

Transparent and consistent sentencing

in the Land and Environment Court of NSW: orders for costs as an aspect of punishment

Volume 2



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CASES TABLES

Explanatory notes

Cases Table 1 (pollute waters offences), **Cases Table 2** (waste offences) and **Cases Table 3** (native vegetation offences) present in a structured table format all relevant offences sentenced by the Land and Environment Court of NSW (LEC) in the 15-year period from January 2000 to February 2015. A comprehensive discussion of these three environmental offences is provided in **Volume 1**, the main study, M Cain and H Donnelly, *Transparent and consistent sentencing in the Land and Environment Court of NSW: orders for costs as an aspect of punishment*, Research Monograph 40, June 2017, at sections [2.4.1], [2.4.4] and [2.4.8] respectively.

In order to understand the sentences imposed by the LEC, it is necessary to group the cases according to specific offence and penalty provisions. This is necessary where Parliament has repeatedly increased the maximum penalty for environmental offences or has altered the ingredients of particular offences. An increase in the maximum penalty for an offence is an indication that sentences for that offence should be increased.

In the **Cases Tables**, the offences are categorised according to discrete offence and penalty regimes. For example, for the offence of pollute waters under s 120 of the *Protection of the Environment Operations Act 1997*, **Cases Table 1** has two penalty regimes to reflect the changes in maximum penalties for this offence. Pollute waters offences sentenced under the repealed *Clean Waters Act 1970* are presented separately as a third regime.

The cases are further ordered and grouped to enable a “like-with-like” comparison. Cases are differentiated on the basis of three important characteristics:

- the nature of the offending (single offence; multiple offences under the one Act; or multiple offences under different Acts)
- the penalty (fine; Additional Order; other specified penalty; or penalty combination)
- whether the quantum of the prosecutor's costs were available to the court at the time of sentencing (or were still to be determined by agreement or assessment).

The particular combination of characteristics — for example “single offence, fined, prosecutor's costs known” — was then used as the basis to stratify the cases within each sentencing regime.

Additional information is given on each case including citation details (the medium neutral citation is provided for each case rather than any reported citation), the type of offender, and important factors determined by the LEC, such as the level of environmental harm and the objective seriousness of the offence. The quantum of the fine and any other monetary component of the punishment are presented including the prosecutor's legal and investigative costs. Where appropriate, mean and median values for fine amounts, prosecutor's costs, the value of any environmental restorative projects, and the “total” pecuniary punishment are also provided.

A short description of each case is also given. The main features of each case are highlighted using pinpoint paragraph references to the court's judgment. Additional detail is provided for those LEC cases involving environmental offences sentenced under the current sentencing regime, that is, where the offence was dealt with under offence and penalty provisions still prevailing at the date of publication of this study.

CASES TABLE 1

CASES TABLE 1: POLLUTE WATERS OFFENCES IN THE NSW LAND AND ENVIRONMENT COURT: 2000–2015											
PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (from May 2006; current regime as at date of publication): s 120											
Maximum penalty: Corporations: \$1,000,000 plus \$120,000 per day for a continuing offence											
Individuals: \$250,000 plus \$60,000 per day for a continuing offence											
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (and/or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" cost	Case details
Single offence, fine only, costs specified											
1	1	<i>EPA v KBL Mining Ltd</i> [2014] NSWLEC 178	Medium	Medium	Corporation*	\$52,000	\$61,390	N/A	\$113,390	54.1%	Defendant a polymetal mining company. A split coupling allowed liquid tailings to escape and enter an unnamed ephemeral stream [1]. Clean-up and remediation costs of \$80,000 viewed a mitigating factor [90]. Fined \$52,000 plus ordered to pay prosecutor's costs totalling \$61,390. A s 250(1)(a) publication order was also issued.
2	2	<i>EPA v Coal and Allied Operations Pty Ltd</i> [2013] NSWLEC 134	Low	Low	Corporation*	\$45,000	\$51,000	N/A	\$96,000	53.1%	Defendant a large open cut coal mining company. Sediment laden waters built up and overflowed following heavy rainfalls and discharged into local waterways [2]. Inadequate sediment and erosion control measures were being rectified at the time at a cost of \$517,000 [75]. This was viewed as an aspect of the defendant's remorse, which was considered a mitigating factor [113]. Fined \$45,000 plus ordered to pay prosecutor's costs of \$51,000. A s 250(1)(a) publication order was also issued.
3	3	<i>EPA v Moolarben Coal Operations Pty Ltd (No 2)</i> [2012] NSWLEC 80	Medium	Medium	Corporation*	\$112,500	\$63,314	N/A	\$175,814	36.0%	Defendant a mining company. Sediment laden waters resulting from heavy rainfall [34] entered ephemeral creek and then a major inland river [2]. Additional sediment and erosion control measures undertaken (cost unspecified) [18]–[26]. Defendant considered remorseful [113]. However, "the business of the defendant does not appear to have been arranged with sufficient expedition to ensure that pollution would not occur" and the measures undertaken to date were not considered a mitigating factor [113]–[114]. Prior conviction 6 months earlier [87] [see Case No 4]. Fined \$112,500 plus ordered to pay prosecutor's costs totalling \$63,314. A s 250(1)(a) publication order was also issued.
4	4	<i>EPA v Moolarben Coal Operations Pty Ltd</i> [2012] NSWLEC 65	Medium	Low	Corporation*	\$105,000	\$61,632	N/A	\$166,632	37.0%	Defendant a mining company. One offence involving four separate discharges of sediment laden waters which entered ephemeral creek and then major inland river [17]. Result of undertaking extensive earthworks without sediment and erosion control structures being in place [60]; rainfall was "unexceptional" [62]. Potential existed for serious environmental harm [58]. No evidence of any action having been taken by the defendant to remove sediment from the creek or river or otherwise address the consequence of these discharges [86]. Fined \$105,000 plus ordered to pay prosecutor's costs totalling \$61,632. A s 250(1)(a) publication order was also made.
5	5	<i>EPA v Big River Group Pty Ltd</i> [2011] NSWLEC 80	Medium	Medium	Corporation	\$67,000	\$59,645	N/A	\$126,645	47.1%	Defendant a plywood manufacturing company. Resin overflow entered stormwater drain and eventually an extensive wetland system [3], [20]. Malicious and deliberate act of one of its employees on the premises that night [37]. Upgrades and conversions to mechanisms/systems to prevent further incidents [50]–[52]. Environmental harm was in the low to moderate range [75]. Limited weight placed on two prior convictions over 20 years old [100]–[101]. Fined \$67,000 plus ordered to pay prosecutor's costs totalling \$59,645. No s 250(1)(a) publication order made.
6	6	<i>EPA v Straits (Hillgrove) Gold Pty Ltd</i> [2010] NSWLEC 114	Medium	Low	Corporation	\$50,000	\$24,000	N/A	\$74,000	32.4%	Defendant a mining company. Between 1,000 to 3,000 tonnes of toxic slimes material spilled from the defendant's gold and antimony mining plant, escaped over a lowered section of an earthen bund and then travelled along the dry bed of an unnamed creek [4]. The defendant knew that the reduced height of the bund posed a risk to the environment but took no steps to raise the lowered part of the bund to contain the slime and to stop processing until the danger was overcome [67]. Clean-up and post-incident measures undertaken (no indication of cost) [44]–[46]. Defendant fined \$50,000 plus legal costs of \$11,000 and investigation costs of \$13,000. No s 250(1)(a) publication order made.
7	7	<i>EPA v Albury City Council</i> [2009] NSWLEC 169	Low	None	Corporation	\$45,500	\$18,044	N/A	\$63,544	28.4%	Defendant a regional local council. A pump failure caused raw sewage to overflow into the Murray River via a stormwater drain and gully [2]. The overflow occurred because of the simultaneous malfunction of two pumps: low foreseeability [66]. A composite discount of 35% was applied resulting in a fine of \$45,500 [96]. Defendant also to pay the EPA's professional costs of \$15,500 and its investigation costs of \$2,544. No s 250(1)(a) publication order made.
8	8	<i>EPA v Ross</i> [2009] NSWLEC 36	Low	Serious	Small business owner**	\$18,000	\$35,000	N/A	\$53,000	66.0%	Defendant a small pest control business – prosecuted as an individual. Pesticide sprayed on foliage adjacent to the waters of a creek and fell or was washed or blown into the waters [1]. Hundreds of dead crayfish and hundreds of ill crayfish observed in the creek over the next two days [8]. "Serious environmental harm resulted from the spraying" [18]. No suggestion on the approved label or in the Material Safety Data Sheet or in the training that the defendant attended which suggested that the chemical could not be sprayed next to water or that a minimum buffer zone around a water body was necessary [46]. The defendant's efforts to clean up contaminated sediment in the creek was a factor that led to a "smaller fine" [106]. Fined \$18,000 and to pay prosecutor's costs of \$23,000 and investigation costs of \$12,000. Also issued an order under s 250(1)(b) to lodge an Adverse Experience Reporting Form with Australian Pesticides and Veterinary Medicines Authority that includes the court's judgment and orders [107, Addendum to Orders].
9	9	<i>EPA v Boral Australian Gypsum Ltd</i> [2009] NSWLEC 26	Medium	Medium	Corporation	\$58,500	\$23,000	N/A	\$81,500	28.2%	Defendant a large corporation, in this case operating a plasterboard and cornice production plant. During batching, a sensor probe failed causing a liquid chemical to overflow into and then over a bunded area and enter an unnamed waterway running into the Parramatta River via onsite and offsite stormwater grates [1], [8]. Not particularly foreseeable that this offence could occur [35]. Rigorous environmental management systems in place with the defendant also taking "active steps to prevent a recurrence at the premises and at other plants it owns around Australia" [42]. Allowed a substantial (35%) reduction in penalty recognising the numerous mitigating circumstances [53]. Fined \$58,500 plus costs totalling \$23,000. No s 250(1)(a) publication order made.
10	10	<i>EPA v Hanson Precast Pty Ltd</i> [2008] NSWLEC 285	Low	Medium	Corporation	\$50,000	\$22,000	N/A	\$72,000	30.6%	Defendant owns and operates a pre-stressed concrete batching plant business. Between 200 and 300 litres of heat transfer oil escaped from its premises via the stormwater drainage system affecting about 200 metres of an unnamed watercourse [2]. The clean-up was efficiently handled and cost the defendant over \$63,000 [73]. The defendant was fined \$50,000 after a one-third discount for all mitigating factors including a 25% discount for the early guilty plea. Prosecutor's costs added another \$22,000 to the penalty. No s 250(1)(a) publication order made.
11	11	<i>EPA v Fulton Hogan Pty Ltd</i> [2008] NSWLEC 268	Medium	Low	Corporation	\$100,000	\$86,187	N/A	\$186,187	46.3%	Co-defendants: Snowy Hydro, as principal, entered into a construction contract with a civil construction company for dam upgrade works on the Snowy River. Sediment laden waters (containing soil, earth, etc) in plunge pool released into river. Court said it was obvious that the measures in place (eg silt curtain) were not working to prevent downstream pollution [163]. Nature of the harm was short-term: degradation of water quality and spoiling the aesthetic quality of the Snowy River [151]. Contractual liability costs claimed by Snowy Hydro against contractor not established nor taken into consideration in the sentencing decision [196]. Given "same sentence" as co-defendant [202]: fined \$100,000 and ordered to pay \$86,187 in prosecutor's costs and investigation costs. No s 250(1)(a) publication order was made.
12	12	<i>EPA v Snowy Hydro Ltd</i> [2008] NSWLEC 264	Medium	Low	Corporation	\$100,000	\$86,187	N/A	\$186,187	46.3%	See Case No 11 above. The considerable costs and significant time and energy expended by Sydney Hydro in addressing the pollution incident, while not characterised as a "hardship" given its size and resources, was taken into account by court [205]. Not clear whether contracted company could successfully dispute any claim by Snowy Hydro under contracted indemnities: not taken into account [212]. Given "same sentence" as co-defendant [219]: fined \$100,000 and ordered to pay \$86,187 in prosecutor's costs and investigation costs. No s 250(1)(a) publication order was made.
13	13	<i>EPA v CSR Building Products Ltd</i> [2008] NSWLEC 224	Medium	Medium	Corporation	\$280,000	\$158,407	N/A	\$438,407	36.1%	Defendant a large corporation in this case operating a building products manufacturing plant. A chemical spill resulting from a liquid transfer overflow affected around 1km of the Parramatta River [21]. The clean-up operation, including a claim by Sydney Ferries, cost over \$83,000 [27]. The prosecutor accepted that the spill was accidental caused by a "fundamental system failure" compounded by human error [36]. Nonetheless, tile coating production should have been suspended [49]. Prior convictions were deemed old, and hardly comparable, and concerned industrial activities no longer performed by the defendant's companies [50]. To the defendant's "credit", it agreed to pay the clean-up and other incidental costs incurred by various public agencies as a result of the spill [51]. The clean-up costs were considered in the final sentence [60]. Defendant fined \$280,000 in the absence of any s 250 order acceptable to the court, plus legal costs of \$75,000 and investigation expenses of \$83,407. No s 250(1)(a) publication order made.
						Mean	\$83,346	\$57,677	\$141,023	40.9%	
						Median	\$58,500	\$59,645	\$113,390		

