



Regulatory principles

*Environmental Protection Act 1986, Part V;
Effective and efficient regulation*

Version: Final

Released: July 2015

Objective

To provide guidance on the Department of Environment Regulation's (DER) application of good regulatory principles to its regulatory functions under Part V of the *Environmental Protection Act 1986* (EP Act). These principles will support effective and efficient environmental regulation and a higher level of consistency and transparency within DER's industry regulation function.

Background

DER undertakes environment regulation functions, principally under the EP Act, of licensing, approvals, compliance and enforcement in relation to:

- emissions and discharges;
- waste;
- noise; and
- clearing of native vegetation.

Licences and approvals authorise activities that may otherwise be unlawful, and in granting such approvals, DER carries a responsibility to ensure the activities do not pose unacceptable risks to public health or the environment.

The common hierarchy of instruments governing environmental regulation administered by DER can be represented as follows:

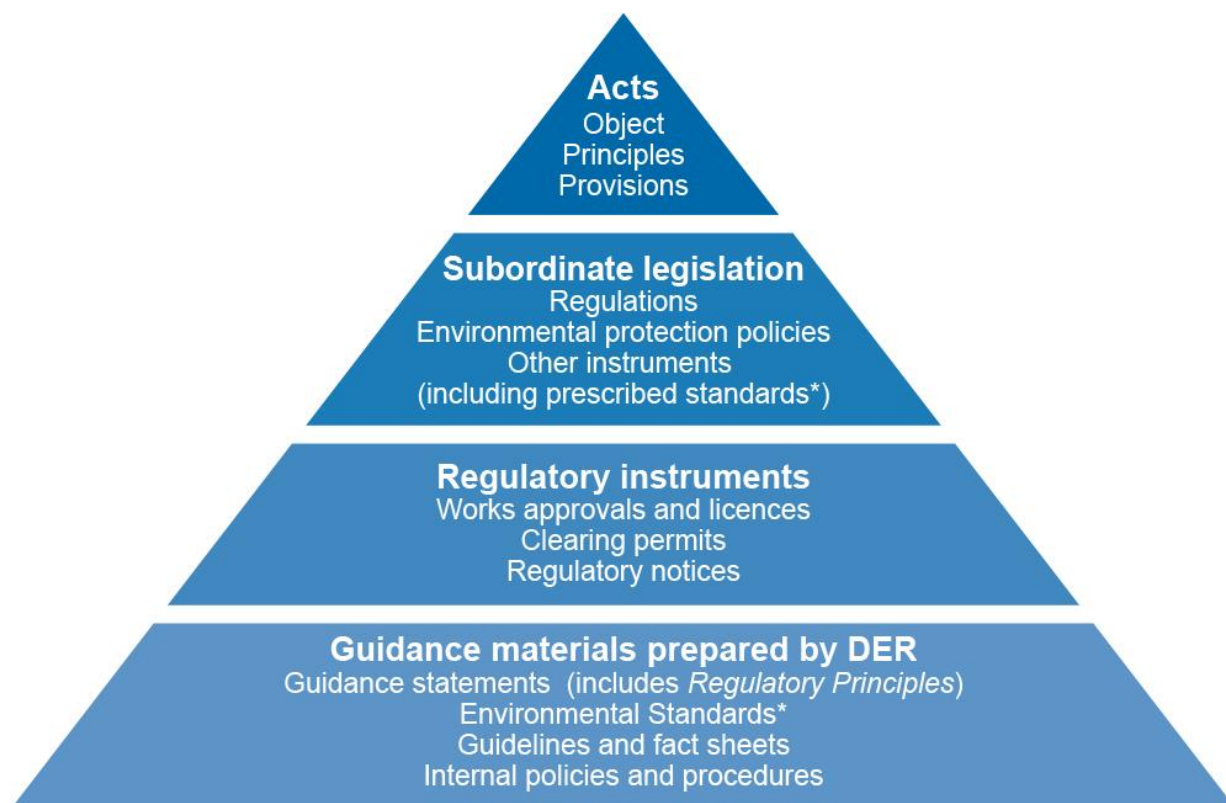


Figure 1: Hierarchy of regulatory instruments

* Environmental Standards may be converted to prescribed standards (within the meaning of the EP Act) following experience with their practical application.

