

Regulatory framework



Regulatory framework



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Aboriginal acknowledgement

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.

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Foreword

The Department of Environment, Land, Water and Planning (DELWP) has a diverse range of regulatory responsibilities. From protecting Victoria's unique biodiversity, through ensuring the safety of dams and energy pipelines, to the harvesting of timber and collection of firewood from public land and fire prevention, we play crucial regulatory roles that contribute to Victoria's liveable, inclusive, sustainable and thriving natural environments.

In 2018 DELWP, at the request of the Minister for Energy, Environment and Climate Change, commissioned an independent review of its timber harvesting regulation. That independent review has proved a seminal moment for DELWP: it has led us to make significant changes in how we approach our regulatory obligations.

Despite our best endeavours and dedicated staff, DELWP has not met community or government expectations in delivering many of our regulatory responsibilities. We are determined to make significant improvements and work hard to become a best practice regulator.

A strong and effective regulatory framework is critical, and DELWP's priority is to ensure high levels of compliance with the laws that we are responsible for.

In DELWP's response to the independent review of timber harvesting regulation, I committed to reforms that will:

- increase transparency about how we regulate,
- improve our relationships and engagement with stakeholders, the community and those we regulate, and
- enhance DELWP's regulatory capability.

Perhaps our most important commitment in responding to the Independent Review of Timber Harvesting Regulation was the decision to appoint a Chief Conservation Regulator, supported by a new Office of the Conservation Regulator. The Chief Conservation Regulator will have responsibilities for overseeing and discharging DELWP's regulatory functions. In addition to lifting the regulatory performance of DELWP, the Office of the Conservation Regulator will drive a more open and transparent approach that will deliver better regulatory outcomes and build community trust over time.



John Bradley
Secretary,
Department of Environment,
Land, Water and Planning

This Regulatory Framework for DELWP describes the regulator we are working to become. We understand that in many areas our current capability and practice has been a long way from the standards and approaches this document describes. We do not underestimate the challenge we have before us, but we are also excited by the challenge and the vision this document lays out for how we will regulate in the future. I look forward to your support and feedback as we embark on this journey.

DELWP's vision

**Liveable, inclusive, sustainable
communities and thriving
natural environments**

Executive summary

The Department of Environment, Land, Water and Planning (DELWP) has a diverse range of regulatory responsibilities and is committed to ensuring that it regulates in a way which makes a positive contribution to the Victorian Community.



Our Vision

DELWP's vision is to create and maintain "Liveable, inclusive, sustainable communities and thriving natural environments".

Our Regulatory Mission

Regulating our responsibilities well is essential to realising this vision. DELWP's regulatory mission is "To be an effective, trusted, best practice regulator".

Our Regulatory Outcomes

DELWP regulates to achieve three outcomes:

- Equitable and safe access to public land and use of natural resources.
- Protected natural and heritage values.
- Sustainable communities – social, economic and environmental.

Our Regulatory Approach

To achieve these regulatory outcomes across our regulatory responsibilities we apply a consistent regulatory approach:

- A focus on collaborating and engaging in our regulatory functions provides an overlay to this approach – we seek to develop and maintain productive and effective collaborations and engagement with communities, Traditional Owners, regulated parties and peak representative bodies.
- We regulate in a way that is risk-based and intelligence led, and we rely on our collaboration and engagement to provide us with intelligence regarding emerging risks.
- To identify and address our priority risks, we carefully plan how to regulate effectively through applying the following five-step cycle:



Introduction

Purpose of this document

This document outlines how DELWP will deliver its regulatory functions and explains the way we want to regulate, and we recognise that we have work to do to fulfil our vision and mission. This Regulatory Framework is intended to clarify what you can expect from DELWP as a regulator and will:

Regulated parties	Co-regulators	Community members	Traditional Owners	DELWP decision-makers and staff
Help regulated parties understand how DELWP will undertake its regulatory functions Be valuable in explaining our approach to peak body representatives of regulated parties	Provide clarity to co-regulators such as Parks Victoria , water corporations and local governments regarding DELWP’s regulatory approach and how DELWP intends to collaborate and partner with co-regulators	Assist interested community members to better understand the department’s roles and approach to fulfilling its regulatory functions	Provide a foundation for us to work with Traditional Owners and Aboriginal communities to fully understand the scope and impact of our regulatory work on custom and practice.	Establish a clear framework to guide DELWP in delivering its regulatory functions consistently and transparently, and to support best practice in the way we regulate



About DELWP and our role as a regulator

Victoria's natural and built environments are highly valued and play a critical role in ensuring the sustainability and liveability of the State.