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (from May 2006; current regime as at date of publication): s 120											
Maximum penalty: Corporations: \$1,000,000 plus \$120,000 per day for a continuing offence Individuals: \$250,000 plus \$60,000 per day for a continuing offence											
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (and/or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" cost	Case details
Single offence, fine only, costs not specified											
14	1	<i>EPA v Bulga Coal Management Pty Ltd</i> [2014] NSWLEC 55	Low	Low	Corporation	\$65,000	As assessed	N/A	Not known	Not known	Defendant a company operating a coal mine. A small intermittent waterway was polluted with coal mine tailings when a broken pipe caused a collection dam to overflow [3](37)-(41). The total internal cost to the defendant of the clean-up of the incident was \$94,550 and the total external cost of the clean-up was \$193,440 [3] (66). This was one of the mitigating factors contributing to a 35% discount in penalty [45]. Corporate defendant fined \$65,000 and ordered to pay the prosecutor's costs as agreed or assessed. No s 250(1)(a) publication order made.
15	2	<i>Gosford City Council v Australian Panel Products Pty Ltd</i> [2009] NSWLEC 77	Low	Low	Corporation	\$25,000	As assessed	N/A	Not known	Not known	Defendant a company that manufactures resin products. Up to 50 litres of resin entered a stormwater drain after overflowing from a bulk container which was not attended to whilst being filled [18]. The stormwater system eventually leads to a creek and a larger saltwater estuary [20]. Immediate preventative and clean-up actions taken [19], [21]. Defendant ordered to pay the prosecutor's costs of the proceedings as agreed or assessed. Investigation costs totalled over \$5,800 [110]. No s 250(1)(a) publication order made.
16	3	<i>Wollongong City Council v Belmorgan Property Development Pty Ltd</i> [2008] NSWLEC 291	Low	Serious	Corporation	\$40,000	As assessed	N/A	Not known	Not known	Defendant a property development company. An automotive workshop, being demolished, housed an underground tank containing an unidentified amount of oil. Rainwater from a faulty gutter inundated the area and flooded the underground tank. The contaminated rainwater overflowed and entered a stormwater system that exited into a golf course's waterways and local wetlands [1], [97]. The environmental impact was serious (even though short-term) [99]. The facts disclosed an "objectively low degree of criminality on the part of the defendant" [118]. The corporate defendant was fined \$40,000 and ordered to pay the prosecutor's costs as agreed or assessed. No s 250(1)(a) publication order made.
						Mean	\$43,333				
						Median	\$40,000				
Single offence, Additional Order in lieu of fine, costs specified											
17	1	<i>EPA v Greater Taree City Council</i> [2014] NSWLEC 88	Medium	Low	Corporation*	N/A	\$57,492	\$50,000	\$107,492	53.5%	Defendant a regional council operating a solid landfill waste facility. A pipe failed at the point of an earlier repair, pumping contaminated water (leachate) into an unnamed watercourse and then into a creek. Over 535,000 litres of contaminated water were pumped out of these waterways as part of the clean-up [19](9)-(12). The defendant was ordered, in lieu of a fine [52], to pay an amount of \$37,500 towards the "Taree Urban Waterways Riparian Regeneration Project", with the court noting the defendant's voluntary undertaking to increase that contribution to \$50,000 [53]. A s 250(1)(a) publication order was also issued.
18	2	<i>EPA v Peak Gold Mines Pty Ltd</i> [2013] NSWLEC 158	Low	Low	Corporation*	N/A	\$56,568	\$50,000	\$106,568	53.1%	Defendant a company operating a copper-gold processing plant. As a result of heavy rainfall, contaminated water (containing mine tailings) discharged from the tailings dam into a clean water drain, dispersing into surrounding bushland at the end of the drain. The discharge of the contaminated water into the drain constituted pollution of waters [1]-[4]. The defendant was ordered, pursuant to s 250(1)(e) of the POEO Act, to pay \$50,000 to the Cobar Shire Council to contribute to the expansion of the council's Effluent Reuse Project [35]. A s 250(1)(a) publication order was also issued.
19	3	<i>EPA v Ravensworth Operations Pty Ltd</i> [2012] NSWLEC 222	Low	Low	Corporation*	N/A	\$28,500	\$50,000	\$78,500	36.3%	Defendant a company operating an open cut coal mining facility. Heavy rainfall caused sediment laden waters to flow through a pipe installed through sediment control structures along a gully and into a creek [1]. Court instructed that "before imposing sentence the parties should explore whether a suitable project for the making of an environmental services order under s 250(1)(e) is available" [76]. Defendant agreed to pay the prosecutor's costs of \$26,500 and investigation costs of \$2,000. A s 250(1)(a) publication order was also issued.
20	4	<i>EPA v Queanbeyan City Council (No 3)</i> [2012] NSWLEC 220	Medium	Low	Corporation*	N/A	\$344,189	\$80,000	\$424,189	81.1%	Defendant a regional local council. Due to a pump failure at a council operated sewage pump station, sewerage overflowed and found its way into the Queanbeyan River [2], [70]. In lieu of a fine, defendant must pay the Murrumbidgee Catchment Management Authority the sum of \$80,000 to be used for the Numeralla East Landscape Project [282]-[283]. A s 250(1)(a) publication order was also issued.
21	5	<i>EPA v Tea Garden Farms Pty Ltd</i> [2012] NSWLEC 89	Medium	Low	Corporation*	N/A	\$121,464	\$77,000	\$198,464	61.2%	Defendant a small company running a coastal rural property. Discharge of sediment-laden water from dam under repair into the waters of the Port Stephens — Great Lakes Marine Park [2]. Pollution was deemed accidental [99]. Over \$450,000 spent on remediating the site to a "permanently safe condition" [131]. Defendant ordered to pay Great Lakes Council the sum of \$40,000 for stabilisation and remediation of tracks within a local nature reserve; plus \$37,000 to the Marine Parks Authority for the installation of "seagrass friendly moorings" in place of "dump and chain" swing moorings within a local marine park [154]. The defendant agreed to pay the prosecutor's legal costs of \$120,000 and also its investigation costs of \$1,464 [134]. A s 250(1)(a) publication order was also issued.
22	6	<i>EPA v Austar Coal Mine Pty Ltd</i> [2011] NSWLEC 252	Low	Low	Corporation*	N/A	\$42,269	\$75,000	\$117,269	36.0%	Defendant a coal mining company. Polluted water containing detergent and effluent from a work bathhouse escaped a mining site into a piped section of a creek [2]-[8]. Defendant agreed to pay the prosecutor's professional legal costs of \$25,000 and investigation costs of over \$17,000 [45]. The defendant ordered to pay to the Hunter-Central Rivers Catchment Management Authority the amount of \$75,000 to be used for the Mount View Corridor Threatened Species Habitat Rehabilitation Project [66]. A s 250(1)(a) publication order was also issued.
23	7	<i>EPA v Sibelco Australia Ltd</i> [2011] NSWLEC 160	Medium	Medium	Corporation*	N/A	\$35,000	\$78,000	\$113,000	31.0%	Defendant a company that operates a small open cut mine. Unintentional discharge of sediment laden water into creek by small open cut mine caused by a dam wall unexpectedly collapsing [1]. Affected waterway is "the primary source of drinking water for several residents in the area. It is also a primary source of stock watering" [52]. Clean-up costs totalled \$640,000 [46] but deemed "not relevant to determination of the penalty" [101]. Defendant to "pay to Hunter Central Rivers Catchment Management Authority ... the amount of \$78,000 to be used for general environmental purposes" for local projects [105]. Prosecutor's costs added another \$35,000 to the defendant's monetary impost. A s 250(1)(a) publication order was also issued.
24	8	<i>EPA v Chillana Pty Ltd</i> [2010] NSWLEC 255	High	Serious	Corporation*	N/A	\$58,071	\$60,000	\$118,071	49.2%	Defendant a privately-owned abattoir. A large quantity of untreated abattoir effluent escaped from a fractured pipe and found its way to a tributary and then a major inland river [11]-[16]. "Actual", and temporarily quite serious, environmental harm was clearly caused" [69]. An environmental consultant previously recommended that the defendant install flow metres in order to quickly detect breaks in the pipes [25]. Clean-up costs were "\$7,400 and at least 200 hours of employee labour" [20], plus \$3,500 and 237 hours of employee time to prevent a recurrence [81]; these costs were considered in sentencing [85]. However, there was no reduction in penalty simply because the effluent was discharged into degraded waters [70]. Defendant was ordered to pay to the Land and Property Management Authority the sum of \$60,000 for a restoration and enhancement project on the banks of the Castlereagh River [119]. Investigation expenses and estimated legal costs totalled over \$58,000 [100]. A s 250(1)(a) publication order was also issued.
25	9	<i>EPA v Centennial Newstan Pty Ltd</i> [2010] NSWLEC 211	Medium	Low	Corporation*	N/A	\$38,500	\$105,000	\$143,500	26.8%	Defendant a company operating an underground coal mine. Between 1.4 megalitres and 1.8 megalitres of water carrying between 6 and 14.6 tonnes of coal dust sediment discharged from a coalmine's pipeline into a creek and a wetland [29]-[31]. Defendant spent \$250,000 in undertaking clean-up and rehabilitation operations: this was viewed as a mitigating factor [102]-[103]. In lieu of a fine, defendant ordered to pay \$105,000 to Lake Macquarie City Council for its Ecosystem Enhancement Operations Program [126]. Prosecutor's costs and expenses totalled \$38,500. A s 250(1)(a) publication order was also issued.
26	10	<i>EPA v George Weston Foods Ltd</i> [2010] NSWLEC 120	Medium	Medium	Corporation*	N/A	\$30,000	\$67,000	\$97,000	30.9%	Defendant an animal nutrition supplies business operating a stock feed manufacturing plant. A fault in a steam pipe within a collection tank allowed vegetable oil/tallow blend to escape via a drainage pipe, into a stormwater drainage system and ultimately into a large inland river [21]. Defendant ensured that it met the full costs of that clean-up of over \$30,000, plus donated \$8,000 to the Tamworth branch of the State Emergency Service for its assistance in the clean-up [66]. These were amongst the factors "recognised favourably" by the court [68]. In lieu of a fine, defendant ordered to pay Tamworth Regional Council \$67,000 to fund the Peel River Riparian Project Stage 2 [89]. A s 250(1)(a) publication order was also issued.
27	11	<i>EPA v Baiada Poultry Pty Ltd</i> [2008] NSWLEC 280	Low	Low	Corporation*	N/A	\$34,872	\$120,000	\$154,872	22.5%	Defendant a company operating a poultry rendering plant. One million litres of effluent escaped from a defective weld in an underground pipeline that conveys effluent from the plant to a council owned sewer line. The effluent ran within an unnamed drought-affected (dry) watercourse for over one kilometre [2]. Clean-up and rectification costs in excess of \$44,700 [18] — a mitigating factor [54] taken into consideration. Four prior convictions for environmental offences but current offence not viewed as part of a continuing disobedience of the law [42], [50]. Defendant ordered to pay Tamworth Regional Council \$120,000 to fund the North Bolton's Creek — Extension of the Grassy Box Woodland Conservation Project [63]. Also ordered to pay almost \$35,000 in prosecutor's costs and expenses [63]. A s 250(1)(a) publication order was also made.
28	12	<i>EPA v Nowra Chemical Manufacturers Pty Ltd</i> [2008] NSWLEC 187	Low	Serious	Corporation*	N/A	\$28,000	\$100,000	\$128,000	21.9%	Defendant a small chemical manufacture business. Around 1,700 litres of diluted sulphuric acid stored in an unsuitable container escaped and flowed into a stormwater channel and into an ephemeral watercourse [2], [6], [9]. A potential for greater harm to a nature reserve would have occurred but for prevailing dry conditions and the thorough clean-up which alleviated the risks [10]. The capacity of the company to respond effectively to acid spills was less than optimum [17]. "The spill was objectively serious in every way. Actual harm is admitted, and very serious harm could easily have been caused" [17]. In lieu of a fine, \$100,000 to be administered to the Shoalhaven Riverwatch Landcare Group and/or other similar group for the purposes of restoration and erosion control works on the Shoalhaven River [23]. Prosecutor's costs at \$28,000. A s 250(1)(a) publication order was also made.

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (from May 2006; current regime as at date of publication): s 120 Maximum penalty: Corporations: \$1,000,000 plus \$120,000 per day for a continuing offence Individuals: \$250,000 plus \$60,000 per day for a continuing offence												
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (and/ or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" cost	Case details	
29	13	<i>EPA v Nalco Australia Pty Ltd</i> [2007] NSWLEC 831	Low	Low	Corporation*	N/A	\$10,000	\$50,000	\$60,000	16.7%	Defendant operates a chemical manufacturing factory. Some 9,000 litres of pure ethylene glycol entered Floodvale Drain, with an unknown quantity entering Botany Bay [7]. The offence was not the result of any failure of plant or equipment, but a simple case of five shut-off valves being left open during the pumping operation [18]. Clean-up costs amounted to \$56,500 [10]. The defendant is to pay to the National Parks and Wildlife Service the sum of \$50,000 to be used for the implementation of the weed management strategy for Towra Point Nature Reserve (in Botany Bay) [31]. Prosecutor's costs in the agreed sum of \$10,000. A s 250(1)(a) publication order was also made.	
							Mean	\$68,071	\$74,000	\$142,071	47.9%	
							Median	\$38,500	\$75,000	\$117,269		
Single offence, Additional Order in lieu of fine, costs not specified												
30	1	<i>EPA v Ramsey Food Processing Pty Ltd (No 2)</i> [2010] NSWLEC 175	Low	Low	Corporation*~	N/A	As assessed	\$84,450	Not known	Not known	Defendant a small company operating a livestock rendering and processing plant. Poor record in environmental matters with recorded incidents and/or court appearances in 2000, 2001, 2003, 2006, 2007, 2008, 2009 and 2010 [16]. Prosecutor no longer sought a further order requiring the defendant to fund an environmental or other community project. Pursuant to s 250(1)(d), the defendant ordered to carry out a mandatory environmental audit of the site and its processing activities with specific regard to preventing water pollution [31]. Defendant to pay costs as agreed or assessed including investigative expenses of \$1,715. A s 250(1)(a) publication order was also made.	
Two or more offences or counts under same Act, fine only, costs specified												
31	1	<i>EPA v Forbes Shire Council</i> [2014] NSWLEC 26	Medium	None	Corporation	\$165,000	\$47,000	N/A	\$212,000	22.2%	Defendant a regional local council convicted of one s 120(1) offence plus a second "failure to notify" offence under s 148 of the POEO Act. Effluent (sewage, septic waste, manure etc) in the form of surface runoff from council operated Livestock Exchange pumped from overflowing effluent dams into an open stormwater drain and an ephemeral creek, and into the creeks and dams of neighbouring properties [3]. Pumping continued for 12 days [17] and Council failed to notify EPA on detecting the pollution or cease pumping immediately when directed to by the EPA [3] (at 75 and 76). For the pollute waters offence, the Council was fined \$130,000 and for its failure to notify authorities it was fined \$35,000. At [46], the court "accepted that the totality principle of sentencing should not apply as the culpability for the failure to notify exists separately from the strict liability water pollution offence". No s 250(1)(a) publication order made.	
32	2	<i>EPA v M A Roche Group Pty Ltd</i> [2013] NSWLEC 191	Low	Low	Corporation*	\$22,000	\$39,200	N/A	\$61,200	64.1%	Defendant a small company operating a quarry. Two s 120(1) offences. Offences involved unintentional discharge of sediment laden water into the dry bed of an unnamed watercourse that flows into a creek [15]-[18]. Defendant previously issued a Prevention Notice by EPA to stop the discharge [32]. Company fined \$15,000 for one offence; \$7,000 for other, with costs of \$39,200. Company director guilty of wilfully delaying or obstructing an authorised officer's powers [2](4) and was fined \$5,000 plus prosecutor's costs of \$9,800. A s 250(1)(a) publication order was also issued.	
33	3	<i>EPA v Pipeline Drillers Group Pty Ltd</i> [2012] NSWLEC 18	Low	Low	Corporation*	\$30,000	\$44,000	N/A	\$74,000	59.5%	Defendant a specialist drilling company. Convicted of two s 120(1) offences, both involving the discharge of a mining slurry into a wetland while the defendant was undertaking horizontal directional drilling beneath the wetland as part of preparing pipelines for a housing development project [5], [7]-[9]. Company fined \$18,000 for one offence and \$12,000 for second offence, with prosecutor's costs totalling \$40,000. A s 250(1)(a) publication order was also issued.	
34	4	<i>EPA v Ramsey Food Processing Pty Ltd</i> [2010] NSWLEC 23	Medium	Serious	Corporation*	\$130,000	\$13,478	N/A	\$143,478	9.4%	Defendant a small company operating a livestock rendering and processing plant. Convicted of two s 120(1) offences plus a third offence under s 148 of the POEO Act. Untreated abattoir effluent spilt from a fractured pipeline and escaped into a creek and tributary part of the Clarence River catchment area [26], [33], [38]. "The offences are serious" [158]. The pollute waters offences attracted fines of \$40,000 and \$10,000; the defendant was also fined \$80,000 for failing to notify authorities. A s 250(1)(a) publication order was also issued.	
35	5	<i>Fairfield City Council v Ngo</i> [2008] NSWLEC 200; <i>Ngo v Fairfield City Council</i> [2009] NSWCCA 241	Low	Low	"Ordinary Joe"	\$3,000	\$4,110	N/A	\$7,110	57.8%	Six s 120(1) offences. Defendant an employee of a rubbish removal company. All offences involved the defendant washing out a garbage truck after legally disposing of its load. The waste waters entered a suburban stormwater drainage system that flows into a creek [2]-[4], [10]. First instance penalty (<i>Fairfield City Council v Ngo</i> [2008] NSWLEC 200): \$22,500 fine plus \$4,110 costs. On appeal, <i>Ngo v Fairfield City Council</i> [2009] NSWCCA 241, the fine was reduced to \$3,000, costs remained unchanged [30]. Also see <i>Fairfield City Council v TT Rubbish Removal Pty Ltd</i> [2008] NSWLEC 201 regarding sentencing of co-offenders [see Cases No 36 and 37 below].	
36	6	<i>Fairfield City Council v TT Rubbish Removal Pty Ltd</i> [2008] NSWLEC 201	High	Low	Corporation	\$22,500	\$34,264	N/A	\$56,764	60.4%	Six s 120(1) offences. The co-defendants were the company and the manager of the rubbish removal company that employed the person who committed the pollute waters offences [1]-[4] (see Case No 35 above). All offences involved the employee washing out a garbage truck after legally disposing of its load, with the waste waters entering a suburban stormwater drainage system that flows into a creek. Company and company manager to pay equal shares of overall fine (\$45,000) and total prosecutor's costs (\$68,527).	
37	7	<i>Fairfield City Council v TT Rubbish Removal Pty Ltd</i> [KT Nguyen] [2008] NSWLEC 201	High	Low	Special liability offender	\$22,500	\$34,264	N/A	\$56,764	60.4%	See Cases No 35 and 36 above.	
							Mean	\$56,429	\$30,902	\$87,331	35.4%	
							Median	\$22,500	\$34,264	\$61,200		
Two or more offences or counts under same Act, Additional Order in lieu of fine, costs specified												
38	1	<i>EPA v Big Island Mining Pty Ltd</i> [2014] NSWLEC 131	Medium	Low	Corporation*	N/A	\$93,000	\$103,000	\$196,000	47.4%	Defendant a company operating a gold mine. Convicted of three counts of s 120(1). Following earthworks by a contractor and rainfall events, sediment laden waters escaped inadequate erosion controls to pollute two drainage channels and a tributary of a larger headwater stream [3](27)-(34). "The pollution occurred within two weeks of commencement of construction works on a new and substantial mining project. While significant steps have been taken to improve sediment and erosion control monitoring and management, given the nature of the defendant's activity this consideration applies in sentencing" [98]. Defendant to pay to the Upper Deua Catchment Landcare Group \$103,000 to be used for the Riparian health works in and around Araluen Creek [115]. Prosecutor's professional costs of \$70,000 and investigative costs of \$23,000 also to be paid. A s 250(1)(a) publication order was also made.	
Two or more offences or counts under same Act, Additional Order in lieu of fine, costs not specified												
39	1	<i>EPA v Orica Australia Pty Ltd (the Nitric Acid Air Lift Incident)</i> [2014] NSWLEC 103	Medium	Low	Corporation*	N/A	As assessed	\$101,500	Not known	Not known	Defendant an Australian-based multi-national corporation. Convicted of a s 120(1) offence plus a s 64 breach of a licence condition. (Part of nine pollution offences committed between October 2010 and December 2011 dealt with under seven separate LEC proceedings [1].) Groundwater was polluted when "water fogging" measures were employed to "suppress" nitrogen oxide greenhouse gas emissions caused by nitric acid escaping under pressure from a ruptured pipe [32]. An unknown quantity of contaminated groundwater found its way to a large coastal river [45]. Environmental improvements including rectification measures cost the defendant \$3.6 million [79]. The defendant was directed to pay the NSW Office of Environment and Heritage \$70,000 for the pollute waters offence (plus \$31,500 for the licence breach offence) as a contribution to the Hunter River Health Monitoring Program. Unspecified prosecutor's legal costs to be paid plus investigation costs of around \$960. A s 250(1)(a) publication order was also made.	
Second offence – different Act, Additional Order in lieu of fine, costs not specified												
40	1	<i>EPA v Forestry Commission of NSW</i> [2013] NSWLEC 101	Medium	Low	Corporation	N/A	As assessed	\$28,000	Not known	Not known	Defendant a NSW government agency. Convicted of one s 120(1) offence plus one s 133(4) of the NPW Act. Offences resulted from hazard reduction burning in a protection zone – pollution of tidal waters in a marine park by ash and charcoal (etc) [12]. The burn planning process was deemed inadequate and parts of the Burn Plan were deemed inaccurate [74]. Forestry Commission's record of prior convictions (five previous convictions in the LEC and 32 PINs for environmental offences) viewed as "not trifling". Taken into account as a circumstance of aggravation but accorded limited weight [113]-[118]. Defendant ordered to pay a total penalty of \$35,000 (\$28,000 for the pollute waters offence) towards the specified environmental project to identify and map a threatened ecological community occurring in State forests in south-eastern NSW [193]. No s 250(1)(a) publication order was made.	