DER considers that application of these principles are central to administering an efficient and effective regulatory cycle.

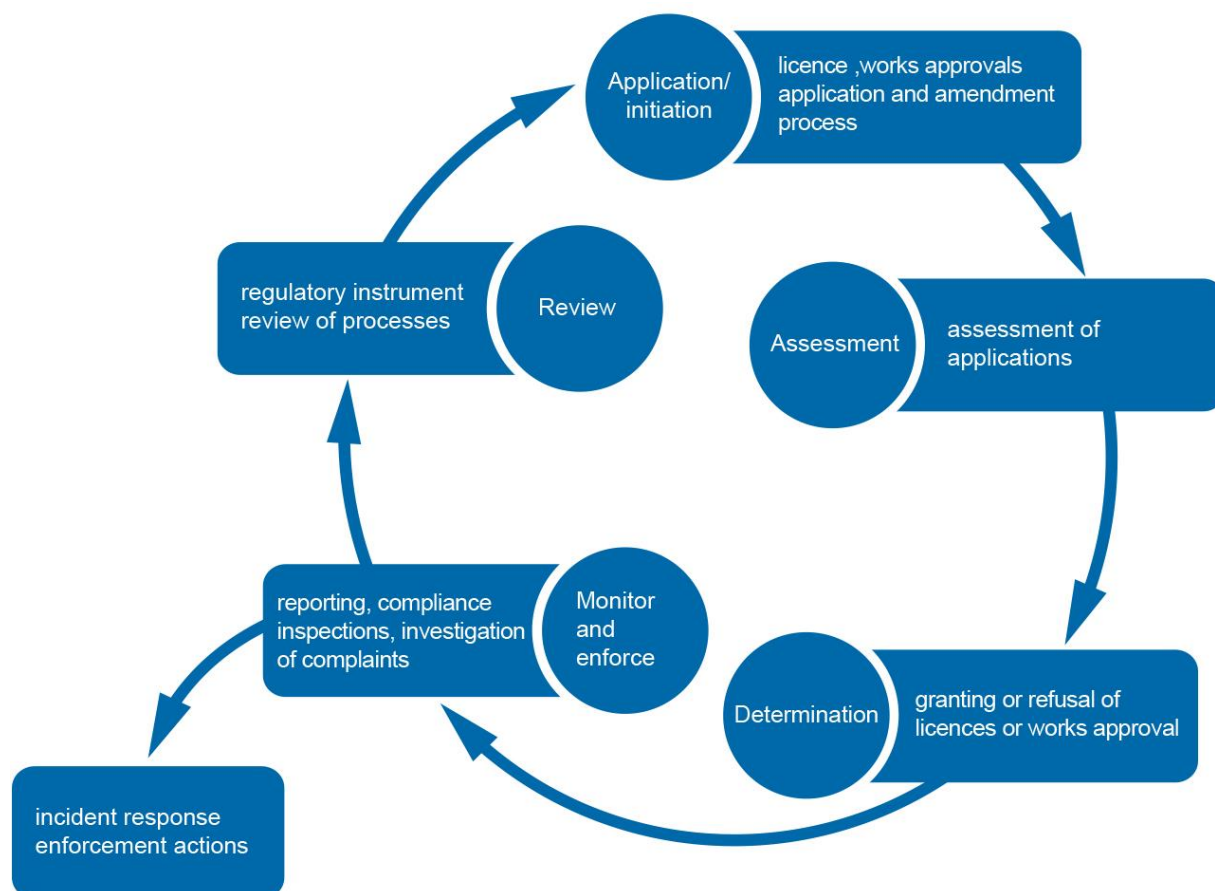


Figure 2: Regulatory cycle

Legislation

This guidance statement is principally related to the application of DER's regulatory functions under the EP Act and its subsidiary legislation.