To strengthen connections between the environment, community, industry and economy, DELWP brings together Victoria's planning, local government, environment, forests, emergency management, energy, climate change and water functions into a single department.

Our DELWP 2020 Strategic Framework establishes a shared vision to create "liveable, inclusive, sustainable communities and thriving natural environments." We seek to deliver nine key outcomes by listening and working alongside DELWP's partners and the people of Victoria.¹

To deliver these outcomes we work with the community and a range of organisations, industry bodies, policy institutes, and universities. This work includes supporting research, policy development, program implementation and funding support. How we work alongside the community and stakeholders is enshrined in the Community Charter.

DELWP also has several important regulatory roles which contribute to achieving the nine key outcomes of the DELWP 2020 Strategic Framework as shown below.

In early 2019 DELWP created The Office of the Conservation Regulator to oversee DELWP's regulatory functions, including:

- priority setting for regulatory activities
- informing and educating about the law
- providing clear standards and guidance
- monitoring compliance and enforcing the law.

The Office of the Conservation Regulator will lift regulatory performance, ensuring DELWP has the tools, systems and structures to be a best practice regulator.



Zero emission, climate-ready economy and community



Healthy, resilient and biodiverse environment



Reliable, sustainable and affordable energy services



Productive and effective land management



Safe and sustainable water resources



A quality built environment



Sustainable and effective local governments



Reduced impact of major bushfire and other emergencies on people, property and the environment

¹ DELWP 2020 Strategic Framework, https://www2.delwp.vic.gov.au/_data/assets/pdf_file/0018/330354/DELWP-Strategic-Framework-2018.pdf

DELWP's regulatory responsibilities

"Regulation is broadly defined as imposition of rules by government, backed by the use of penalties that are intended specifically to modify the ... behaviour of individuals and firms".² As defined by the Organisation of Economic Cooperation and Development.

DELWP has a diverse range of regulatory responsibilities that include the below.

Our Regulatory Framework applies to all of our direct regulatory responsibilities, however, DELWP's regulatory powers vary between responsibilities.

DELWP's direct regulatory responsibilities are those regulatory powers and functions vested in DELWP's Secretary or another staff member (whether by delegation from a Minister or vested by an Act of Parliament or Regulation).

It does not apply to independent statutory authorities such as the Victorian Building Authority and the Environment Protection Authority.

Details about how DELWP regulates will be provided in separate documents, including in Statements of Regulatory Intent for DELWP's key regulatory functions and the development and publication of annual State and regional Compliance Plans for responsibilities within the Office of the Conservation Regulator. These documents will be published as they become available, at: www2.delwp.vic.gov.au/regulator.



Timber harvesting in state forests

Fire

Public land use

Biodiversity: flora

Biodiversity: fauna



Heritage

Land use planning

Energy infrastructure

Water

Local government

² OECD Glossary of Statistical Terms, sourced from: <https://stats.oecd.org/glossary/detail.asp?ID=3295>

Regulatory principles

To achieve our vision, a set of regulatory principles guide our approach to regulation. These principles are consistent with Australian and international best practice regulatory approaches.

Given DELWP's diverse regulatory roles and the fact that our regulatory powers and functions are established in multiple Acts of Parliament, the way these principles are applied will necessarily be tailored to each area of regulation.