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (1999 to April 2006): s 120											
Maximum penalty: Corporations: \$250,000 plus \$120,000 per day for a continuing offence											
Individuals: \$120,000 plus \$60,000 per day for a continuing offence											
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" cost	Case details
Single offence, fine only, costs specified											
41	1	<i>EPA v Cargill Australia Ltd</i> [2007] NSWLEC 337	Low	Low	Corporation	\$37,500	\$30,000	N/A	\$67,500	44.4%	One s 120(1) offence. 20,000 litres of wastewater from a livestock slaughtering plant escaped from a cracked pipeline. Defendant replaced entire pipeline at a cost of \$107,000. Two previous offences [17]. Defendant's agreement to pay costs relevant [37].
42	2	<i>EPA v Colenden Pty Ltd</i> [2007] NSWLEC 289	Medium	Low	Corporation	\$25,500	\$18,000	N/A	\$43,500	41.4%	One s 120(1) offence. 1000 litres of contaminated wastewater leaked from a buffer tank and entered a dam and a nearby creek. Wastewater contained a hazardous substance capable of causing acute and chronic health effects in humans, fauna and flora [23]. Defendant has an excellent environmental record: particularly commendable given the nature of the operations it undertakes [35]. Agreement to pay prosecutor's costs shows defendant's genuine contrition and remorse [35].
43	3	<i>EPA v Hochtief AG and Thiess Pty Ltd</i> [2007] NSWLEC 177	Medium	Low	Corporation*	\$22,500	\$12,000	N/A	\$34,500	34.8%	One s 120(1) offence. 36,750 litres of turbid wastewater overflowed from a sludge tank into a creek. Preventative measures put in place after the incident [11]. Actual harm was minimal due to defendants' swift and effective clean-up [19]. Joint venture companies to pay equal shares of overall fine (\$45,000) and total prosecutor's costs (\$24,000).
44	4	<i>EPA v Hochtief AG and Thiess Pty Ltd</i> [2007] NSWLEC 177	Medium	Low	Corporation*	\$22,500	\$12,000	N/A	\$34,500	34.8%	See Case No 43 above. One s 120(1) offence by joint venture companies.
45	5	<i>EPA v Cleary Bros (Bombo) Pty Ltd</i> [2007] NSWLEC 466	Medium	Serious	Corporation	\$16,000	\$111,240	N/A	\$127,240	87.4%	Defendant a company contracted to operate a State-owned landfill site. Up to 124,000 litres of untreated leachate, a liquid waste product generally associated with modern landfill operations, overflowed during a pumping operation and entered a creek causing the death of many aquatic organisms [1], [19]. The offence resulted in no continuing harm [112]. The spill would have been contained if the bund had been constructed to its design capacity and had not otherwise failed, this was the responsibility of the contracting company, the Waste Recycling and Processing Corporation [161]. The court took into consideration the fact that this incident has already proved costly to the defendant having incurred clean-up costs of \$82,292. It also agreed to pay the prosecutor's investigation costs of \$7,240 and the prosecutor's legal costs of \$104,000. The total costs incurred were more than \$193,500. The defendant also paid its own legal costs, as well as the penalty. WRAPC also withheld contract payments to the defendant of over \$423,000 to cover its own costs and expenses arising from the incident, including the fine which it was ordered to pay (\$75,000) and the prosecutor's costs which it also was ordered to pay (\$39,000) in the associated prosecution of WRAPC [163]-[164]. No s 250(1)(a) publication order made. Lloyd J noted at [175]: "In the associated case of <i>Waste Recycling and Processing Corp</i> (Case No 46 below), Preston J imposed a penalty of \$75,000, ordered the defendant to pay the prosecutor's costs of \$39,000 and the prosecutor's investigative costs and expenses of \$7,240, and ordered the defendant to comply with a publication order. This may be contrasted with the present case involving precisely the same offence with precisely the same environmental impact, in which I impose a penalty of \$16,000, an order that the defendant pay the prosecutor's costs of \$104,000 and the prosecutor's investigative costs and expenses of \$7,240, and in which I decline to make a publication order. This may at first sight be seen to be somewhat surprising, but it demonstrates that for precisely the same offence there can be vastly different degrees of culpability and vastly different mitigating circumstances".
46	6	<i>EPA v Waste Recycling and Processing Corporation</i> [2006] NSWLEC 419	Medium	Serious	Corporation*	\$75,000	\$46,740	N/A	\$121,740	38.4%	One s 120(1) offence committed by State-owned corporation operating large urban landfill site [1]. Between 116,000 and 124,000 litres of toxic leachate escaped from nearby landfill and overflowed into nearby creek. The toxic pollution killed most of the aquatic life in affected section of creek [5]. "The defendant accepts that the actual environmental harm was serious" [154]. Many factors favourable to the defendant in this case [233].
47	7	<i>EPA v Integral Energy Australia Pty Ltd</i> [2006] NSWLEC 141	Low	Low	Corporation*	\$26,250	\$52,471	N/A	\$78,721	66.7%	One s 120(1) offence committed by State-owned corporation providing electricity supplies [1]. 9000 litres of transformer oil escaped from an unbunded transformer onto the ground and into stormwater system and a local creek. Defendant was mindful of its environmental obligations and was in the process of implementing these. Offence is in the low range of seriousness [71]. Defendant responded quickly, prompt clean-up averted greater harm [81]. Defendant agreed to pay the prosecutor's costs.
48	8	<i>EPA v Coe Drilling Australia Pty Ltd</i> [2005] NSWLEC 719	Medium	Low	Corporation	\$18,000	\$20,000	N/A	\$38,000	52.6%	One s 120(1) offence. Pollutant, a drilling fluid (water) containing bentonite, a non-toxic natural clay compound, affected a protected coastal wetlands [5]-[6]. Non-trivial nature of offence and lack of extenuating circumstances outweigh the defendant's lack of prior record and other mitigating circumstances [146]. Clean-up costs of \$46,413 [187].
49	9	<i>EPA v Hochtief AG; Thiess Pty Ltd</i> [2005] NSWLEC 506	Low	Low	Corporation	\$12,000	\$10,500	N/A	\$22,500	46.7%	One s 120(1) offence. Liquid from a water treatment plant escaped a bunded area and found its way into a local urban waterway [2]. Two previous PINs under <i>POEO Act</i> issued on the defendant, Thiess Pty Ltd in respect of a breach of a condition of the relevant environment protection licence [28]. Joint venture companies to pay equal shares of overall fine (\$24,000) and total prosecutor's costs (\$21,000).
50	10	<i>EPA v Hochtief AG; Thiess Pty Ltd</i> [2005] NSWLEC 506	Low	Low	Corporation	\$12,000	\$10,500	N/A	\$22,500	46.7%	See Case No 49 above. One s 120(1) offence by joint venture companies.
51	11	<i>EPA v Allied Industrial Services Pty Ltd</i> [2005] NSWLEC 501	Low	Low	Corporation	\$25,000	\$31,000	N/A	\$56,000	55.4%	One s 120(1) offence committed by chemical and ultrasonic cleaning business. Pollutants from the defendant's premises flowed into an unnamed creek 200m downstream from the stormwater drains entered [14]. Pollutants were highly toxic [20]. The prompt clean-up and unblemished record of the defendant were recorded amongst the mitigating factors [38].
52	12	<i>EPA v Olex Australia Pty Ltd</i> [2005] NSWLEC 475	Low	None	Corporation	\$15,000	\$13,000	N/A	\$28,000	46.4%	One s 120(1) offence. Pollutants overflowed from a floor waste pit and escaped into a stormwater drain and then flowed through a drainage channel into an urban creek [2]. Low gravity offence [46]. Co-operation with council and prosecutor in cleaning-up and in investigating the pollution incident recognised as mitigating factors [45].
53	13	<i>EPA v Illawarra Coke Company Pty Ltd</i> [2005] NSWLEC 296	Medium	Low	Corporation	\$40,000	\$20,000	N/A	\$60,000	33.3%	One s 120(1) offence. Waste oil and/or tar naphtha entered an unnamed watercourse leading into a creek and a lagoon at the back of a coastal beach [1]. Significant expenditure of \$4 million on environmental management, plus \$86,883 spent on remediating the damage [48]. Two previous PINS for unrelated pollution incidents. Regard given to defendant agreeing to pay the prosecutor's costs of \$20,000 [48].
54	14	<i>Shoalhaven City Council v DP Druce Pty Ltd</i> [2005] NSWLEC 123	Medium	None	Corporation	\$30,000	\$40,000	N/A	\$70,000	57.1%	One s 120(1) offence. Sediment-laden waters from a construction site entered adjacent coastal wetlands and thereafter made their way into a major tributary. Defendant complied with clean-up notice and carried out remedial work at its own expense [18]. The defendant's preparedness to pay the not inconsiderable amount of legal costs of the prosecutor taken into account in reducing the penalty [34].
55	15	<i>Greater Taree City Council v Haritomeni Nominees Pty Ltd</i> [2004] NSWLEC 775	Low	Low	Corporation	\$18,000	\$30,000	N/A	\$48,000	62.5%	One s 120(1) offence. Septic tank effluent and sillage from a caravan park entered a river through installed pipes. The waste contained high concentrations of faecal coliforms [7]. "New" owners unaware of nature of problem [12]-[13]. Employed a waste disposal contractor to pump out and truck away a daily average of 19,000 litres of effluent at a cost of some \$33,500. Defendant also connected caravan park to the main sewerage system at a cost of some \$220,000 [26]-[27]. Significant mitigating factors, including agreement to pay prosecutor's costs reduced the penalty [50].
56	16	<i>EPA v Encore Tissue Pty Ltd</i> [2003] NSWLEC 417	Low	Low	Corporation	\$20,000	\$10,000	N/A	\$30,000	33.3%	One s 120(1) offence. Collected waste water overflowed and then entered a stormwater drain finding its way into a local creek [1]. Waste discharged was not of a toxic or hazardous nature [10]. Spent \$20,000 in clean-up costs [26]. Further, in relation to mitigation, there has been agreement that the defendant pay the prosecutor's costs [27].
57	17	<i>EPA v Mid Coast County Council trading as Mid Coast Water</i> [2003] NSWLEC 416	Low	Low	Corporation	\$30,000	\$24,000	N/A	\$54,000	44.4%	One s 120(1) offence. Defendant operates and manages sewage treatment and associated reticulation systems. Raw sewage overflowed through a manhole, down a drainage line into two dams, entered a network of drains and found its way into a river system [8]. Potential risk to human health, although no evidence of actual harm [11]. \$180,000 spent on clean-up costs and system improvements not taken into account to reduce the penalty [32].
58	18	<i>EPA v Lubrizol International Inc</i> [2003] NSWLEC 349	Low	Low	Corporation	\$16,000	\$20,000	N/A	\$36,000	55.6%	One s 120(1) offence. During pump out operations from a barge, a low toxic chemical [23] overflowed from a holding tank and entered a tributary of a major Sydney river. Clean-up costs of \$111,000 plus \$23,640 spent on preventative measures [22]. Defendant agreed to pay costs.
59	19	<i>EPA v Abigroup Contractors Pty Ltd</i> [2003] NSWLEC 342	Low	None	Corporation	\$37,500	\$16,000	N/A	\$53,500	29.9%	One s 120(1) offence. Pumped out waste water containing ammonia, phosphorus and nitrogen descended into a nearby watercourse which led to an urban creek [1]. No actual harm [25]. Consideration given to various mitigating factors including the defendant's co-operation with the prosecutor and agreement to pay their costs [35].
60	20	<i>EPA v Metzlya Pty Ltd</i> [2003] NSWLEC 196	Low	Low	Corporation	\$19,500	\$14,000	N/A	\$33,500	41.8%	One s 120(1) offence. Ineffective erosion and sediment controls caused muddy waters to enter a rural table drain [6]. No evidence of actual harm beyond the actual pollution itself [19]. That the defendant agreed to pay the prosecutor's cost was one mitigating factor reducing the quantum of the penalty [39]-[40].
61	21	<i>EPA v Heggies Bulkhaul Ltd</i> [2003] NSWLEC 77	Low	Low	Corporation	\$26,000	\$15,000	N/A	\$41,000	36.6%	One s 120(1) offence. Processed water and sand slurry released from an overflow point ran partly into a swamp, having breached sediment control fencing and hay bales [7]. Up to 6,500,000 litres of processed water and the equivalent of 500 tonnes of sand, being spilled into the swamp affecting aquatic flora and fauna including a threatened native species [9]. Environmental harm was transitory and relatively minor in nature [29]. Non-compliance with initial clean-up notice [11]-[12]. Clean-up costs of \$60,000 plus \$90,000 in production losses whilst plant was closed taken into consideration [22], [39].