Guidance statement

In undertaking its environment regulation functions DER will apply its regulatory principles, as contained within this guidance statement.

Regulatory principles

The statutory object and principles set out in section 4A of the EP Act guide DER's environmental regulation functions.

DER will also apply principles of good regulatory practice to the exercise of its environment regulation functions. These principles are set out below.

Risk-based regulation

- DER will regulate to ensure that there is not an unacceptable risk of harm to public health or the environment.
- Licensing and approval decisions, including any conditions imposed on any approval, will be proportionate to the level of risk (likelihood and consequence) that the activity poses to public health and the environment.
- Compliance and enforcement resources and activities will be targeted at premises or activities that present the greatest risks to public health and the environment.
- Enforcement action will be proportionate to the magnitude or seriousness of the potential or actual harm to public health or the environment, taking into account the conduct of the responsible parties.

Evidence-based decision-making

- DER will use the information that it holds or acquires, and will require applicants to provide such technical and general information as is necessary, to inform its assessment of the risks associated with the proposed activity and in undertaking its regulatory functions.
- DER makes informed decisions and judgments based on the best available information, noting the limitations often associated with the available evidence.

Application of Environmental Standards

- DER will establish Environmental Standards that set out the required levels of environmental performance for regulated activities based on the hierarchy of preventing, controlling, abating and mitigating pollution and environmental harm.
- Environmental Standards will be developed with consideration of the costs and benefits associated with different levels of risk to public health and the environment.
- Environmental Standards may relate to the separation, siting, design, construction, commissioning, operation, closure and monitoring of emissions/discharges/by-products from activities.
- Applicants will be required to demonstrate that they meet the Environmental Standards, or to justify how deviations from them will achieve the same level of public health and environmental protection.
- As a response to a risk-based assessment, environmental regulation that is more stringent than generally applicable Environmental Standards may be required in particular circumstances to protect public health or the environment.
- Applications for licences or approvals that do not demonstrate that the risk of harm to public health or the environment can be managed to an acceptable level will be refused.
- Environmental performance beyond Environmental Standards will be voluntary and will be encouraged and supported through non-regulatory means.

Appropriate conditions

- Licences and approvals issued will be subject to conditions that ensure there is not an unacceptable risk of harm to public health or the environment.
- Conditions imposed on works approvals, licences, permits and other approvals will be justifiable, clear and enforceable.
- Conditions will preferentially be outcome-based where practical and appropriate.
- Process and management-based conditions will be imposed where it is not reasonable or practical to set outcome-based conditions or where outcome-based conditions do not adequately address the risks to public health or the environment.
- Improvement conditions may be included to transition existing activities to Environmental Standards or to address unacceptable risks to public health or the environment.
- Monitoring and reporting conditions will be imposed in order to:
 - validate assessment predictions and provide assurance over the effectiveness of outcome, process, management and improvement conditions; and
 - discharge DER's accountability for public reporting purposes.

Fair and equitable decision-making processes

- Licensing, approvals, compliance and enforcement decision-making should result in consistent outcomes under similar circumstances.
- Consistent processes will guide DER's regulatory functions. The outcome will, however, be dependent on many variables including the circumstances of the situation, the actual or potential impact to public health and the environment, and the history and actions of the relevant parties.
- The rules of procedural fairness apply to DER's regulatory functions.
- Determinations of applications and compliance and enforcement actions will be undertaken fairly, without bias or undue delay, and decisions will be documented and based upon findings of fact.

Engagement, consultation and transparency

- DER will consider all representations made in relation to public advertisements and consultation regarding licensing and approval applications and decisions.
- DER will consult with stakeholders, and consider submissions made, in relation to proposed DER regulatory policies, Environmental Standards and guidelines.
- The process and basis for regulatory decision-making will be documented, transparent and publicly available.

Competitive neutrality
<ul style="list-style-type: none">Environmental regulation will be administered to minimise unnecessary competitive distortion between industry participants, while noting that applicants' technology, process and site selection may require different levels of environmental performance.