Regulatory principle	Description
Outcomes-focused	Our regulatory approach is driven by clear outcomes which are articulated and measured to ensure that we make progress.
Risk-based	Our effort is focussed on addressing the most significant risks in order to maximise the outcomes achieved.
Intelligence-led and evidence based	We gather knowledge and evidence, including information provided by the community, and we use it to determine which risks to focus on and how to design and implement our regulatory interventions.
Proportionate and graduated	We consider factors such as whether breaches of the law were intentional or repeated, and the impact of the breach in our decision making. This means that our approach will shift depending on the circumstances from providing information and advice about how to comply with the law through to imposing fines, cancelling licences and permits or prosecuting for serious offending.
Collaborative	We collaborate with, the Victorian community, Traditional Owners, stakeholders and with other regulators, providing opportunities to shape our approach to achieving regulatory outcomes and help us be a successful regulator.
Transparent	We are as transparent as possible about our regulatory policies, priorities, actions and outcomes. We believe that being transparent works to hold DELWP accountable to the Victorian community and encourages regulated parties to comply with the law. We ensure that the public release of information about regulatory activities does not undermine our ability to prosecute or impose sanctions.
Safe	We ensure that our regulatory activities are undertaken in a manner that is safe for our staff and the community.

Overview of our regulatory approach

Our approach to regulation has been developed to realise our regulatory mission: To be an effective, trusted best practice regulator.

This regulatory mission addresses feedback DELWP has not always been a timely, responsive and effective regulator, which has at times impacted community and industry trust

Our aim is to be:

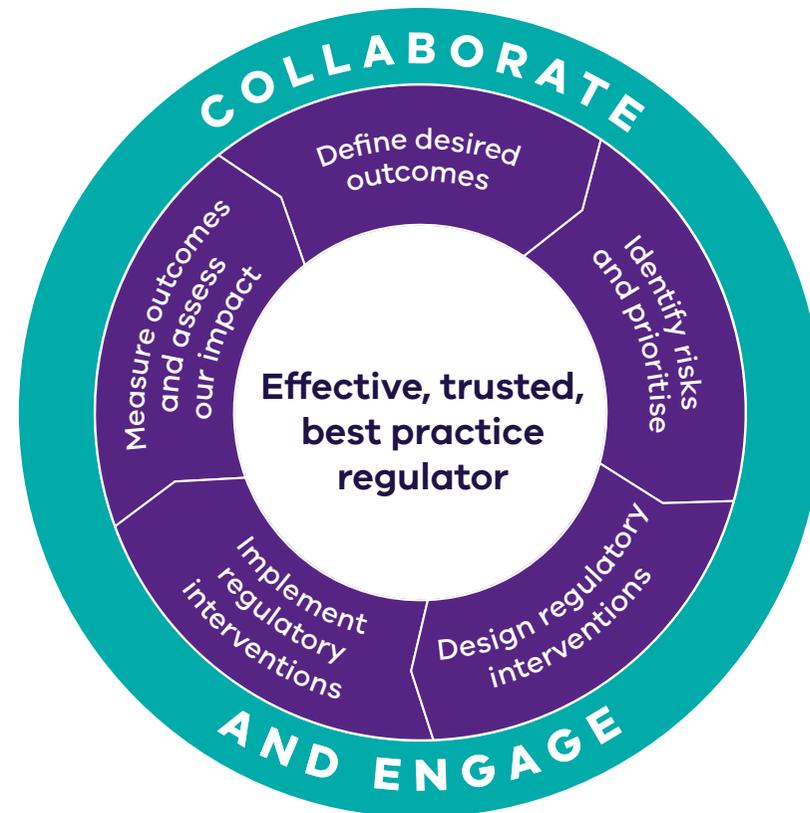
Effective	By focusing our regulatory effort to greatest impact.
Trusted	A trusted regulator through providing greater transparency and clarity on how we approach the law.
Best practice	We will benchmark ourselves against national and international regulatory practice and strive to meet these regulatory standards.

We will realise our mission, by:

- Collaborating and engaging with the community and with our regulatory partners, and
- Being outcomes-focused and risk-based.

To identify and address our priority risks, we carefully plan how to regulate effectively through applying the following five-step cycle:

- 1 Define desired outcomes
- 2 Identify risks and prioritise
- 3 Design regulatory interventions
- 4 Implement regulatory interventions
- 5 Measure outcomes and assess our impact



Collaborate and engage



Our approach to collaborating and engaging is guided by the DELWP Community Charter, where we promise to be available, speak and listen and take action

(<https://www2.delwp.vic.gov.au/communities-and-regions/community-charter>).