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (1999 to April 2006): s 120											
Maximum penalty: Corporations: \$250,000 plus \$120,000 per day for a continuing offence											
Individuals: \$120,000 plus \$60,000 per day for a continuing offence											
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" cost	Case details
62	22	<i>EPA v Ecolab Pty Ltd</i> [2002] NSWLEC 206	Medium	Medium	Corporation	\$30,000	\$12,000	N/A	\$42,000	28.6%	One s 120(1) offence. A ruptured tank caused bleach to spill and travel through the stormwater drain into an unnamed urban creek [3]. No long-term water quality impact resulting from the spillage [20]. Defendant incurred clean-up costs of \$23,586 plus agreed to pay the prosecutor's costs [38].
63	23	<i>EPA v Ulan Coal Mines Ltd</i> [2002] NSWLEC 199	Low	Low	Corporation	\$15,000	\$7,500	N/A	\$22,500	33.3%	One s 120(1) offence. Waters laden with coal dust exited the premises of a coal mine and found its way into a local creek. Defendant removed almost all of the coal fines from the creek's bed [15] at a cost of \$7,500 [19]. Agreement to pay prosecutor's costs also taken into account in the final penalty [27].
64	24	<i>EPA v Collex Pty Ltd</i> [2002] NSWLEC 196	Low	Low	Corporation	\$15,000	\$9,500	N/A	\$24,500	38.8%	One s 120(1) offence. Black, odorous liquid was found to have drained from a licensed quarry and landfill site into an unnamed urban creek [16]. No significant effect on the environment [23]. Defendant took prompt and effective remedial action, showed contrition and remorse, fully cooperated with the prosecutor and agreed to pay its costs [90].
65	25	<i>EPA v The Crown in the right of NSW</i> [2002] NSWLEC 52	Low	Low	Corporation	\$20,000	\$30,000	N/A	\$50,000	60.0%	One s 120(1) offence. The Crown (through the NSW Department of Public Works and Services and the NSW National Parks and Wildlife Service) caused Perisher Creek, in or about the Perisher Sewerage Treatment Plant, to be polluted with partially treated effluent from the plant [1]-[2]. The actual or likely extent of harm regarded as being in the very lowest range of seriousness [57]. Agreement by the defendant to pay the prosecutor's costs [66].
66	26	<i>Cabonne Shire Council v EPA</i> [2001] NSWCCA 280	Low	Low	Corporation	\$11,250	\$7,000	N/A	\$18,250	38.4%	Successful CCA appeal. One s 120(1) offence. Raw sewerage disposed by appellant's employee at a landfill site. Employee acted out of character. Original fine of \$75,000 plus \$7,000 in costs (made in <i>EPA v Cabonne Shire Council</i> [2000] NSWLEC 272) reduced on appeal to \$11,250 with the original order for costs not changed.
67	27	<i>EPA v Middle Harbour Constructions Pty Ltd</i> [2001] NSWLEC 185	Low	None	Corporation	\$10,000	\$3,500	N/A	\$13,500	25.9%	One s 120(1) offence. 432,000 litres of low pH waters overflowed a sand mine site onto a road and towards a drainage channel leading to Cudgen Creek, and thence the Pacific Ocean. No actual environmental harm, but a potential for harm [24]. Preparedness to pay the prosecutor's costs one of a number of factors in mitigation [30].
68	28	<i>EPA v Johnson and Johnson Pacific Pty Ltd</i> [2001] NSWLEC 99	Low	None	Corporation	\$25,000	\$5,500	N/A	\$30,500	18.0%	One s 120(2) offence: "causing waters to be polluted". Polluted waters entered Floodvale Drain (which empties into Botany Bay) via a stormwater pipeline draining the defendant's premises [10]. No actual environmental harm [10]. Defendant was responsible for the physical installations even though its lessee was actually operating the plant when the pollution incident occurred [33]. Defendant had already paid the prosecutor's reasonable legal costs [36].
69	29	<i>EPA v Devro-Teepak Pty Ltd</i> [2000] NSWLEC 275	High	Serious	Corporation	\$60,000	\$10,000	N/A	\$70,000	14.3%	One s 120(1) offence. Waste water overflowed a holding tank and entered a local creek via a stormwater drain [18]. No actual harm but likely harm asserted by prosecution [35]. Finding of serious nature of the offence committed (both in terms of the objective gravity of the facts concerning the pollution incident and the subjective culpability of the defendant in respect of the incident) [35]. 40% global reduction in sentence considering substantial mitigating factors including early guilty plea [36]-[37].
					Mean	\$25,190	\$22,119		\$44,309	46.8%	
					Median	\$22,500	\$15,000		\$41,000		
Single offence, fine only, costs not specified											
70	1	<i>Fairfield City Council v Florence Flowers Pty Ltd</i> [2006] NSWLEC 707	Low	Low	Corporation	\$13,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. To pay the investigation costs of the prosecutor pursuant to s 248 of the <i>POEO Act</i> in the amount of \$3,465; must pay the prosecutor's costs of the proceedings against it, as agreed or assessed.
71	2	<i>EPA v Tyco Water Pty Ltd</i> [2005] NSWLEC 453	Medium	Serious	Corporation	\$50,000	As assessed	N/A	Not known	Not known	One 120(1) offence. "It was a serious and significant example of the offence created by s120(1)" [120]. To pay the prosecutor's reasonable costs in the sum determined in accordance with s 253(2) of the <i>Criminal Procedure Act 1986</i> .
72	3	<i>Newcastle City Council v Pace Farm Egg Products Pty Ltd</i> [No 3] [2005] NSWLEC 423	Low	Low	Corporation	\$12,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. Prosecutor failed in proving certain important aspects of the case [39]. Defendant to pay only 30% of prosecutor's costs [41].
73	4	<i>EPA v Cut and Fill Pty Ltd</i> [2005] NSWLEC 401	Low	None	Corporation	\$7,800	As assessed	N/A	Not known	Not known	One s 120(1) offence. Court took into account that the defendant had incurred considerable expense (\$87,608) in mitigating the harm that occurred [23], [36]. Defendant must pay the prosecutor's costs in accordance with s 253 of the <i>Criminal Procedure Act 1986</i> .
74	5	<i>EPA v Forestry Commission of NSW</i> [2004] NSWLEC 751 revised - 4/03/2005	Low	Low	Corporation	\$30,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant to pay the prosecutor's costs as agreed or assessed.
75	6	<i>EPA v Jolly's Pest Control Pty Ltd</i> [2003] NSWLEC 398	Low	None	Corporation	\$7,500	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant to pay the prosecutor's costs (expected to be about \$8,000 [30]) pursuant to s 52(2) of the <i>Land and Environment Court Act 1979</i> .
76	7	<i>EPA v Truegain Pty Ltd</i> [2003] NSWLEC 277	Low	Low	Corporation	\$7,500	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant ordered to pay the prosecutor's costs of the proceedings.
77	8	<i>EPA v Collis</i> [2003] NSWLEC 190	Low	Low	"Ordinary Joe"	\$5,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. In the circumstances of this case, the defendant was considered to be an employee of the company responsible for polluting waters [20], [27]. Defendant must pay the prosecutor's costs of the proceedings against him, as agreed or assessed.
78	9	<i>EPA v Ramsey Food Processing Pty Ltd</i> [2003] NSWLEC 82 revised - 30/04/2003	Medium	Medium	Corporation*^	\$33,750	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant spent approximately \$400,000 on measures to prevent further pollution [39]. Fined \$33,750 plus order made under s 245(c): "defendant to submit a specification for the operation of the defendant's waste disposal system" [47].
79	10	<i>EPA v Boral Resources (NSW) Pty Ltd</i> [2002] NSWLEC 232	Low	None	Corporation	\$20,000	As assessed	N/A	Not known	Not known	One s 120(2) offence: "causing waters to be polluted". Defendant must pay the costs of the prosecutor, as determined in accordance with the <i>Land and Environment Court Act 1979</i> .
80	11	<i>EPA v Hy-Tec Industries Pty Ltd</i> [2002] NSWLEC 189	Medium	None	Corporation	\$25,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant must pay the prosecutor's reasonable legal costs in the sum determined in accordance with s 52(2) of the <i>Land and Environment Court Act 1979</i> .
81	12	<i>EPA v Excel Fuels Pty Ltd</i> [2002] NSWLEC 160	High	Serious	Corporation	\$25,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. "I would regard the offence as serious by dint of the introduction into the stormwater drain and thereafter Farmers Creek of 400 litres of diesel fuel that were not recovered in the clean-up operations undertaken by the Fire Brigade" [49]. "The offence is in my judgment properly regarded as one of serious objective gravity" [70]. Defendant must pay the prosecutor's reasonable legal costs in the sum agreed.
82	13	<i>Wollondilly Shire Council v Brogan Box Pty Ltd</i> [2002] NSWLEC 139	Low	Low	Corporation	\$12,500	As assessed	N/A	Not known	Not known	One s 120 offence. Ordered to pay the reasonable costs of the prosecutor in the sum agreed or failing agreement as assessed in accordance with the provisions of s 52(2) of the <i>Land and Environment Court Act 1979</i> .
83	14	<i>EPA v Virotec International Ltd</i> [2002] NSWLEC 110	Medium	None	Corporation	\$30,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant to pay the prosecutor's costs in such sum as is agreed or determined. Payment of the prosecutor's costs to date exceeded \$100,000 [53].
84	15	<i>EPA v Duke Eastern Gas Pipeline Pty Ltd</i> [2002] NSWLEC 84	Low	Low	Corporation	\$25,000	As assessed	N/A	Not known	Not known	One s 120(2) offence: "causing waters to be polluted". The defendant has agreed to pay the costs of the prosecutor in the sum of \$75,000 [44].
85	16	<i>Newcastle City Council v Pace Farm Egg Products Pty Ltd</i> [2002] NSWLEC 66	High	Serious	Corporation	\$22,500	As assessed	N/A	Not known	Not known	One s 120(1) offence. "The offence must be described as serious and potentially very serious" [29]. The defendant must pay the prosecutor's costs.
86	17	<i>EPA v BHP Steel (AIS) Pty Ltd</i> [2001] NSWLEC 214	Medium	Low	Corporation	\$60,000	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant to pay the costs of the prosecutor in such sum as may be agreed.
87	18	<i>EPA v Transfield Pty Ltd</i> [2001] NSWLEC 45	Low	None	Corporation	\$12,500	As assessed	N/A	Not known	Not known	One s 120(1) offence. Defendant to pay the reasonable costs of the prosecutor, to be agreed, or assessed according to law.
					Mean	\$22,169					
					Median	\$21,250					

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (1999 to April 2006): s 120												
Maximum penalty: Corporations: \$250,000 plus \$120,000 per day for a continuing offence												
Individuals: \$120,000 plus \$60,000 per day for a continuing offence												
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" cost	Case details	
Single offence, Additional Order in lieu of fine, costs not specified												
88	1	<i>EPA v Abigroup Contractors Pty Ltd</i> [2007] NSWLEC 712	Medium	Low	Corporation*	N/A	\$30,000	\$20,000	\$50,000	60.0%	One s 120(1) offence. Pursuant to s 250(1)(e) of the <i>Protection of the Environment Operations Act 1997</i> , the defendant is to pay to the Department of Primary Industries the sum of \$20,000 for general environmental purposes [73].	
89	2	<i>EPA v Centennial Newstan Pty Ltd</i> [2006] NSWLEC 732	Medium	Low	Corporation*	N/A	\$28,000	\$50,000	\$78,000	35.9%	One s 120(1) offence. Order under s 250(1)(e) of the <i>POEO Act</i> , in lieu of a fine, to undertake the works specified in the project brief – LT creek bushland rehabilitation and in-stream works [143].	
90	3	<i>EPA v Simplot Australia Pty Ltd</i> [2001] NSWLEC 264	Low	None	Corporation	N/A	\$8,500	\$20,000	\$28,500	29.8%	One s 120(1) offence. Carry out specified projects to the value of \$20,000 for the restoration or enhancement of the environment of the Macquarie River, Raglan Creek and associated freshwater drains, gullies, and levee banks which are severely degraded [24].	
							Mean	\$22,167	\$30,000	\$52,167	42.5%	
							Median	\$28,000	\$20,000	\$50,000		
Two or more offences or counts under same Act, fine only, costs specified												
91	1	<i>EPA v TransGrid</i> [2003] NSWLEC 18	Low	Medium	Corporation	\$80,000	\$50,000	N/A	\$130,000	38.5%	Four s 120(2) offences (cause waters to be polluted; where offence committed between 01/07/1999 and 30/06/2002; repealed). Each offence fined \$20,000 with \$12,500 costs for each offence.	
92	2	<i>EPA v Nationwide Oil Pty Ltd</i> [2002] NSWLEC 201	Medium	None	Corporation	\$80,000	\$17,000	N/A	\$97,000	17.5%	One s 120(1) offence fined \$50,000 plus \$7,000 costs plus one offence under s 129(1) of the <i>POEO Act</i> : breach condition of licence, fined \$30,000 plus costs of \$10,000.	
93	3	<i>EPA v Byron Shire Council</i> [2001] NSWLEC 54 revised – 01/05/2001	Medium	Low	Corporation	\$90,000	\$8,100	N/A	\$98,100	8.3%	One s 120(1) offence fined \$60,000 plus one offence under s 19(1) of the <i>Clean Waters Act 1970</i> : fail to obtain pollution control approval, fined \$30,000. Plus total costs of \$8,100.	
94	4	<i>EPA v Simplot Australia Pty Ltd</i> [2001] NSWLEC 40	Medium	Low	Corporation	\$60,000	\$16,500	N/A	\$76,500	21.6%	Two s 120(1) offences. First fined \$45,000, second \$15,000. Prosecutor's costs totalled \$16,500.	
							Mean	\$77,500	\$22,900	\$100,400	22.8%	
							Median	\$80,000	\$16,750	\$97,550		
Two or more offences or counts under same Act, fine only, costs not specified												
95	1	<i>EPA v BHP Steel (AIS) Pty Ltd</i> [2004] NSWLEC 37	Medium	Medium	Corporation	\$70,500	As assessed	N/A	Not known	Not known	One s 120(1) offence fined \$60,000, plus 3 offences under s 64(1) of the <i>POEO Act</i> : contravene licence condition, fined \$6,000, \$3,000 and \$1,500. Ordered to pay the prosecutor's costs in accordance with s 253(2) of the <i>Criminal Procedure Act 1986</i> .	
96	2	<i>EPA v Byron Shire Council</i> [2003] NSWLEC 207; [2002] NSWLEC 128	Low	Medium	Corporation*	\$30,000	As assessed	N/A	Not known	Not known	Two s 120(1) offences. Company fined \$25,000 for one offence; \$5,000 for other. Defendant to pay all costs. Originally, a s 250(1)(c) restoration project was being considered. Practicalities deemed too difficult as it could potentially lead to a technical breach and further offence [21].	
97	3	<i>EPA v Pancorp Australia Pty Ltd</i> [2002] NSWLEC 38	Low	Low	Corporation	\$32,000	As assessed	N/A	Not known	Not known	Co-offender with Rail Infrastructure Corporation [Case No 98 below]. Three counts of s 120(1). Fined \$20,000, \$8,000 and \$4,000. Ordered to pay the costs of the prosecutor in each of the matters in a sum to be agreed.	
98	4	<i>EPA v Rail Infrastructure Corporation</i> [2002] NSWLEC 37	Low	Medium	Corporation	\$32,000	As assessed	N/A	Not known	Not known	Co-offender with Pancorp [Case No 97 above]. Three counts of s 120(2) (cause waters to be polluted). Fined \$20,000, \$8,000 and \$4,000. Ordered to pay the costs of the prosecutor in each of the matters in a sum to be agreed.	
99	5	<i>EPA v Haylan [WWLS Blayney Pty Ltd]</i> [2001] NSWLEC 289	Low	None	Corporation	\$13,500	As assessed	N/A	Not known	Not known	Two s 120(1) offences. No actual (or potential) harm to the environment [17]. Company, WWLS Blayney Pty Ltd, fined \$7,500 for one offence; \$6,000 for other. Also ordered to pay costs. Co-offender with Kenneth William Haylan (identified in Case No 104 below) charged under s 169 as company director (received s 10 dismissal for both offences).	
							Mean	\$35,600				
							Median	\$20,000				
Two or more offences or counts under same Act, Additional Order in lieu of fine, costs specified												
100	1	<i>EPA v Arengo Pty Ltd</i> [2006] NSWLEC 244	Low	None	Corporation*	N/A	\$25,050	\$26,000	\$51,050	49.1%	Two counts of s 120(1). Pursuant to s 250(1)(e) of the <i>POEO Act</i> , the defendant to pay the Department of Primary Industry (Mineral Resources NSW) \$26,000 for the erosion and sediment control project at the abandoned Silver Peak Mine. Ordered to pay the prosecutor's costs of \$25,050.	
Two or more offences or counts under same Act, Additional Order in lieu of fine, costs not specified												
101	1	<i>EPA v Caltex Australia Petroleum Pty Ltd</i> [2007] NSWLEC 647	Low	None	Corporation*	N/A	As assessed	\$27,000	Not known	Not known	One s 120(1) offence plus one s 48(2) (fail to notify) offence. Possible leak from faulty pipeline into groundwater [1]. No evidence of actual contamination [23]. Defendant incurred costs of \$237,616 in implementing the remediation and monitoring program [11]. In lieu of a fine, the defendant ordered to pay the sum of \$27,000 (ie \$12,000 + \$15,000) to Moree Plains Shire Council for application towards the Mehi River Corridor Restoration Project [29]–[30]. Ordered to pay prosecutor's costs as agreed or assessed.	
102	2	<i>EPA v Hines</i> [2004] NSWLEC 107	Low	None	Small business owner	N/A	As assessed	\$25,000	Not known	Not known	One s 120(1) offence plus one s 148(2) (non-holder licence) offence. In lieu of the payment of the fines of \$14,000 and \$11,000, "the defendant is ordered to enter into an arrangement with the prosecutor ... for the purpose of the restoration and enhancement of Grail Creek and its tributaries" [45]. "The Court is ... mindful that the prosecutor is seeking an order for payment of its costs in the amount of \$25,000 for both charges" [39].	
Second offence – different Act, fine only, costs not specified												
103	1	<i>EPA v Hopley</i> [2003] NSWLEC 112	Medium	Medium	Small business owner	\$35,000	As assessed	N/A	Not known	Not known	One s 120(1) offence fined \$20,000 and one offence against s 35(2) of the <i>Road and Rail Transport (Dangerous Goods) Act 1997</i> fined \$15,000. Defendant is a transport business (small business owner). Ordered to pay costs.	
Two or more offences or counts under same Act, s 10 only, costs not specified												
104	1	<i>EPA v Haylan [KW Haylan]</i> [2001] NSWLEC 289	Low	None	Special liability offender	\$0	As assessed	N/A	Not known	Not known	Two s 120(1) offences. No actual (or potential) harm to the environment [17]. Co-offender with WWLS Blayney Pty Ltd [Case No 99]; company fined \$7,500 for one offence; \$6,000 for the other. Company ordered to pay costs. Kenneth William Haylan charged under s 169 as company director (received s 10 dismissal for both offences), no costs ordered on director.	

