions internally reviewed and to appeal those decisions to Court.</p>
<p>Examples and/or case studies that highlight the extent to which DES’s regulatory practices in 2018–19 aligned with the</p>	<p>The department publishes information about its regulatory activities in both its annual report and in the annual statutory report on the administration of the <i>Environmental Protection Act 1994</i>.</p>

regulator model practices could be enhanced in line with the model practices.	
Actions taken in 2018–19, or currently being taken by DES to improve regulatory activities and business practices to reflect the regulatory model practices.	The department is currently reviewing its provision of information required to be made available on public registers under the <i>Environmental Protection Act 1994</i> with a view to improving the accessibility of the information.