We recognise that being a successful regulator requires strong relationships, and that collaborating with others leads to better outcomes. DELWP seeks to build strong relationships with its partners, stakeholders and communities, as well as with those we regulate. We maintain a position of neutrality across our regulatory practice and act in a fair and transparent manner to build trust over time.

Community and stakeholders

As we review and reform what and how we regulate we will include communities, groups, stakeholders, partners and regulated parties who may be impacted. We will ask if and how you want to be engaged. We will provide a clear purpose for our engagement and will always provide feedback to let you know how you have influenced change, and where change can't be made, we will let you know why.

We will:

- Listen to and understand your views, needs and expectations.
- Work with you to understand what is important to you locally as we identify and prioritise risks.
- Respond quickly, transparently and positively to reports of harm, in line with our risk-based approach.
- Provide opportunities to participate locally through citizen science and local campaigns.
- Work with you to identify barriers and opportunities and to find innovative local solutions to prevent or reduce harm.
- Consult you as we develop new policies, processes and practices.
- Test our thinking about how we can better support compliance through information and education.
- Be available to speak informatively and listen with intent to understand in all our conversations.
- Provide clear and accessible information about our approach, decisions and performance.

Traditional Owners and Aboriginal communities

We will work with Traditional Owners and Aboriginal communities to fully understand the scope and impact of regulatory compliance and enforcement on custom and practice.

Our work is guided by Munganin – Gadhaba 'Achieve Together' the DELWP Aboriginal Inclusion Plan (www2.delwp.vic.gov.au/aboriginalinclusion/home/munganin-gadhaba) and the Victorian Aboriginal Affairs Framework 2018-2023 (vic.gov.au/aboriginalvictoria/policy/victorian-aboriginal-affairs-framework/victorian-aboriginal-affairs-framework-2018-2023.html).

Co-regulators

To be efficient and effective DELWP needs to collaborate and partner with other regulators. Collaborating with other regulators achieves a number of benefits including greater consistency in regulatory approaches, more flexibility to tailor the regulatory response to the environmental risks, avoiding inconsistent actions by multiple regulators, and most importantly ensuring timely and efficient action to address regulatory non-compliance.

Examples of our co-regulatory partnerships include:

- Parks Victoria
- Environmental Protection Authority
- Local government
- Energy Safe Victoria
- Essential Services Commission
- Catchment management authorities
- Department of Jobs, Precincts and Regions
- Water corporations

We derive great benefit from working with and receiving assistance from co-regulators in planning and delivering compliance activities.



Defining regulatory outcomes



Our DELWP 2020 strategic framework³ outlines our public value commitment of “Supporting Victoria’s natural and built environment to ensure economic growth, and liveable, sustainable and inclusive communities that are resilient to the impacts of climate change”.

Our regulatory functions are one aspect of DELWP’s role in delivering on this commitment. We have defined three outcomes that we will seek to achieve in fulfilling our diverse range of regulatory functions across DELWP’s responsibilities, below.

These DELWP-wide regulatory outcomes are not always relevant in implementing each of our specific regulatory functions. As appropriate, we will develop specific objectives for regulatory functions.



³ DELWP 2020 Strategic Framework, https://www2.delwp.vic.gov.au/_data/assets/pdf_file/0018/330354/DELWP-Strategie-Framework-2018.pdf