CLEAN WATERS ACT (1991–1999): s 16											
Maximum penalty (1 July 1991 – 30 June 1999): Corporations: \$125,000 plus \$60,000 per day for a continuing offence Individuals: \$60,000 plus \$30,000 per day for a continuing offence											
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" cost	Case details
Single offence, fine only, costs specified											
105	1	<i>EPA v Incitec Ltd</i> [2000] NSWLEC 217	Medium	Low	Corporation	\$25,000	\$12,000	N/A	\$37,000	32.4%	One s 16(1) offence. Release of acid into effluent drain. Impact to the river water and its ecology localised and not sustained [17]. Total discount of approximately 25% for the guilty plea, and various other matters of cooperation and contrition [50], including rectification work of \$50,000 [32].
106	2	<i>EPA v Sydney Water Corporation</i> [2000] NSWLEC 156	Medium	Serious	Corporation	\$40,000	\$25,522	N/A	\$65,522	39.0%	One s 16(1) offence. A blocked mains released sewerage into a creek which flowed into a major Sydney metropolitan river within a national park [4]. Clean-up costs of \$120,000 [7]. The harm caused to the environment was serious [31]. Defendant did not demonstrate contrition: "Its decision to designate the relevant area to 'reactive maintenance' amounts to an abandonment of its statutory duties to prevent pollution" [53].
107	3	<i>EPA v New Generation Beverages Pty Ltd</i> [2000] NSWLEC 130	Low	Low	Corporation	\$7,500	\$4,475	N/A	\$11,975	37.4%	One s 16(1) offence. A liquid chemical leaked from a fitting on a storage tank, entered a gutter which entered a stormwater drain and ultimately an unnamed tributary [17]. No serious or lasting environmental harm [38]. Joint venture companies to pay equal shares of overall fine (\$15,000) and total prosecutor's costs (\$8,950).
108	4	<i>EPA v Pepsi Seven-Up Bottlers Australia Pty Ltd</i> [2000] NSWLEC 130	Low	Low	Corporation	\$7,500	\$4,475	N/A	\$11,975	37.4%	See Case No 107 above.
109	5	<i>EPA v Aaron Plant Hire & Earthmoving Pty Ltd</i> [2000] NSWLEC 122	Low	Medium	Corporation	\$15,000	\$10,000	N/A	\$25,000	40.0%	One s 16(1) offence. In desilting a dam, earthmoving machinery placed slurry where it ran into a tributary of a metropolitan lagoon, adversely affecting a pre-existing ecosystem [28]. Clean-up costs of \$32,965 considered in assessment of penalty [36].
110	6	<i>EPA v Dubbo City Council</i> [2000] NSWLEC 78	Low	None	Corporation	\$15,000	\$5,500	N/A	\$20,500	26.8%	One s 16(1) offence. Defendant a regional local council. Effluent pumped from a livestock market and ran into a stormwater drain and eventually into a stormwater run-off collection pond [3]. Agreement to pay prosecutor's costs (and other matters) taken into account in setting the fine [20].
111	7	<i>EPA v Fletcher International Exports Pty Ltd</i> [2000] NSWLEC 41	Low	Low	Corporation	\$12,000	\$5,000	N/A	\$17,000	29.4%	One s 16(1) offence. Discharge of effluent from an abattoir into an adjacent stormwater collection dam eventually finding its way into an inland river [3], [10]. Payment of prosecutor's costs one of a number of factors in mitigation [24]–[25].
112	8	<i>EPA v Timber Industries Ltd</i> [2000] NSWLEC 39	Low	None	Corporation	\$15,000	\$5,250	N/A	\$20,250	25.9%	One s 16(1) offence. A worker error caused a liquid wood preservative to overflow from a tank and enter a stormwater drain and an inland tributary [11]. Clean-up costs of \$30,000 [31] and \$16,917 for equipment rectifications [24] considered in sentencing [35].
						Mean	\$17,125	\$9,028	\$26,153	34.5%	
						Median	\$15,000	\$5,375	\$20,375		
Single offence, fine only, costs not specified											
113	1	<i>EPA v Gilmour [No 6]</i> [2001] NSWLEC 257	Low	None	Corporation	\$6,000	As assessed	N/A	Not known	Not known	One s 16(1) offence. A malfunction in the doorway in the bottom of the fuselage of the defendants' aeroplane caused fertiliser pellets to be dropped beyond the boundaries of the area contracted to be fertilised [4]. No specific or lasting harm done [6]. Defendant purchased equipment at the cost of \$31,000 to prevent similar accidental discharges from his aeroplane [7]. Total fine of \$12,000 equally divided amongst corporate offender and special liability "principal" (pilot). The defendant ordered to pay the just and reasonable costs of the prosecutor.
114	2	<i>EPA v Gilmour [No 6]</i> [2001] NSWLEC 257	Low	None	Special liability offender	\$6,000	As assessed	N/A	Not known	Not known	See Case No 113 above.
115	3	<i>EPA v Boral Resources (QLD) Pty Ltd</i> [2001] NSWLEC 22	Low	None	Corporation	\$5,000	As assessed	N/A	Not known	Not known	One s 16(1) offence. Discharge of liquid from a concrete batching plant entered a drain and found its way into a tidal inlet of the Tweed River [3]. No evidence of actual harm [17]. Unspecified prosecutor's costs not mentioned as a factor in sentencing [20].
116	4	<i>EPA v Mangha Singh & Sons Pty Ltd</i> [2000] NSWLEC 277	Low	None	Corporation	\$12,500	As assessed	N/A	Not known	Not known	One s 16(1) offence. Waste containing non-filterable residues entered an unnamed watercourse and spilled into a swamp [5]. Defendant has invested between \$20,000 and \$30,000 in upgrading facilities to manage effluent discharge [12]. Defendant fined and ordered to pay costs.
117	5	<i>EPA v Tenterfield Shire Council</i> [2000] NSWLEC 229	Low	Low	Corporation	\$15,000	As assessed	N/A	Not known	Not known	One s 16(1) offence. Worker error in council-operated treatment works resulted in excess sewage overflowing settling tanks and entering a stormwater drain and then a country creek. Clean-up of the spill was not practicable as the creek had diluted and moved the discharge downstream [7]. Minor degree of harm but potential for greater harm [29]. Fined and costs ordered.
						Mean	\$8,900				
						Median	\$6,000				
Single offence, fine plus Additional Order, costs specified											
118	1	<i>EPA v Brucic</i> [2000] NSWLEC 213	Low	None	"Ordinary Joe"	\$6,000	As assessed	\$10,000	\$16,000	Not known	One s 16(1) offence. Earthmoving contractor dumped waste in an erosion gully, constituting an unnamed perennial creek [1]. Fined \$6,000 also agreed to undertake rectification work estimated at between \$7,000 and \$10,000 [10]. Costs ordered.

Sentencing regime key (Tier 2 pollute waters offences)

- POEO Act (May 2006 – 2015): s 120
- POEO Act (1999 – April 2006): s 120
- CW Act (1991 – 1999): s 16

Additional Orders key linked to "Class of offender" column (for example, Corporation):

- * s 250(1)(a) order to publicise the offence also imposed as part of penalty.
- ** s 250(1)(b) order also imposed as part of penalty: defendant to "lodge an Adverse Experience Reporting Form with Australian Pesticides and Veterinary Medicines Authority" that includes the court's judgment and orders: Case No 8 [98].
- *~ s 250(1)(d) order also imposed as part of penalty: offender is ordered to carry out an environmental audit [31]. In this particular case, a s 250(1)(a) publication order was also imposed: Case No 38 [31].
- *^ s 245(c) order also imposed as part of penalty: "submit a specification for the operation of the defendant's waste disposal system": Case No 78 [47].

CASES TABLE 2

CASES TABLE 2: WASTE OFFENCES IN THE NSW LAND AND ENVIRONMENT COURT: 2000–2015												
PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (from 1 May 2006; current regime as at date of publication): ss 143, 144, 144AA(1) and 144AA(2) – see Table 13 (in Vol 1) for creation and amendment of waste offences under the POEO Act and changes to maximum penalties												
Maximum penalty: Corporations: s 143 – \$1,000,000, s 144 – \$1,000,000 plus \$120,000 per day for a continuing offence, s 144AA(1) – \$250,000, s 144AA(2) – \$500,000 Individuals: s 143 – \$250,000, s 144 – \$250,000 plus \$60,000 per day for a continuing offence, s 144AA(1) – \$120,000, s 144AA(2) – \$240,000 or 18 months imprisonment or both												
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (and/or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" costs	Case details	
Single offence, fine only, costs specified												
No cases												
Single offence, fine only, costs not specified												
1	1	<i>The Hills Shire Council v Kinnamey Civil & Earthworks Pty Ltd (No 2)</i> [2012] NSWLEC 95	Medium	Serious	Corporation	\$50,000	As assessed	N/A	Not known	Not known	One s 143(1) offence. Defendants (corporation and "special liability" director) operated an earthworks business. Entered a verbal agreement with a rural neighbour to transport and deposit "clean" fill on the neighbour's land for a fee in order to create a firebreak [8]. The neighbour's land could not lawfully be used as a "waste facility" [9]. The deposited landfill included fibrous asbestos sheeting [95]. The company was fined \$50,000 and the company director fined \$30,000. Defendants also ordered to pay the prosecutor's legal costs as agreed, "roughly in the order of \$200,000" [38]. No s 250(1) publication order made.	
2	2	<i>The Hills Shire Council v Kinnamey Civil & Earthworks Pty Ltd (No 2)</i> [2012] NSWLEC 95	Medium	Serious	Special liability offender	\$30,000	As assessed	N/A	Not known	Not known	See Case No 1 above. Defendant was the company director.	
3	3	<i>EPA v Hogan</i> [2008] NSWLEC 125	Low	None	Special liability offender	\$18,000	As assessed	N/A	Not known	Not known	Defendant a general manager of a company operating a landfill site. The company held a licence to undertake the activities of landfilling solid and inert waste [5]. Defendant believed virgin excavated natural material (VENM) was not waste [6]. The VENM imported to the waste facility was unwanted and surplus to those who had excavated it, explaining why they were willing to pay to truck it to the waste facility and deposit it [9]. The fact that the company managed by the defendant wished to re-use the material did not alter its character as "waste" within the meaning of the definition [9]. Charged with one s 144(1) offence: use of land as a waste facility without lawful authority. Defendant fined \$18,000 plus prosecutor's costs as agreed, which the EPA indicated would be approximately \$30,000 [20]. No s 250(1) publication order made.	
						Mean	\$32,667					
						Median	\$30,000					
Single offence, fine plus Additional Order, costs specified												
4	1	<i>EPA v Smart Skip (NSW) Pty Ltd</i> [2009] NSWLEC 204	Medium	None	Corporation**	\$50,000	\$20,000	N/A	\$70,000	28.6%	Defendant operates a waste skip company with a licence to transport waste. Convicted of one s 144(1) offence: occupier of premises caused it to be unlawfully used as a waste facility. "The unlawfulness involved is the failure to hold an environment protection licence for a waste storage, transfer separating or processing facility that stored, transferred or recovered by way of separating or processing more than 30,000 tonnes a year. In addition, the operation is in breach of the current development consent for the premises which allows the sorting of 80 tonnes of waste per day" [8, (2)]. Fined \$50,000 and ordered to pay prosecutor's costs of \$20,000. Additional orders: s 245(1)(c) (compulsory monthly reporting of waste transactions to prevent recurrence of offence) and s 250(1)(a) publication order [54].	
Two or more offences or counts under same Act, fine only, costs specified												
5	1	<i>Kogarah City Council v Wong</i> [2013] NSWLEC 187	Low	None	"Ordinary Joe"	\$20,000	\$17,080	N/A	\$37,080	46.1%	Defendant an "Ordinary Joe" individual and local resident who dumped cartons that contained broken fibrous cement containing asbestos fibres on streets and footpaths in and around his suburb. Defendant denied being aware that the material contained any form of asbestos [16]. Four s 143(1) offences: transporting and depositing of waste material. Each offence fined \$5,000. Prosecutor's investigation and clean-up costs in the sum of \$3,080 and legal costs of \$14,000 also to be paid.	
6	2	<i>EPA v Shannongrove Pty Ltd (No 2)</i> [2012] NSWLEC 202 (first hearing); <i>Shannongrove Pty Ltd v EPA</i> (2013) 84 NSWLR 668	Low	Low	Corporation*	\$35,000	\$118,225	N/A	\$153,225	77.2%	Defendant a company contracted to transport a waste liquid by-product from a large urban recycling facility. It transported the liquid waste to a dairy farming property where it was injected into the soil as a liquid fertilizer. The liquid waste was considered by the farm operator as beneficial to soil moisture and the growing of pasture crops [3]. The CCA was required to make a statutory interpretation on what constitutes "waste" in two cases – <i>Shannongrove Pty Ltd v EPA</i> and <i>EPA v Terrace Earthmoving Pty Ltd</i> – heard by that court "as companion cases raising similar issues" regarding the reuse of discarded matter. Defendant fined \$20,000 and \$15,000 for two s 143(1) offences and ordered to pay prosecution's legal costs estimated at \$93,500 [94] plus investigation costs of \$24,725 [95]. A s 250(1)(a) publication order was also made. An appeal against conviction for both offences, <i>Shannongrove Pty Ltd v EPA</i> [2013] NSWCCA 179, was unsuccessful. * Note: in the companion case of <i>Terrace</i> , nine questions of law were submitted to the CCA for determination under s 5AE of the Criminal Appeal Act: <i>EPA v Terrace Earthmoving Pty Ltd</i> [2013] NSWCCA 180 (2013) 84 NSWLR 679. The proceedings were returned to the LEC for final orders to be made. The defendants were sentenced outside the study period (<i>EPA v Terrace Earthmoving Pty Ltd</i> [2016] NSWLEC 158).	
7	3	<i>EPA v Geoff Robinson Pty Ltd</i> [2011] NSWLEC 14	Medium	Medium	Corporation*	\$13,400	\$24,000	N/A	\$37,400	64.2%	Defendants (corporation and "special liability" director) operated a waste receiving and storage facility in a regional part of NSW: effectively a tip [23]. Erosion and sediment control measures requested by council [31]. Waste was being deposited in an environmentally sensitive area [41]. Two s 144(1) offences with the company fined \$13,400 and the director fined \$10,500. Company to pay \$24,000 (half the prosecutor's costs); director to pay other half. A s 250(1)(a) publication order was also made.	
8	4	<i>EPA v Geoff Robinson Pty Ltd (Geoff Robinson)</i> [2011] NSWLEC 14	Medium	Medium	Special liability offender*	\$10,500	\$24,000	N/A	\$34,500	69.6%	See Case No 7 above. Defendant was the company director.	
						Mean	\$19,725	\$45,826	\$65,551	69.9%		
						Median	\$16,700	\$24,000	\$37,240			
Two or more offences or counts under same Act, fine only, costs not specified												
9	1	<i>Bankstown City Council v Hanna</i> [2014] NSWLEC 152	Medium	Serious	Small business owner*	\$225,000	As assessed	N/A	Not known	Not known	Defendant a small business owner operating a tip truck. Same offender as in <i>EPA v Hanna</i> [2010] NSWLEC 98 [Case No 15]. Recalcitrant repeat offender: "[The defendant] has repeatedly over the last seven years unlawfully transported and dumped building waste. He has been issued with at least 29 penalty notices and prosecuted in courts at least 11 times for offences involving the unlawful transporting and dumping of waste, failing to pay fees for cleaning up waste that he has dumped, failing to comply with requirements made of him in the investigation of unlawful transporting and dumping of waste, or obstructing an authorised officer exercising powers to investigate unlawful transporting or dumping of waste" [1]. Charged and convicted of two s 143 offences plus two s 142A offences. Fined \$77,000 for offence of unlawfully transporting and depositing waste on private land; \$48,000 for the offence of polluting this private land; \$60,000 for the second offence of unlawfully transporting and depositing waste at public park; and, \$40,000 for the offence of polluting land at the public park. The defendant was ordered to pay the prosecutor's costs as assessed or agreed. A s 250(1)(a) publication order was also made.	
10	2	<i>EPA v Ashmore</i> [2014] NSWLEC 136; <i>EPA v Ashmore (No 2)</i> [2014] NSWLEC 142	Medium	None	Special liability offender	\$36,000	As assessed	N/A	Not known	Not known	Defendant the company director of a civil engineering and demolition company. Charged with one s 143(1) offence (permitted waste to be transported to a place that could not lawfully be used as a waste facility for that waste), and one s 144AA(1) offence (supplied false information to another person in the course of dealing with waste). Defendant knew that the waste contained asbestos requiring that it be taken to a licensed facility for that waste; also knew that the weighbridge dockets he was using were false [61]. Stood to gain financially from the depositing of the waste without incurring the fee that would be charged for so doing at a licensed facility [61]. The fact that the defendant was not paid (no actual financial gain) does not detract from the seriousness of the offences [61]. Limited weight given to the finding that the commission of the offences was affected by duress [94]. Defendant fined \$24,000 and \$12,000 respectively, and ordered to pay the prosecutor's legal costs. No s 250(1)(a) publication order made. Order for the defendant to pay investigation costs later declined in <i>EPA v Ashmore (No 2)</i> .	
11	3	<i>EPA v Aargus Pty Ltd</i> [2013] NSWLEC 19	Low	None	Corporation*	\$30,000	As assessed	N/A	Not known	Not known	Defendants an environmental company (specialising in land contamination, remediation, wastewater) and the company's project manager and environmental manager. Two offences against s 144AA ("false or misleading information about waste"): issued a clearance certificate stating that "no asbestos materials were observed or are currently present within the nominated stockpile of fill materials" [6]. Two pieces of materials taken from the fill were later found in a designated asbestos bin outside the Aargus office in Sydney and tested positive for containing two types of asbestos [50]. Corporation fined \$15,000 for each offence; project manager fined \$4,500 for each offence; environmental manager fined \$3,000 for each offence. Corporation ordered to pay investigation costs (\$946 x 2 = \$1,892) and 50% of prosecutor's legal costs (as agreed or assessed: assumed by court to be in the vicinity of \$50,000 [124]); project manager to pay 30% of such legal costs; and, environmental manager 20% of such legal costs. Corporation also ordered to pay for a s 250(1)(a) publication order naming all three offenders (the employees only by their company titles).	

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (POEO Act) (from 1 May 2006; current regime): ss 143, 144, 144AA(1) and 144AA(2) — see Table 13 (in Vol 1) for creation and amendment of waste offences under the POEO Act and changes to maximum penalties											
Maximum penalty: Corporations: s 143 – \$1,000,000, s 144 – \$1,000,000 plus \$120,000 per day for a continuing offence, s 144AA(1) – \$250,000, s 144AA(2) – \$500,000 Individuals: s 143 – \$250,000, s 144 – \$250,000 plus \$60,000 per day for a continuing offence, s 144AA(1) – \$120,000, s 144AA(2) – \$240,000 or 18 months imprisonment or both											
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine (and/or Epay) plus costs ("Total")	Prosecutor's costs as % of "Total" costs	Case details
12	4	<i>EPA v Aargus Pty Ltd [Konstantinos Kariotoglou]</i> [2013] NSWLEC 19	Low	None	Special liability offender	\$9,000	As assessed	N/A	Not known	Not known	See above. Defendant was the project manager.
13	5	<i>EPA v Aargus Pty Ltd [Mark Kelly]</i> [2013] NSWLEC 19	Low	None	Special liability offender	\$6,000	As assessed	N/A	Not known	Not known	See above. Defendant was the environmental manager.
					Mean	\$61,200					
					Median	\$15,000					
Two or more offences or counts under same Act, Additional Order in lieu of fine, costs specified											
14	1	<i>EPA v Wyong Shire Council</i> [2012] NSWLEC 36	Medium	Low	Corporation*	N/A	\$73,830	\$62,000	\$135,830	54.4%	Defendant a regional council. "Toukley Site had been used since about 1950 for night soil and garbage disposal while the Mardi Site had been used for garbage disposal since 1922. Each site had therefore been 'harmed' by that use" [71]. Clean-up notice issued. "The cost of compliance with these clean-up notices was significant. In the case of the Toukley Site, the total cost was \$3,505,974 while the cost incurred at the Mardi Site was \$479,512 [117]. There was also \$527,000 in staffing costs in order to implement the reforms that followed the commission of these offences [113]. Two s 144(1) offences. Pursuant to s 250(1)(e), the defendant must pay to the Tuggerah Lakes Reserve Trust the sum of \$42,000 with respect to one offence and \$20,000 with respect to the other offence to contribute to the funding of the Pioneer Dairy Wetlands Bush Regeneration and Weed Removal Project. Prosecutor's costs of \$73,830 also ordered. A s 250(1) publication order was also made.
15	2	<i>EPA v Hanna</i> [2010] NSWLEC 98	Medium	Medium	Small business owner*	N/A	\$29,283	\$104,000	\$133,283	22.0%	Defendant a small business owner operating a tip truck. Charged with four s 143(1) offences (illegal dumping of rubbish on private and public lands). "The Defendant's conduct in disposing of waste on each of the four occasions on which he was charged was premeditated and intentionally done with knowledge of its illegality" [48]. Prior convictions for three identical offences deemed an aggravating factor [56]. That the offences were committed for apparent financial gain (s 21A(2)(o)) and the materials contained asbestos and were dumped without due regard for public safety (s 21A(2)(i)). Defendant fined a total of \$104,000. However, pursuant to s 250(1)(e), and in lieu of payment of the fines, defendant is to pay \$104,000 to the Environmental Trust (Emergency Pollution and Orphan Waste Clean-up Program). Prosecutor's costs were \$29,283. A s 250(1) publication order was also made.