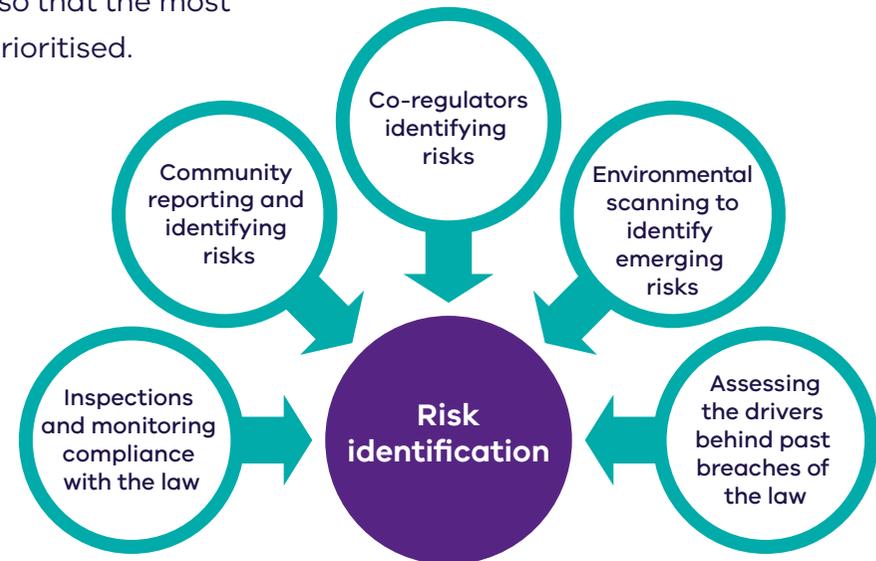
Identify risks and priorities



We focus our regulatory efforts on addressing risks that threaten the greatest harm to the outcomes we are seeking to achieve. We seek to prevent harms by reducing the likelihood of harmful events occurring. When harm does occur, we use our regulatory powers to address those harms. Fundamental to this philosophy is being able to identify risks and evaluate them so that the most significant risks can be prioritised.

How we identify risks

Identifying risks occurs through gathering intelligence and information from a multitude of sources. Key sources of intelligence we use to identify risks are summarised in this diagram:



How we assess and prioritise risks

Risk is assessed by considering the combination of two factors: how likely is it that the risk will be realised (ie. a harmful event will occur); and how significant would the harm be if that risk is realised. These two factors allow us to evaluate and compare very different risks to determine which deserve our greatest effort.

On the basis of this assessment, we prioritise the risks that we will focus on, and put them through the next stages of our regulatory process: designing and delivering regulatory interventions to address the priority risk and measuring the outcomes and impact we are achieving through those regulatory interventions.

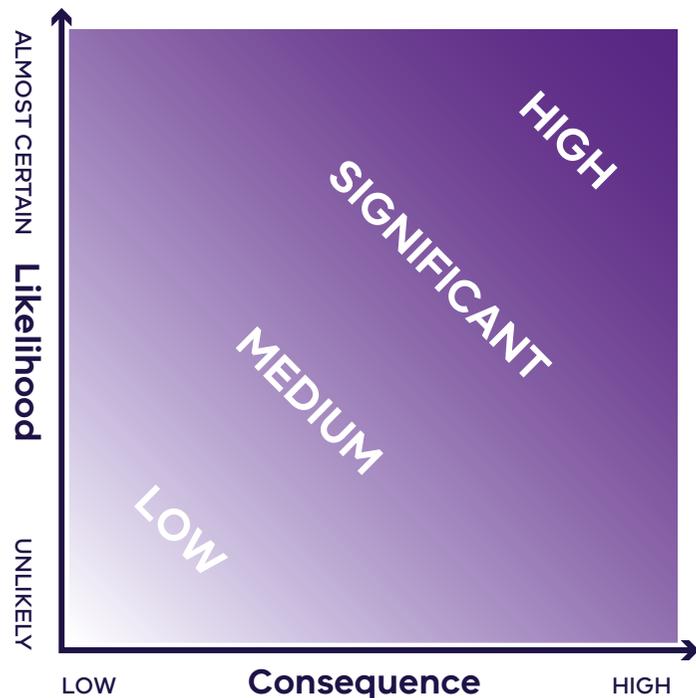
Our risk assessment is influenced by both the risk of a significant one-off event and systemic issues that are a series of minor events that have a significant cumulative harm.

A risk that we assess as being high priority might be a very unlikely (rare) event that has catastrophic impacts, and equally might be an event that happens very regularly with each individual incident causing minor harm but the cumulative impact of regular minor harms being very significant.

For example, in terms of prioritising regulatory action to protect the remaining habitat of a critically endangered species, our risk assessment might identify two high priority risks that need attention:

- 1 the unlikely prospect of a catastrophic bushfire caused by an unattended campfire to all remaining critical habitat; and
- 2 regular small harms caused by illegal recreational use of public land (whether it be four-wheel-driving, trail bike riding or camping in prohibited areas).

Our approach to regulatory risk is consistent with and supported by DELWP's Risk Management Policy and Risk Management Guidelines.



A preventative focus and carefully planning our regulatory effort

Some of our work necessarily involves responding to non-compliance after it has occurred, however we firmly believe that prevention is a priority and we maximise the outcomes achieved by investing in preventing potential harms (risks) from ever being realised.

In planning our regulatory activities, DELWP aims to put a considered mix of our resources into:

- preventative work such as raising awareness of regulatory requirements and how to comply,
- monitoring and assessing compliance with regulatory requirements, and
- responding to harmful events as they arise.

We assess all alleged or suspected contraventions of the law (those reported by the community and those we identify through our work). We will carefully prioritise our responses to each to ensure the most effective use of our resources. This approach recognises that it is not practical or appropriate to take compliance and enforcement action in response to every alleged or suspected breach, and our effort should be focussed on investing our resources where they can have the greatest positive impact for the community.



Design regulatory interventions



Designing regulatory interventions that effectively address a priority risk has three key elements:

- 1 Understanding the available regulatory “tools”;
- 2 Identifying the “drivers” that might cause someone to break the law; and
- 3 Selecting a tool or suite of tools that can most efficiently and effectively address the drivers behind the priority risk to reduce the likelihood of the occurrence of a harmful event.

Understanding the available regulatory “tools”

As a regulator, DELWP has a range of tools available to it. These tools vary from regulatory topic to topic as established by relevant Act(s) of Parliament. The following is a generic overview of the types of tools available to DELWP as a regulator.

DELWP’s regulatory tools – a generic overview

Set standards and clarify how we will apply the law	Publish standards and guidelines to clearly outline how to comply with the law and articulate how the regulator interprets and intends to apply the law.
Informing and educating	Provide clear and accessible information to support an understanding of the law and how to comply with it.
Supporting compliance	Provide practical and constructive advice to encourage compliance with the law, interpret standards and when required provide support to remedy non-compliance.
Licences, permits and authorisations	These are legal instruments that allow a person/organisation to undertake a particular activity subject to specified conditions. They include authority to control wildlife permits and permits to change any place or object in the Victorian Heritage Register.
Monitoring compliance	Using intelligence including community information and inspections and audits to monitor compliance with the law and with licences, permits and authorities we have granted.
Enforcing the law by requiring compliance	An enforceable direction to a person to change their behaviour so they comply with the law.
Enforcing the law by punishing non-compliance	Applying sanctions (eg. fines or prosecution) to punish and deter future non-compliance.
Communicating outcomes	Public reporting of compliance and non-compliance with regulatory requirements, and the outcomes achieved by our regulatory work.

Identifying the “drivers” of each priority risk

Key to successfully addressing a priority risk is understanding the drivers that sit behind it. We ask the question “why is the law being broken or at high risk of being broken?” to understand the causes of each priority risk.

The drivers behind a risk can be very diverse. It is not unusual for people to break the law simply because they are not aware of their legal obligations, or because they don’t know how to comply with them. Equally, much law breaking is deliberate or wilfully negligent and the reasons for this can be difficult to understand. DELWP seeks to use all sources of intelligence available to understand the reasons why each significant risk exists so that we can design interventions that treat the root cause of the risk rather than a symptom.

Selecting a tool or suite of tools

Having understood the regulatory tools available and the drivers behind each priority risk, DELWP designs the regulatory interventions it will apply by selecting one or more of our regulatory tools and working out how they can be used to most effectively and efficiently target the drivers behind the risk.

We design a tailored approach to address each priority risk – in many cases using a targeted mix of tools including education, compliance support and enforcement of the law.

DELWP’s regulatory responsibilities also involve the granting of licences, permits and consents. These ‘permissions’ can be used where there is a need to put strict controls around how an activity is conducted (eg. authority to control wildlife permits) or development is managed (e.g. heritage permits).