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (1 July 1999 to 30 April 2006): ss 143, 144 and 144AA(1) — see Table 13 (in Vol 1) for creation and amendment of waste offences under the POEO Act and changes to maximum penalties											
Maximum penalty: Corporations: s 143 – \$250,000 (then up to \$1,000,000), s 144 – \$250,000 plus \$120,000 per day for a continuing offence (then \$1,000,000 plus \$120,000/day), s 144AA(1) – \$250,000 Individuals: s 143 – \$120,000 (then \$250,000), s 144 – \$120,000 plus \$60,000/day for a continuing offence (then \$250,000 plus \$60,000/day), s 144AA(1) – \$120,000											
N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine plus Epay plus costs	Prosecutor's costs as % of "Total" costs	Case details
Single offence, fine only, costs specified											
16	1	<i>Eurobodalla Shire Council v Leth</i> [2007] NSWLEC 599	Low	Low	"Ordinary Joe"	\$2,500	\$24,000	N/A	\$26,500	90.6%	One s 144(1) offence (permit land to be unlawfully used as a waste facility). Fined \$2,500 with costs of \$24,000.
17	2	<i>Eurobodalla Shire Council v Tip It Today Broulee Pty Ltd</i> [2007] NSWLEC 274	Low	None	Corporation*	\$1,500	\$18,500	N/A	\$20,000	92.5%	One s 143(1) offence. Offender a driver of waste transport company. Pain J at [33]–[34] mentions the reduction in fine resulting from high prosecutor's costs (\$18,500). Her Honour also mentions the CCA decision of <i>Barnes</i> and that the matter could have been dealt with in the Local Court. A s 250(1)(a) publication order was made.
18	3	<i>EPA v Davis</i> [2005] NSWLEC 643	Low	None	Small business owner	\$5,000	\$9,000	N/A	\$14,000	64.3%	One s 143(1)(a) offence (transported waste to a place that could not lawfully be used as a waste facility for that waste). Small septic tank waste collection and transport business. Held environmental protection licence. Fined \$5,000. Costs of \$9,000.
19	4	<i>EPA v Floyd</i> [2004] NSWLEC 214	Medium	Serious	Special liability offender	\$10,000	\$16,000	N/A	\$26,000	61.5%	One s 144(1) offence. Company director (no charge laid against company — now defunct). Defendant also prosecuted civilly for the same conduct. Fine of \$10,000 plus prosecutor's legal costs in the agreed amount of \$16,000. No s 250 publication order, "lest it create (in the absence of consideration of these detailed reasons) a misleading impression in respect of the gravity of the admitted offence and its proper punishment" [73].
					Mean	\$4,750	\$16,875		\$21,625	78.0%	
					Median	\$3,750	\$17,250				
Single offence, fine only, costs not specified											
20	1	<i>The Hills Shire Council v Suci</i> (No 3) [2009] NSWLEC 192	High	Medium	Small business owner	\$80,000	As assessed	N/A	Not known	Not known	One s 143(1) offence. Offender a small business owner. Offence described as "in the worst type of case category" [28]. Defendant failed to appear (whereabouts unknown).
21	2	<i>EPA v Pannowitz [Steepleton Pty Ltd]</i> [2005] NSWLEC 175	High	None	Company*	\$40,000	As assessed	N/A	Not known	Not known	One s 143(1) offence. Offenders a corporation (fined \$40,000) and company director (fined \$20,000). The court detailed the factors behind the "serious" nature of the offence [47]. Defendants to pay the prosecutor's costs in accordance with s 253(2) of the <i>Criminal Procedure Act</i> 1986. A s 250(1)(a) publication order was also made.
22	3	<i>EPA v Pannowitz</i> [2005] NSWLEC 175	High	None	Special liability offender*	\$20,000	As assessed	N/A	Not known	Not known	See Case No 21 above. Defendant was the company director.
23	4	<i>EPA v Robinson</i> [2004] NSWLEC 629	High	Low	"Ordinary Joe"	\$8,000	As assessed	N/A	Not known	Not known	One s 144(1) offence. Land owner permitted waste to be deposited. The court details the factors that "highlight the seriousness of the offence" [29]. Fined \$8,000. Defendant to pay the prosecutor's costs in accordance with s 253(2) of the <i>Criminal Procedure Act</i> 1986.
24	5	<i>EPA v Fernando</i> [2003] NSWLEC 281	High	None	Special liability offender	\$60,000	As assessed	N/A	Not known	Not known	One s 143(1) offence. Offenders a corporation (fined \$5,000) and manager (fined \$60,000). "The [manager's] conduct was deliberate and dishonest, placing the seriousness of this particular offence and his culpability at the highest end of the scale" [22]. The defendants were ordered to jointly and severally pay the prosecutor's costs as agreed or assessed.
25	6	<i>EPA v Fernando [Steadfast Maintenance Services Pty Ltd]</i> [2003] NSWLEC 281	Low	None	Company	\$5,000	As assessed	N/A	Not known	Not known	See Case No 24 above. Defendant was the company.
26	7	<i>EPA v Hunter</i> [2003] NSWLEC 32	Low	Low	Small business owner	\$15,000	As assessed	N/A	Not known	Not known	One s 143(1) offence. Offender a small business owner (a builder supplementing income through waste transport), clean-up costs of \$3,685. Fined \$15,000. Defendant must pay the prosecutor's costs in accordance with s 52(2) of the <i>Land and Environment Court Act</i> 1979.
					Mean	\$32,571					
					Median	\$20,000					
Single offence, Additional Order in lieu of fine, costs specified											
27	1	<i>EPA v Slade</i> [2004] NSWLEC 773	Low	None	"Ordinary Joe"	N/A	\$10,000	\$20,000	\$30,000	33.3%	One s 144(1) offence. Appropriate to make an environmental service order pursuant to s 250(1)(c) ... that work will incur an expenditure of some \$20,000 [21].
Single offence, fine plus "restoration order", costs specified											
28	1	<i>EPA v Hardt</i> [2007] NSWLEC 284	High	Serious	"Ordinary Joe"*	\$12,000	\$105,000	\$55,000	\$172,000	61.0%	One s 144(1) offence. Fined \$12,000. Prosecutor's costs of \$105,000. Extensive s 245 restoration order [64], [68] with estimated costs of \$30,000 to \$55,000 [65].

PROTECTION OF THE ENVIRONMENT OPERATIONS ACT (1 July 1999 to 30 April 2006): ss 143, 144 and 144AA(1) – see Table 13 (in Vol 1) for creation and amendment of waste offences under the POEO Act and changes to maximum penalties
Maximum penalty: Corporations: s 143 – \$250,000 (then up to \$1,000,000), s 144 – \$250,000 plus \$120,000 per day for a continuing offence (then \$1,000,000 plus \$120,000/day), s 144AA(1) – \$250,000
Individuals: s 143 – \$120,000 (then \$250,000), s 144 – \$120,000 plus \$60,000/day for a continuing offence (then \$250,000 plus \$60,000/day), s 144AA(1) – \$120,000

N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine plus Epay plus costs	Prosecutor's costs as % of "Total" costs	Case details
Two or more offences or counts under same Act, fine only, costs specified											
29	1	<i>EPA v Barnes</i> [2006] NSWLEC 2	Medium	Low	"Ordinary Joe"	\$4,500	\$15,727	N/A	\$20,227	77.8%	Two charges of s 143(1)(a). Fined \$4,000 and \$500. Pay costs of \$15,727. "These costs are substantial and I take this into account. Had the costs not been so great I would have imposed a much higher penalty" [53].
30	2	<i>EPA v Australian Pacific Oil Company Pty Ltd</i> [2003] NSWLEC 279	Medium	Medium	Corporation*	\$20	\$55,000	N/A	\$55,020	100.0%	Two s 143(1)(b) offences (owner of waste transported to unlawful waste facility). Six summons against three offenders: company and two company directors. The stored waste materials "constituted a significant threat to the environment being not only toxic but also hazardous in terms of flammability ... some of the materials were less hazardous than others. Nevertheless they all constituted a potential threat to the environment if not managed properly and controlled in a way that ensured that either there was no prospect of an explosion or fire or indeed the escape at all of the substances" [5]–[6]. Clean-up costs of \$177,000 incurred [16]. Company received nominal fines of \$10 for each waste offence. Each company director received a \$20,000 fine for each waste offence (\$40,000 each). Publication order made under s 250(1)(a). Defendants responsible jointly and severally for the sum of \$55,000 representing the costs in each matter.
31	3	<i>EPA v Australian Pacific Oil Company Pty Ltd</i> [Craig Williams] [2003] NSWLEC 279	Medium	Medium	Special liability offender*	\$40,000	\$55,000	N/A	\$95,000	57.9%	See Case No 30 above. Defendant was a company director (<i>Craig Williams</i>).
32	4	<i>EPA v Australian Pacific Oil Company Pty Limited</i> [Jamie Williams] [2003] NSWLEC 279	Medium	Medium	Special liability offender*	\$40,000	\$55,000	N/A	\$95,000	57.9%	See Cases No 30 and 31 above. Defendant was a company director (<i>Jamie Williams</i>).
					Mean	\$21,130	\$45,182		\$66,312	68.1%	
					Median	\$20,000	\$55,000				
Two or more offences, fine plus "restoration order", costs specified											
33	1	<i>EPA v Obaid</i> [2005] NSWLEC 171	High	Serious	Special liability offender*^	\$73,125	\$30,000	\$17,351	\$120,476	24.9%	Four charges of a s 144(1) offence. "Although there is no evidence of actual harm to the environment in this case, the risks created by the stockpiling of large amounts of tyres at all of the sites are obvious and potentially catastrophic" [49]. At [61], the court detailed the various factors that highlight the seriousness of the offence. Defendant fined \$39,000, \$19,000, \$9,750 and \$4,875 = \$73,125. Costs of 4 x \$7,500 = \$30,000, plus a s 246(1)(b) order for clean-up costs of \$17,371 [78]. Uncosted s 245(a) orders for restoration and prevention also made [78].

WASTE MINIMISATION AND MANAGEMENT ACT 1995 (1996 to 1999): s 63 and s 64
Maximum penalty: Corporations: s 63(1) – \$125,000 plus \$60,000/day for a continuing offence, s 64(1) – \$125,000 plus \$60,000/day for a continuing offence
Individuals: s 63(1) – \$60,000 plus \$30,000/day for a continuing offence, s 64(1) – \$60,000 plus \$30,000/day for a continuing offence

N	Category count	Citation	Objective seriousness	Environmental harm	Class of offender	Fine amount	Prosecutor's costs	Environmental payment (Epay)	Fine plus Epay plus costs	Prosecutor's costs as % of "Total" costs	Case details
Single offence, fine only, costs specified											
34	1	<i>EPA v J K Williams Contracting Pty Ltd</i> [2001] NSWLEC 13 revised – 23/02/2001	Medium	Low	Corporation	\$52,000	\$7,000	N/A	\$59,000	11.9%	One s 63 offence. Contaminated soil, containing lead bullets and bullet fragments, was deposited upon a construction site for a residential estate [1]. Remediation work "was completed within two months at a cost of \$336,497.28. In addition to the sum of \$33,878 in respect of fees paid to environmental consultants, engineers and lawyers, a further sum of \$1 million dollars was paid by the defendant to Glenmore as general damages which was divided amongst the residents potentially affected" [9]. Defendant fined \$52,000. Prosecutor's costs as agreed at \$7,000.
Single offence, fine only, costs not specified											
35	1	<i>EPA v Fletcher</i> [2001] NSWLEC 104	High	Low	"Ordinary Joe"	\$36,000	As assessed	N/A	Not known	Not known	One s 64(1) offence. Landowner permitted waste to be deposited. Court "concluded that this case is 'serious', but not 'worst case', and sits on the 'scale' at 60–70% of the most serious case". Aggravating factors included that the offence was committed for financial gain and there was "no evidence of remorse, nor of any attempt to remediate the environmental harm ... caused" [132]. Fined \$36,000. Ordered to pay the just and reasonable costs of the prosecutor as agreed or assessed.
Single offence, fine plus 'restoration order', costs specified											
36	1	<i>EPA v Douglass</i> [No 2] [2002] NSWLEC 94	High	Serious	Small business owner	\$45,000	\$49,517	\$1,169,489	\$1,264,006	3.9%	One s 64(1) offence. Fined \$45,000 plus prosecutor's costs of \$49,517. The defendant is to pay the Environmental Trust the sum of \$1,169,488.93, being the costs incurred in the mitigation of harm to the environment caused by the commission of the offence [18(3)].
Two or more offences or counts under same Act, fine only, costs specified											
37	1	<i>EPA v Richardson</i> [Klaus Behnfeld] [2002] NSWLEC 205	High	Serious	Special liability offender	\$30,000	\$40,000	N/A	\$70,000	57.1%	Three counts under s 63 (unlawfully transport waste to a place that could not lawfully be used as a waste facility). CEO of company (<i>Behnfeld</i>) on two charges, fined \$20,000 and \$10,000 (total \$30,000), plus agreed to pay full prosecutor's costs of \$40,000. A third charge to "shelf" company contractor (<i>Richardson</i>), fined \$30,000 (no costs to pay).
38	2	<i>EPA v Richardson</i> [John Richardson] [2002] NSWLEC 205	High	Serious	Special liability offender	\$30,000	\$0	N/A	\$30,000	0.0%	See Case No 37 above. Defendant was a sub-contractor (<i>Richardson</i>).
Second offence – different Act, fine only, costs not specified											
39	1	<i>EPA v Nechakoski</i> [2002] NSWLEC 61	Medium	Medium	Small business owner	\$31,000	As assessed	N/A	Not known	Not known	One s 63(1) offence under <i>WMM Act</i> plus one s 143(1) offence under <i>POEO Act</i> (transporting waste to a place that could not lawfully be used as a waste facility). "A complicating factor in this case is that the applicable legislative regime changed during the commission of the offence ... Whilst the nature of the offence is identical under each Act, the penalty for each offence is different" [2]. Defendant a small business owner. Fined \$21,000 and \$10,000. Defendant to pay the costs of the prosecutor in accordance with s 52 of the <i>Land and Environment Court Act 1979</i> .
40	2	<i>EPA v Energy Services International Pty Ltd</i> [2001] NSWLEC 59	Medium	None	Corporation	\$56,668	As assessed	N/A	Not known	Not known	One s 64(1) offence <i>WMM Act</i> (fined \$56,668) plus one offence under s 26 of the <i>Environmentally Hazardous Chemicals Act 1985</i> (unlawfully carried on a prescribed activity) (fined \$45,000) plus a second offence under s 26 of that Act (unlawfully carried on a prescribed activity without approval in writing) (fined \$45,000). Ordered to pay the prosecutor's costs in relation to each of the charges.
Second offence – different Act, fine plus Additional Order, costs not specified											
41	1	<i>EPA v Sorcevski</i> [2002] NSWLEC 115	Low	Medium	"Ordinary Joe"*~	\$8,500	As assessed	N/A	Not known	Not known	One s 64(1) of <i>WMM Act</i> plus one s 144(1) offence under the <i>POEO Act</i> . Landowner allowed it to be used as a waste facility. Orders made pursuant to s 14 of the <i>EOP Act</i> (rep) and s 245 of the <i>POEO Act</i> "whereby the site will be rehabilitated to a state satisfactory to the prosecutor within eight months". Fined \$6,000 for first offence and \$2,500 for the second offence. Defendant ordered to pay the prosecutor's costs.

Sentencing regime key (Tier 2 waste offences)

- POEO Act (May 2006 to 2015): s 143, s 144, s 144AA(1), s 144AA(2)
- POEO Act (1999 to April 2006): s 143, s 144, s 144AA(1)
- WMM Act (1996 to 1999): s 63(1), 64(1)

Additional Orders key linked to "Class of offender" column (for example, Corporation):

- * s 250(1)(a) order to publicise the offence also imposed as part of penalty.
- ** s 245(1)(c) order (compulsory monthly reporting of waste transactions to prevent recurrence of offence) also imposed as part of penalty; in addition to s 250(1)(a) publication order: Case No 4.
- ^ s 245 order made to restore and repair the environment harmed by the commission of the offence. No s 250(1)(a) publication order: Case No 28.
- *^ s 245(a) orders ("restore and repair" environmental damage) plus s 246(1)(b) order (reimburse third party for clean-up costs) imposed as part of penalty. No s 250(1)(a) publication order: Case No 33.
- ~ s 14 order under repealed *Environmental Offences and Penalties Act* to "prevent, control, abate or mitigate any harm to the environment" caused by the commission of the offence. Plus s 245 order under *POEO Act* to satisfactorily rehabilitate the site. No s 250(1)(a) publication order: Case No 41.

CASES TABLE 3

CASES TABLE 3: NATIVE VEGETATION OFFENCES IN THE NSW LAND AND ENVIRONMENT COURT: 2000–2015												
NATIVE VEGETATION ACT 2003 (from December 2005; current regime as at date of publication*): s 12												
Maximum penalty (under s 126 of the <i>Environmental Planning and Assessment Act 1979</i> , until 30 July 2015): \$1,100,000 plus \$110,000 per day for a continuing offence. Both persons and incorporated bodies subject to the same maximum penalties												
* The NV Act is to be repealed on the commencement of s 3 of the <i>Local Land Services Amendment Act 2016</i> which is cognate with the <i>Biodiversity Conservation Act 2016</i>												
N	Category count	Citation	Class of offender ^A	Reason	Objective seriousness	Environmental harm	Fine amount	Prosecutor's costs ^B	Remediation order (s 38)	Fine plus costs "Total"	Prosecutor's costs as % of "Total" costs	Case details
Single offence, fine only, costs specified												
1	1	<i>Chief Executive of the Office of Environment and Heritage, Department of Premier and Cabinet v Turnbull</i> [2014] NSWLEC 150	"Ordinary Joe"	Financially motivated. Commercial gain [152]	Medium	Serious	\$140,000	\$172,275	No (remediation notices were issued on son and grandson of defendant as the owners of the illegally cleared land)	\$312,275	55.2%	One s 12 offence committed by Moree farmer/landowner/developer [8], [178]. Area of land unlawfully cleared disputed in hearing: 38.7 hectares [101] across two adjoining rural properties — minimum 3,000 trees [129]. Affected properties owned by son and grandson of defendant. Remediation orders imposed on owners are the subject of ongoing court proceedings (see, for example, <i>Chief Executive of the Office of Environment and Heritage v Turnbull (No 4)</i> [2016] NSWLEC 66). Defendant's conduct "was a reckless breach, a factor that increases the objective seriousness of his offence" [144]. Commercial incentive but "financial motivation is properly to be taken into account as a relatively minor aggravating factor" [152]. Defendant demonstrated no contrition, remorse or responsibility for his conduct, nor acknowledged the environmental harm resulting from his illegal land clearing [157]. Utilitarian value of guilty plea reduced by conduct during sentencing hearing [164]–[168]. Fined \$140,000. Prosecutor costs (without additional investigation expenses) estimated at \$172,275 [171]. Subsequent successful appeal on grounds of costs: original costs order altered to direct applicant to pay the prosecutor's reasonable legal costs but excluded payment of the prosecutor's investigation costs and other disbursements (<i>Turnbull v Chief Executive of the Office of Environment and Heritage</i> [2015] NSWCCA 278 at [93]). Defendant was subsequently found guilty of the murder of an environmental compliance officer during the course of the latter conducting his lawful public duties (<i>R v Turnbull (No 26)</i> [2016] NSWSC 847).
2	2	<i>Chief Executive of the Office of Environment and Heritage v Humphries</i> [2013] NSWLEC 213	Small business owner	Financially motivated. Commercial gain plus weed eradication [44]	Medium	Medium	\$67,500	\$34,000	No (voluntary repair of the property)	\$101,500	33.5%	One s 12 offence by landowner within two areas on his agricultural property in Moree region [1] comprising 89 hectares [22]. The larger area of 80 hectares was almost totally cleared; the smaller area was largely cleared, leaving only scattered trees. Subsequently, most of the larger area and all of the smaller area were tilled for cropping [6]. Motive was commercial gain and the object was to "bring back the agricultural productivity and the profits from these areas of the property" [66]. Land owned in partnership with wife as "agricultural business" [73]. Defendant offered to make partial reparation for the environmental harm by undertaking conservation works on other parts of the property [31]; acknowledged by court in the context of contrition and remorse [59]. Defendant pleaded guilty, demonstrated genuine remorse, and cooperated fully with authorities [57]–[60]. Fined \$67,500 plus prosecutor's costs of \$34,000.
3	3	<i>Chief Executive of the Office of Environment and Heritage v Newbigging</i> [2013] NSWLEC 144	Small business owner	Financially motivated. Commercial gain [66]	Medium	Medium	\$112,000	\$45,000	No (agreed to a remedial direction)*	\$157,000	28.7%	One s 12 offence by landowner/farm manager on his property in the Parkes district [6]–[7]. Around 60.6 hectares cleared, 834 trees [57]–[58]. The defendant agreed to a remedial direction in respect of an area of 46 hectares [30]. The defendant's deliberate choice to clear the land to avoid OH&S problems and equipment damage adds a "commercial flavour" to the offence [66]. Defendant conceded the commercial element involved, which was also evidenced in the defendant seeking to practise "controlled traffic" or "tramline" farming [66]. Guilty plea, little demonstration of remorse — accepting a remedial direction entitled the defendant to some credit [73] — and cooperation with authorities was equivocal [74]–[75]. Fined \$112,000 plus prosecutor's costs of \$45,000.
4	4	<i>Chief Executive of the Office of Environment and Heritage v Kennedy</i> [2012] NSWLEC 159	"Ordinary Joe"	Financially motivated. Commercial gain (re agricultural improvement) [5], [76]	Medium	Medium	\$40,000	\$36,600	Yes (no \$)	\$76,600	47.8%	One s 12 offence by landowner in Tamworth region. A total of 32.48 hectares cleared with 600 mature trees removed [5], which at the time he mistakenly believed were permitted to be cleared for the "routine agricultural management activity" [4]. Defendant was issued with a remedial direction to carry out specified remedial works on the property for 15 years [40]. "The substantial cost of compliance and the negation of the stock grazing benefit to the defendant are relevant considerations on sentence" [40]. Guilty plea at sixth mention, little remorse (insisted it was just an "unfortunate mistake" but cooperated with authorities [85]–[89]). Fined \$40,000 plus ordered to pay costs. "The defendant has not yet agreed on the quantum of the prosecutor's costs [\$36,600]. The amount of costs can be taken into account as part of the consideration of penalty" [94].
5	5	<i>Chief Executive, Office of Environment and Heritage, Department of Premier and Cabinet v Powell</i> [2012] NSWLEC 129	Special liability offender	Financially motivated. Commercial gain [127]	Medium	Medium	\$120,000	\$42,000	No	\$162,000	25.9%	One s 12 offence. Managing director ("He is in fact the company" [2]) prosecuted, but charges against company dropped [3]. Productive grazing was defendant's objective in buying the Narrandera property with the native vegetation cleared being a real impediment to the development and exploitation of the property [127]. No attempt to plant any replacement vegetation, although defendant was in talks with local authority to negotiate a property vegetation plan [134]. Illegal clearing continued after departmental contact [150]: 65 hectares cleared [124] and 100–150 trees removed [151]. Defendant made no attempt at remediation [161]. Defendant pleaded guilty but did not demonstrate remorse and assistance to the prosecutor was equivocal [161]. Fined \$120,000 plus costs. Stated prosecution costs of \$42,000 did not include the investigation expenses to be claimed [136]. Quoted costs not accepted by defendant [148].
6	6	<i>Director-General, Department of Environment, Climate Change and Water v Vin Heffernan Pty Ltd</i> [2010] NSWLEC 200	Small business owner	Negligent. Paid for work. Financial gain was NOT an aggravating factor [46]	Medium	Medium	\$30,150	\$30,000	Yes* (no \$)	\$60,150	49.9%	One s 12 offence by small business owner (a contracted earthmoving and log haulage company), prosecuted as a corporation for unlawfully clearing land on a Bega Valley property. 22 hectares affected — not broadscale clearing [39]. "Unlawful clearing was not deliberate inasmuch as it was not known by [defendant] to be unlawful at the time" [43]. Defendant's "state of mind ought properly be described as negligent" [44]. Defendant pleaded guilty (on third occasion before the court), expressed remorse and cooperated with authorities [54]–[55]. "A remediation order has been issued on the owner of the land [not the defendant] requiring the owner to take specified action over a period of 7 years" [4] see Facts at (55)*. Fined \$30,150 and agreed to pay the prosecutor's costs of \$30,000. * Landowner, Mr Alexander, also the principal director of the corporate defendant, Source & Resources Pty Ltd, in proceedings against same s 12 offence (<i>Director-General, Department of Environment, Climate Change and Water v Source & Resources Pty Ltd</i> [2010] NSWLEC 235). Application for vacation of remaining hearing dates and adjournment of Class 5 proceedings due to defendants' possible unfitness to stand trial. Subsequently, in <i>Alexander (No 2)</i> [2011] NSWLEC 87, Mr Alexander, who represented the "will and mind of the company" [30], was found unfit to stand trial (due to dementia) [1], [33]. Prosecution intended to withdraw charges against the company: [33] see (2). Court informed that the defendant's wife, Mrs Alexander, had ceased to be a co-director of the company six months earlier. No record of further criminal proceedings for this native vegetation offence against the company or its director(s).
7	7	<i>Director-General, Department of the Environment and Climate Change and Water v Ian Colley Earthmoving Pty Ltd</i> [2010] NSWLEC 102	Small business owner	Not financially motivated. Contractor's employee cleared trees on instruction from landowner [37]	Low	Medium	\$5,000	\$15,000	No	\$20,000	75.0%	One s 12 offence by small business owner (a contracted earthmoving company) prosecuted as a corporation for unlawfully clearing land on a property near Mudgee: 29 hectares — 60% cleared [33]; 128 trees removed [12]. Defendant failed to give any instructions about the NV Act to his employee who carried out the clearing, nor was the defendant on site to oversee the way in which his employee carried out the work [36]. Not appropriate to find defendant careless in not making inquiries whether landowner had the necessary permit to enable clearing of native vegetation: the defendant's culpability deemed low [44]. Defendant pleaded guilty, assisted the authorities and demonstrated contrition and remorse [61], [62] and [65]. "As the Defendant is not the landowner he has no ability to mitigate the harm, such as by complying with a remediation notice" [34]. Fined \$5,000 and ordered to pay prosecutor's costs of \$15,000. Note: Landowner not prosecuted. The court "did not know the reasons behind the decision of the Prosecutor not to prosecute" [75].
8	8	<i>Director-General, Department of the Environment and Climate Change v Calman Australia Pty Ltd</i> NSWLEC 182	Small business owner	Financially motivated. Commercial gain [47]	Low	Medium	\$22,000	\$24,333	Yes (no \$)	\$46,333	52.5%	One s 12 offence. Three corporate defendants: two were the owners of the affected rural properties in Berrigan (Riverina region), the third a small business owner contracted to clear the land. 21 hectares cleared with 2,383 trees removed [43]. Relevant that "the clearing was undertaken for commercial gain, in the case of the landowners in pursuit of agricultural activities on the land" [47]. All three corporate defendants, through the affidavits of their respective directors, pleaded guilty [7], expressed contrition and remorse, accepted responsibility for the offence and acknowledged the environmental harm caused [58]; they sought to rectify the harm by remediation works [58], and cooperated with the prosecutor at all stages of the investigation [60]. Each defendant was fined \$22,000 (total of \$66,000) plus each to pay prosecutor's costs of \$24,333 (total of \$73,000). Company directors agreed to complete remediation work [11(63)]. Pain J took "judicial notice of long standing difficulties for government in managing uncontrolled native vegetation clearances in NSW" [52].

NATIVE VEGETATION ACT 2003 (from December 2005; current regime as at date of publication*): s 12													
Maximum penalty (under s 126 of the <i>Environmental Planning and Assessment Act 1979</i> , until 30 July 2015): \$1,100,000 plus \$110,000 per day for a continuing offence. Both persons and incorporated bodies subject to the same maximum penalties													
* The NV Act is to be repealed on the commencement of s 3 of the <i>Local Land Services Amendment Act 2016</i> which is cognate with the <i>Biodiversity Conservation Act 2016</i>													
N	Category count	Citation	Class of offender ^A	Reason	Objective seriousness	Environmental harm	Fine amount	Prosecutor's costs ^F	Remediation order (s 38)	Fine plus costs "Total"	Prosecutor's costs as % of "Total" costs	Case details	
9	9	<i>Director-General, Department of Environment and Climate Change v Calman Australia Pty Ltd [Iroch Pty Ltd]</i> [2009] NSWLEC 182	Small business owner	Financially motivated. Commercial gain [47]	Low	Medium	\$22,000	\$24,333	Yes (no \$)	\$46,333	52.5%	See Cases No 8 above. Agreed to complete remediation work [11(63)].	
10	10	<i>Director-General, Department of Environment and Climate Change v Calman Australia Pty Ltd [GD & JA Williams Pty Ltd trading as Jerilderie Earthmoving]</i> [2009] NSWLEC 182	Small business owner	Financially motivated. Commercial gain – no personal financial advantage. Paid as contractor [35]	Low	Medium	\$22,000	\$24,333	Yes (no \$)	\$46,333	52.5%	See Cases No 8 and 9 above. The contractor, Jerilderie Earthmoving, "also gained a benefit by gaining an opportunity to graze cattle on the cleared land, albeit in lieu of being paid for the contracted clearing work" [47].	
							Mean	\$58,065	\$44,787		\$102,852	43.5%	
							Median	\$35,075	\$32,000				
Two or more offences or counts under same Act, fine only, costs specified													
11	1	<i>Director-General, Department of Environment and Climate Change v Hudson (No 2)</i> [2015] NSWLEC 110 [second hearing] <i>Hudson v Director-General, Department of Environment, Climate Change and Water</i> [2012] NSWCCA 92 [successful appeal] <i>Director-General of the Department of Environment and Climate Change v Hudson</i> [2009] NSWLEC 4 [Class 5 hearing]	"Ordinary Joe"	Financially motivated. Commercial gain (agriculture) [78]	High	Serious	\$318,750	As assessed	Yes (no \$) *Subsequently	N/A	N/A	One s 12 offence plus one s 36(4) offence (failure to comply with notice to provide specified information and/or documents) (<i>Hudson (No 2)</i> [20] and [58]) on rural property located near Moree committed by landowner. The clearing was motivated by commercial considerations (<i>Hudson (No 2)</i> [153]); clearing not undertaken for routine agricultural management activities (noxious weed removal) as argued, but for purpose of making more land available for agriculture. Total land cleared was 472 hectares (<i>Hudson (No 2)</i> [119]). "Where the harm, loss or damage, caused by an offence is substantial, as is the case here, it is an aggravating factor" [79]. Following successful appeal, CCA quashed original penalties and remitted matter back to LEC for second hearing. Second hearing orders: fines of \$318,750 and \$1,275 plus ordered to pay costs of second hearing and half the costs of first hearing. * Note: subsequent remediation order on landowner since the commission of the offences: "much of the vegetation on the cleared land had regrown" and defendant had incurred significant economic losses as a result of carrying out the remediation order (<i>Hudson (No 2)</i> , [79]).	
Single offence, fine only, costs not specified													
12	1	<i>Rummery v Chief Executive, Office of Environment and Heritage</i> [2014] NSWCCA 106 [successful appeal] <i>Chief Executive, Office of Environment and Heritage v Rummery</i> [2012] NSWLEC 271 [Class 5 hearing]	"Ordinary Joe"	Negligent (Safe Working Environment) [140]-[141] of first instance hearing	Serious	Serious	\$66,000	As assessed	No	N/A	N/A	One s 12 offence by landowner on rural property in Tamworth region. From first instance hearing: 239 hectares cleared [72] and estimated 18,000 to 20,000 trees removed [85]. Actions were undertaken negligently [129]. Several reasons for clearing given by defendant: the primary being the provision of a safe working environment [132]. Commercial advantage was incidental and not found to be the motivation for the clearing as an aggravating factor [140]-[141]. Defendant pleaded guilty [150], demonstrated genuine contrition and remorse for his actions [157] and cooperated with authorities [160]. Fined \$80,400. From appeal hearing: appeal from conviction dismissed but sentence appeal allowed and fine reduced to \$66,000 [198]; although R A Hulme AJ favoured an even lesser fine based on "the fact that 10 to 20% or so of the trees could lawfully have been cleared was something which went to lessen the seriousness of the offence and should have been taken into account in any determination of the penalty" [207]-[209].	
13	2	<i>Corbyn v Walker Corporation Pty Ltd</i> [2012] NSWLEC 75 [sentencing hearing] <i>Director-General of the Department of Environment, Climate Change and Water v Walker Corporation Pty Ltd (No 2)</i> [2011] NSWLEC 229 [Class 5 hearing]	Corporation	Not for commercial gain; no intention or recklessness <i>Corbyn</i> [27], [29]	Low	Medium	\$80,000	As assessed	No	N/A	N/A	One s 12 offence. Walker, the corporate landowner, found vicariously liable for a contractor's acts of clearing of native vegetation on the three lots in Appin committed by Environmental Land Clearing Pty Ltd ("ELC") (<i>Walker</i> [111], [125]), 7.3 hectares cleared (<i>Corbyn</i> [21], <i>Walker</i> [84]). In the subsequent sentencing hearing, Preston CJ of the LEC stated: "The evidence and the findings I made in the penal liability judgment do not support drawing the inference that the offence was committed by Walker for financial gain but to preserve "a land bank for future development" (<i>Corbyn</i> [29]). Plead not guilty, showed no remorse but did assist authorities [55]-[56]. Fined \$80,000 plus costs. No remediation direction made and no revegetation work undertaken.	
14	3	<i>Director-General of the Department of Environment, Climate Change and Water v Graymarshall Pty Ltd (No 2)</i> [2011] NSWLEC 149 [sentencing hearing] <i>Director-General of the Department of Environment, Climate Change and Water v Graymarshall Pty Ltd</i> [2011] NSWLEC 125 [Class 5 hearing]	Corporation	Financially motivated. Commercial gain [21], [22]	High	Serious	\$200,000	As assessed	No	N/A	N/A	One s 12 offence against corporate landowner clearing native vegetation on four registered plots totalling 38 hectares in Clarence Valley (between Coffs Harbour and Grafton) [1]. Defendant did not appear and was unrepresented; convicted and sentenced in his absence [38]. Total area cleared (38 ha) excessive for purpose of routine agricultural management activity – development application for subdivision into homesites: land cleared for financial incentives ("interested purchasers" identified) [36]. In <i>Graymarshall (No 2)</i> , Sheahan J at [26] "determined that a conviction should be recorded, and a substantial fine imposed. The defendant should also be ordered to pay the prosecutor's costs. While I am satisfied that the prosecutor made every effort to keep its costs down, the failure of the defendant to engage with the prosecutor put the prosecutor to substantial expense in the form of expert evidence, photogrammetry, and the like". No evidence of contrition or remorse, nor of any intention on the defendant's part to seek to remediate the lands it cleared [25]. Defendant was fined \$200,000 and ordered to pay costs.	
15	4	<i>Director-General, Department of Environment and Climate Change v Walker Corporation Pty Ltd (No 4)</i> [2011] NSWLEC 119 [Class 5 hearing] <i>Walker Corporation Pty Ltd v Director-General, Department of Environment, Climate Change and Water</i> [2012] NSWCCA 210 [unsuccessful appeal]	Corporation	Not for commercial gain; "property maintenance" [103]	Medium	Medium	\$200,000	As assessed	Yes (no \$)	N/A	N/A	One s 12 offence committed by the Walker Corporation on 23 hectares of a property it owned in Wilton (Hawkesbury-Nepean area) [38]. Later offence than that dealt with in <i>Corbyn v Walker</i> (see Case No 13). After the commission of that offence, a vegetative site assessment ("2006 Keystone report") was commissioned by a contracted specialist land clearing company and given to Walker Corporation in mid August 2006. This report warned that "all of the work carried out up until the date of the report 'could be illegal' and that an expert assessment should be obtained to ascertain, in effect, the non-protected regrowth that could be lawfully cleared and the protected regrowth that could not" [13]-[14]. Nonetheless, clearing recommenced in October 2006 [15]. Pepper J had "no hesitation in finding beyond reasonable doubt that both before, but most certainly after, the receipt of the 2006 Keystone report, Walker's instructions to clear the property were in reckless disregard of whether or not native vegetation would be unlawfully removed" [98]. Defendant did not plead guilty to the offence, no contrition or remorse was expressed, and no evidence of any cooperation or assistance given to the prosecutor [115]-[117]. Defendant did carry out the solitary remediation measure recommended [118]. Defendant fined \$200,000 and ordered to pay prosecutor's costs "not quantified (but) likely to be considerable" [119]. An appeal based on various grounds, including whether the sentence was excessive, was heard by the CCA in <i>Walker Corporation Pty Ltd v Director-General, Department of Environment, Climate Change and Water</i> . The appeal was dismissed.	