Illegal firewood collection case study

Illegal collection of firewood from public land is an example of a risk DELWP is responsible for regulating which has multiple drivers leading to the same outcome: illegal collection of firewood. This has two harmful impacts – it adversely impacts the health of the natural ecosystem, and it leads to inequitable access to a public resource of those limited quantities of firewood which can be appropriately taken from the land.

Some people who are breaking the law are simply not aware of the rules regarding how and when they can legally collect firewood for personal use. These people will often want to comply with the law and do the right thing, but they do not know what they can do and may not even be aware that firewood collection is regulated.

By contrast, some people deliberately break the law to collect firewood which they then sell at significant profit.

DELWP needs to separately consider each of these drivers of illegal firewood collection in determining how to tackle this regulatory risk and applies very different regulatory tools to address each of them.



Use of our regulatory tools

DELWP seeks to be responsive, proportionate and graduated in applying our regulatory tools. This means that the way we regulate takes account of factors such as:

- What was the driver of the illegal activity? Was the breach inadvertent and the result of ignorance, a lack of competence or an accident, or was it wilful or negligent?
- Is there a history of non-compliance? We will escalate the seriousness of our response if a person is repeatedly failing to comply with the law.
- How serious is the harm or risk of harm from the illegal activity? Activities that pose the most risk should attract the most attention from the regulator and this means they may require strong controls on that person's future behaviour, including withdrawing any permit or licence they may hold and/or prosecution.

In applying our regulatory tools, we will also consider:

- Appropriate action to deter future breaches of the law and building community and industry trust in the regulatory scheme.
- Ensuring a level playing field so that people who do the right thing are not disadvantaged by others being able to make personal gains by breaching the law.
- Making our compliance efforts public to deter others from seeking to do the wrong thing in the future.

DELWP's compliance and enforcement policy provides further information about how we will apply our tools to enforce the law through requiring compliance actions and through seeking to punish non-compliance with sanctions.



Implement regulatory interventions



The designed regulatory interventions are then implemented in the field. Quite often a newly designed regulatory intervention will be trialled or piloted to test its effectiveness.

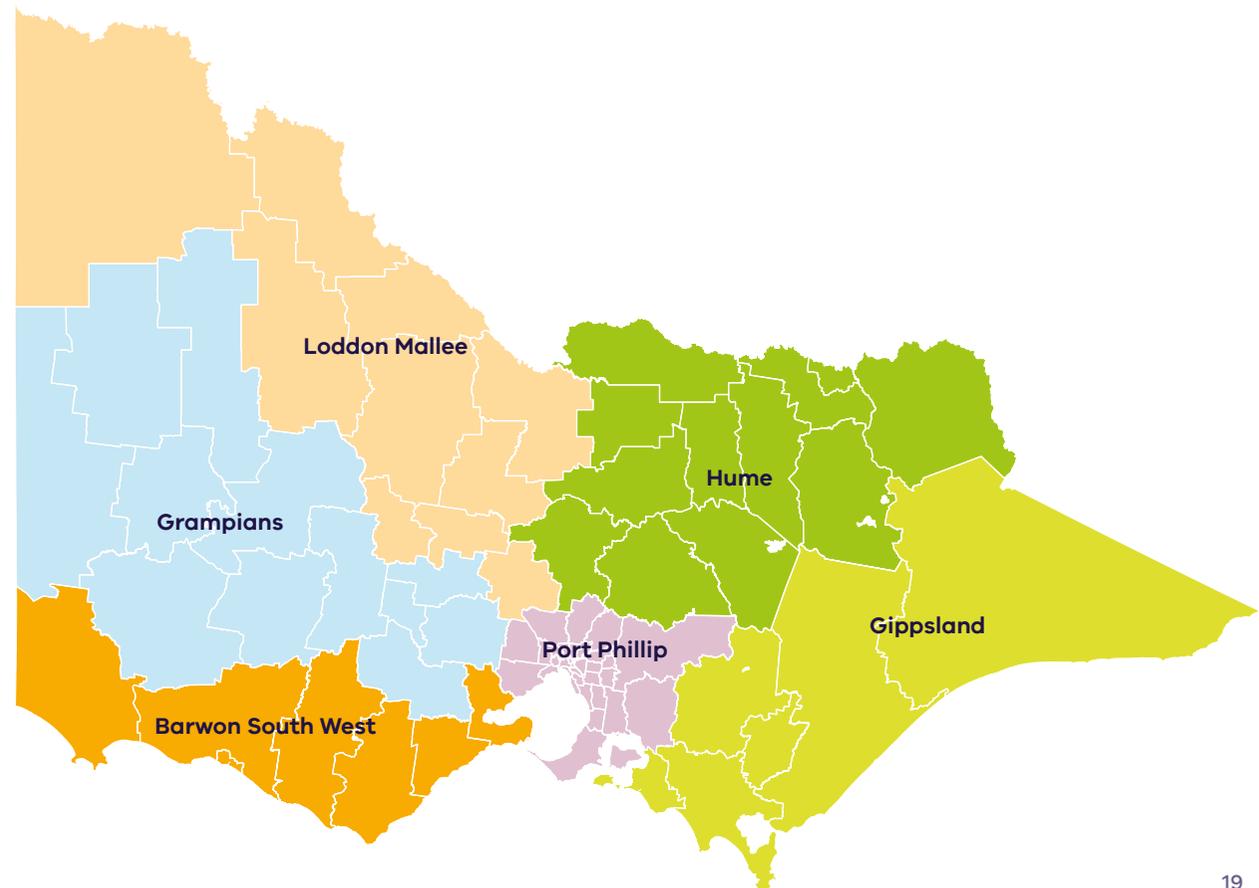
The way each intervention is implemented will be determined by its characteristics and the nature of the regulatory risk we are tackling. Regulatory interventions will vary significantly in terms of their scale and timing:

- regionally specific (for example to address a risk to a vulnerable species in a priority location),
- seasonal (for example monitoring that licensed tourism operators are complying with rules about maintaining a safe distance from whales), and
- short-term (for example an intensive compliance audit on a particular type of activity) or long term (for example a public education campaign).

We implement our regulatory intervention across our six DELWP regions – Barwon South West, Gippsland, Grampians, Hume, Loddon Mallee and Port Phillip.

DELWP’s Office of the Conservation Regulator will publish State and Regional Compliance Plans annually.

These plans will identify regulatory priorities to address the areas of highest risk of harm to the environment. Internal annual work programs to prioritise and direct resources will support these plans.



Measure outcomes and assess our impact



We complete our regulatory cycle by measuring outcomes and assessing the impact we are achieving.

We do this by:

- continually evaluating our effectiveness in achieving our intended regulatory outcomes.
- seeking to continuously improve the way we regulate and the benefits we are able to achieve for the Victorian community.
- welcoming feedback from the community and from those we regulate regarding the way we go about our job.
- being committed to being as transparent as possible about our regulatory activities.

Measuring outcomes and impact can be difficult for many reasons, including when there are factors other than our regulatory work which might be leading to changes in behaviour. In designing and implementing tailored regulatory interventions to address priority risks, we will aim to develop practical measures of the impact we are having into our planning.

In many cases, the observations of our own staff and of community and businesses will be the most valuable way of assessing whether our approaches are having the desired impacts. We aim to learn and respond as we go, revising the design or implementation of our regulatory interventions in response to emerging indications regarding how we can refine our approaches to be more effective.



Conclusion

Regulating is a vitally important part of DELWP's activities that makes a significant contribution to how DELWP delivers on our public value commitment of "supporting Victoria's natural and built environment to ensure economic growth, and liveable, sustainable and inclusive communities that are resilient to the impacts of climate change".

DELWP's Regulatory Framework describes how we go about our regulatory work as part of our commitment to being a trusted and successful practice regulator.

We know that being a best practice regulator requires support and input from our community and those we regulate, and we look forward to working with you as we implement this Framework.

For more information about DELWP as a regulator, see: www2.delwp.vic.gov.au/regulator