NATIVE VEGETATION ACT 2003 (from December 2005; current regime as at date of publication*): s 12
 Maximum penalty (under s 126 of the *Environmental Planning and Assessment Act 1979*, until 30 July 2015): \$1,100,000 plus \$110,000 per day for a continuing offence. Both persons and incorporated bodies subject to the same maximum penalties
 * The NV Act is to be repealed on the commencement of s 3 of the *Local Land Services Amendment Act 2016* which is cognate with the *Biodiversity Conservation Act 2016*

N	Category count	Citation	Class of offender [^]	Reason	Objective seriousness	Environmental harm	Fine amount	Prosecutor's costs [^]	Remediation order (s 38)	Fine plus costs "Total"	Prosecutor's costs as % of "Total" costs	Case details
16	5	<i>Director-General, Department of the Environment and Climate Change v Olmwood (No 2)</i> [2010] NSWLEC 100 [sentencing hearing] <i>Department of Environment and Climate Change v Olmwood Pty Limited</i> [2010] NSWLEC 15 [Class 5 hearing]	Corporation	Financially motivated. Commercial gain/development/rezoning [61]–[62]	Medium	Medium	\$100,000	As assessed	Yes (no \$)	N/A	N/A	One s 12 offence against corporate landowner. Olmwood Pty Ltd found vicariously liable for a contractor's acts of clearing native vegetation [371]–[372] on a property in Old Bar (Greater Taree region). 10 hectares were cleared [2]. From <i>Olmwood (No 2)</i> : arranging for clearing work was reckless at best, deliberate at worst and premeditated [50]. "Clearing was part of a process of fencing and tidying up that had started in 2005. That process was undertaken as part of the intention to develop the property" [62]. Defendant did not plead guilty and the level of contrition and remorse expressed and the extent of assistance to authorities was questioned by the prosecutor [71]–[72]. Defendant fined \$100,000 plus costs; also agreed to (uncosted) remediation order "which will require it to revegetate and keep 2 ha on the eastern boundary, part of which it can otherwise clear under exemptions in the NV Act ... [this was] taken into account in the Defendant's favour" [73].
17	6	<i>Director-General, Department of Environment and Climate Change v Mura</i> [2009] NSWLEC 233 (also see Case No 19 below)	Special liability offender	Financially motivated. Commercial gain [78]	Low	Medium	\$5,000	As assessed	Yes (no \$)	N/A	N/A	Also see Case No 19. One s 12 offence on a farming property in Cessnock by director of the company that owned the property, with 12 hectares cleared. "The defendant was a two man company and Mr Mura was the directing mind of the corporation so far as the offence was concerned. It was he who caused and permitted the contractor to carry out the clearing works" [77]. "The intention of the defendant in clearing the land was to increase its grazing yield, which should thereby have improved its value" [78]. Mr Mura entered a late guilty plea [83], demonstrated contrition [82] but his cooperation with the prosecuting authority was less than complete [84]. Mr Mura was bankrupt with very limited capacity to pay a substantial penalty [87]–[93]. Fined \$5,000 and ordered to pay prosecutor's costs. Remediation direction made on the company landowner and its "silent" co-director (see Case No 19).
18	7	<i>Director-General of the Department of Environment and Climate Change v Rae</i> [2009] NSWLEC 137	"Ordinary Joe"	Financially motivated. Commercial gain [44], [49]	Medium	Serious	\$160,000	As assessed	Yes (no \$)	N/A	N/A	One s 12 offence by the landowner. Affected property in Coonamble Shire (Orana region, Northern NSW). Partial or complete clearing of an area of approximately 215 hectares [2]. Some 155 hectares were cleared of trees to an extent of over 95% [2]. The defendant admitted that he had knocked down trees on the property; he knew that he needed consent before clearing the trees, but decided to go ahead without seeking consent in case he was not successful in obtaining consent and would be prevented from clearing in the future; and that he cleared the trees to improve the property to make it more viable and increase its capital value [6]. Defendant pleaded guilty but with reduced utilitarian value [64]. Defendant was found remorseful for his actions, accepted responsibility for his actions, acknowledged the environmental harm caused by his actions and agreed to carry out remedial work [66]. Court recognised "a material cost" associated with carrying out the remedial work and having land excluded from agricultural production [65]. Fined \$160,000 plus ordered to pay the prosecutor's costs.
							Mean Median					
							\$115,857 \$100,000					
Single offence, s 10 only, costs not specified												
19	1	<i>Director-General, Department of Environment and Climate Change v Jack & Bill Issa Pty Ltd (No 6)</i> [2010] NSWLEC 43 [sentencing hearing] <i>Director-General, Department of Environment and Climate Change v Jack & Bill Issa Pty Ltd (No 5)</i> [2009] NSWLEC 232 [Class 5 hearing] (also see Case No 17 above)	Corporation	Financially motivated. Commercial gain [23]	Low	Medium	Conviction without further penalty recorded against corporation, of which defendant was a "silent" director (passive investor).	As assessed	Yes (no \$)	N/A	N/A	Also see Case No 17. One s 12 offence by corporate landowner. Mr Issa a "silent" director (passive investor) and thus not culpable [33]–[34]: "Mr Mura was the only active director and the company had put him in possession and control of the [Cessnock] land" [6]. "The intention of the company in clearing the land was to increase its grazing yield, which should thereby have improved its value" [23]. Corporate defendant did not plead guilty [29] but guilt was attributable by conduct of its company director, Mr Mura [23]. However, the conduct of the defence avoided a potentially protracted hearing — significant utilitarian value for the administration of justice — which was taken into account as a mitigating factor in sentencing [29]. Defendant was a two man company and Mr Mura has already been punished. No personal culpability attaches to Mr Issa except for not exercising tighter corporate governance as a director [33]. Corporate defendant and Mr Issa in financial difficulty — intention to sell the land [32]. "Remedial Direction directed the defendant to repair damage caused by the clearing, to rehabilitate land affected by the clearing (including the taking of steps to allow the land to regenerate) and to ensure that the cleared land would not be further damaged by the clearing. It required the defendant to perform specified remedial works on the property within the time specified, if any, for each work or where no time was specified for a period of thirteen years" [21]. Remediation direction not costed. "Mr Issa will bear a financial burden from all that has happened" [34]. Unusual circumstances of the case noted, including the financial burden of any compliance with the remedial direction or any variation of it [35]–[36]. * Note: conviction recorded against company — no fine (or other penalty) — but ordered to pay prosecutor's costs.

NATIVE VEGETATION CONSERVATION ACT 1997 (rep): s 21
 Maximum penalty (under s 126 of the *Environmental Planning and Assessment Act 1979*): Between January 1998 and 31 January 2000, the maximum penalty was \$110,000 (with a daily penalty of \$11,000 for a continuing offence). From 1 February 2000 to 30 November 2005, the maximum penalty was \$1.1 million (with a daily penalty of \$110,000 for a continuing offence). Both persons and incorporated bodies subject to the same maximum penalties

N	Category count	Citation	Class of offender [^]	Reason	Objective seriousness	Environmental harm	Fine amount	Prosecutor's costs [^]	Remediation order (s 38)	Fine plus costs "Total"	Prosecutor's costs as % of "Total" costs	Case details
Single offence, fine only, costs not specified												
20	1	<i>Director-General, Department of Environment, Climate Change and Water v Linklater</i> [2011] NSWLEC 30	"Ordinary Joe"	Recklessness [33], [50]	Medium	Medium	\$82,500	\$23,000	Yes (no \$)	\$105,500	21.8%	One s 21(2) offence under the <i>NVC Act</i> (rep) by tenant leasing the rural property located in the Wentworth Shire Council. Defendant applied and received consent to clear specified land of native vegetation. Offence involved clearing of native vegetation outside the areas authorised by the consent [7]–[9]. 166 hectares unlawfully cleared [31]. Recklessly cleared land without proper markers; defendant did not clear to make a profit or to save an expense or to avoid the costs of obtaining and implementing a development consent [51]. Remediation direction served and placed on 161 hectares which generally corresponds to area cleared without authorisation. The remediation direction operational for a period of 15 years (ending April 2025) [23]. Defendant pleaded guilty, demonstrated genuine remorse and provided "meaningful" assistance to the regulatory authority [63], [66] and [70]. Defendant ordered to pay a fine of \$82,500 and the prosecutor's costs of \$23,000.
21	2	<i>Director-General of the Department of Land and Water Conservation v Leverton Pastoral Company Pty Limited</i> [2002] NSWLEC 212	Corporation	Financially motivated. Commercial gain (plus vermin eradication) [25]	Medium	Low	\$5,000	\$31,000	Yes (no \$)	\$36,000	86.1%	One s 21(2) offence under the <i>NVC Act</i> (rep) by landowner/small family company on grazing property in Moree region [5]. 325 hectares cleared [12]. "The original intention was to gain some benefit for production which translates into a profit making concern, the ultimate consequence of the defendant carrying out the clearing is that it will suffer, and has indeed already suffered, economic constraints and losses" [36]. Defendant pleaded guilty [27] and cooperated throughout the investigation and hearing [17]; contrition expressed [30]. Extensive remediation plan, voluntarily agreed to, with sizeable constraints on agricultural activities and future productivity [32]–[37]. Court accepted defendant's explanation that it believed it was entitled to clearing the land without having to obtain consent [43]. "In all of the circumstances it is appropriate, as the prosecutor concedes, that the penalty should be modest" [44]. Defendant fined \$5,000 plus ordered to pay costs of \$31,000. Maximum penalty at the time that the offence occurred was \$110,000; subsequently been increased to in excess of \$1 million [39].

NATIVE VEGETATION CONSERVATION ACT 1997 (rep): s 21												
Maximum penalty (under s 126 of the <i>Environmental Planning and Assessment Act 1979</i>): Between January 1998 and 31 January 2000, the maximum penalty was \$110,000 (with a daily penalty of \$11,000 for a continuing offence). From 1 February 2000 to 30 November 2005, the maximum penalty was \$1.1 million (with a daily penalty of \$110,000 for a continuing offence). Both persons and incorporated bodies subject to the same maximum penalties												
N	Category count	Citation	Class of offender [^]	Reason	Objective seriousness	Environmental harm	Fine amount	Prosecutor's costs [#]	Remediation order (s 38)	Fine plus costs "Total"	Prosecutor's costs as % of "Total" costs	Case details
Two or more offences or counts under same Act, fine only, costs specified												
22	1	<i>Director-General of the Department of Environment and Climate Change v Wilton</i> [2008] NSWLEC 297	Small business owner	Carelessness/commercial gain [51]	Medium	Medium	\$40,000	\$15,000	Yes (no \$)	\$55,000	27.3%	Two s 21(2) offences under the <i>NVC Act</i> (rep) by landowner/small business owner (agricultural and private forestry property in Snowy Monaro region). Fined \$30,000 and \$10,000. Prosecutor's costs totalling \$30,000. Serious careless error based on mistaken belief that the cleared vegetation was all regrowth less than 15 years old [74] with 13.5 hectares cleared [2]. Financial advantage including enhanced value of land in establishing the plantation [76]; land was advertised for sale [45]. Defendant pleaded guilty, gave full assistance to the prosecutor, demonstrated remorse, accepted responsibility for his actions, acknowledged the damage caused and complied with a remediation order [75]. The court added \$10,000 to the fine "with the object of negating the net financial advantage that the defendant otherwise would obtain" [76].
Second offence – different Act, fine only, costs specified												
23	1	<i>Director-General of National Parks and Wildlife v Wilkinson Pty Ltd; Director-General of the Department of Land and Water Conservation v Wilkinson</i> [2002] NSWLEC 171	Corporation and special liability offender (sole director)	Financially motivated. Commercial gain/intentional [48] see (j)-(l)	Medium	Serious	\$43,500	\$90,000	Yes (no \$)	\$133,500	67.4%	Two s 21(2) offences under the <i>NVC Act</i> (rep) committed by corporate landowner and company director. These two native vegetation offences of "the same nature as 6 [additional] offences against 118D(1) of the <i>National Parks and Wildlife Act 1974</i> (<i>NPW Act</i>) (damage to habitat of threatened species, etc.) and arise out of the same course of conduct" [96]. Wilkinson is the sole shareholder, director and secretary of Hockitt Pastoral Company [71], a rural property located in the Taree region. Around 34 hectares cleared [91]. The defendants pleaded guilty, and expressed contrition which is further evidenced by the defendant's act of entering into a Property Agreement and consent to orders under s 118E of the <i>NPW Act</i> [80]. Property agreement under Pt 5 of the <i>NVC Act</i> (rep) relates to the land being retained for conservation purposes [50]. The agreement is between Hockitt Pastoral Company and the Department of Land and Water Conservation and remains in force for 10 years and the landholder is to bear the cost of carrying out any works [52]. Corporate defendant fined \$11,000 for the native vegetation offence and a total of \$5,250 (3 x \$1,750) for the offences of knowingly damage the habitat of threatened species. Company director fined \$1,750 for the native vegetation offence and a total of \$25,500 (\$22,000 plus 2 x \$1,750) for the offences of knowingly damage the habitat of threatened species. Totality principle applied: "The resultant aggregate which I adopt, namely \$43,500, is one which is appropriate for all the offences so as to reflect the total criminality of the defendants. The individual penalties [detailed in the judgment] are ... what would otherwise be appropriate if each is considered in isolation" [96]. Maximum penalty at the time that the native vegetation offence occurred was \$110,000 [subsequently increased to \$1.1 million] [9]. Defendants to jointly pay the prosecutor's costs – \$50,000 with regard to the native vegetation offences and \$40,000 for the damage habitat offences [90].
Single offence, fine only, costs not specified												
24	1	<i>Director-General of the Department of Environment and Climate Change v Taylor</i> [2007] NSWLEC 530	"Ordinary Joe"	Prosecutor alleged: financially motivated; for commercial gain [20]	High	Serious	\$20,000	As assessed	Yes (no \$)	N/A	N/A	One s 21 offence under the <i>NVC Act</i> (rep) by the landowner on property located near Kempsey. Change in landcover detected by satellite imagery analysis and aerial photography [10]-[11]. Around 30.5 hectares of land cleared to create pasture for cattle, to carry more cattle and to improve the value of the property [20]. Court rejected "the assertion made by the defendant that his motivation was simply to allow for the better movement of cattle across the property. If that was his motivation then the area required for such a purpose was only a small proportion of the area that was cleared" [21]. Defendant pleaded guilty but supplied misleading information and failed to cooperate with authorities, which provided "doubt as to the extent of genuine contrition, repentance and remorse" [27]-[29]. Defendant was also served with a remediation direction and lodged an appeal to the LEC against that direction. That appeal was subsequently discontinued after the parties reached a compromise agreement as to the area of land to be the subject of remedial action [14]. The remediation work was not costed. Defendant fined \$20,000 and ordered to pay the prosecutor's costs.

Sentencing regime key

- NV Act 2003: s 12
- NVC Act 1997: (rep)

Key to symbols

- # Estimated prosecutor's costs used where indicated in the judgment.
- [^] No s 250(1)(a) publication order (or similar) was ordered for any of the 24 native vegetation offences.