Risk-based regulation

Figure 3 provides an overview of how DER’s functions will be guided by the risk thresholds of beyond acceptable, acceptable and unacceptable environmental risk. These risk thresholds will be informed by an environmental risk framework, which will ensure the consistent assessment of risk throughout the whole regulatory cycle.

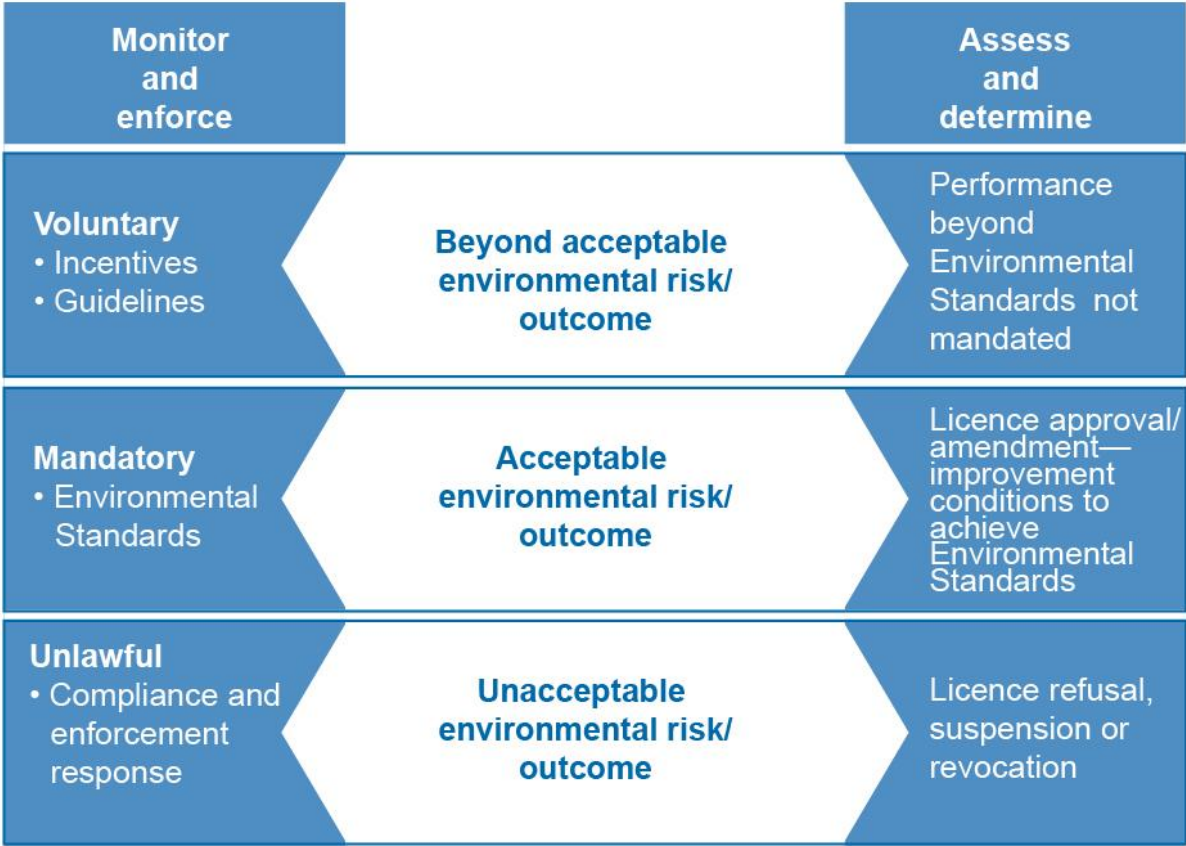


Figure 3: Risk thresholds

Application of regulatory principles

An overview of the application of the regulatory principles to the assessment and determination stages of the regulatory cycle is shown in Figure 4.

To ensure that there is consistent condition setting for licences, DER will be establishing essential regulatory controls for each of its category of licences. These controls will be informed by the application of the environmental risk framework.

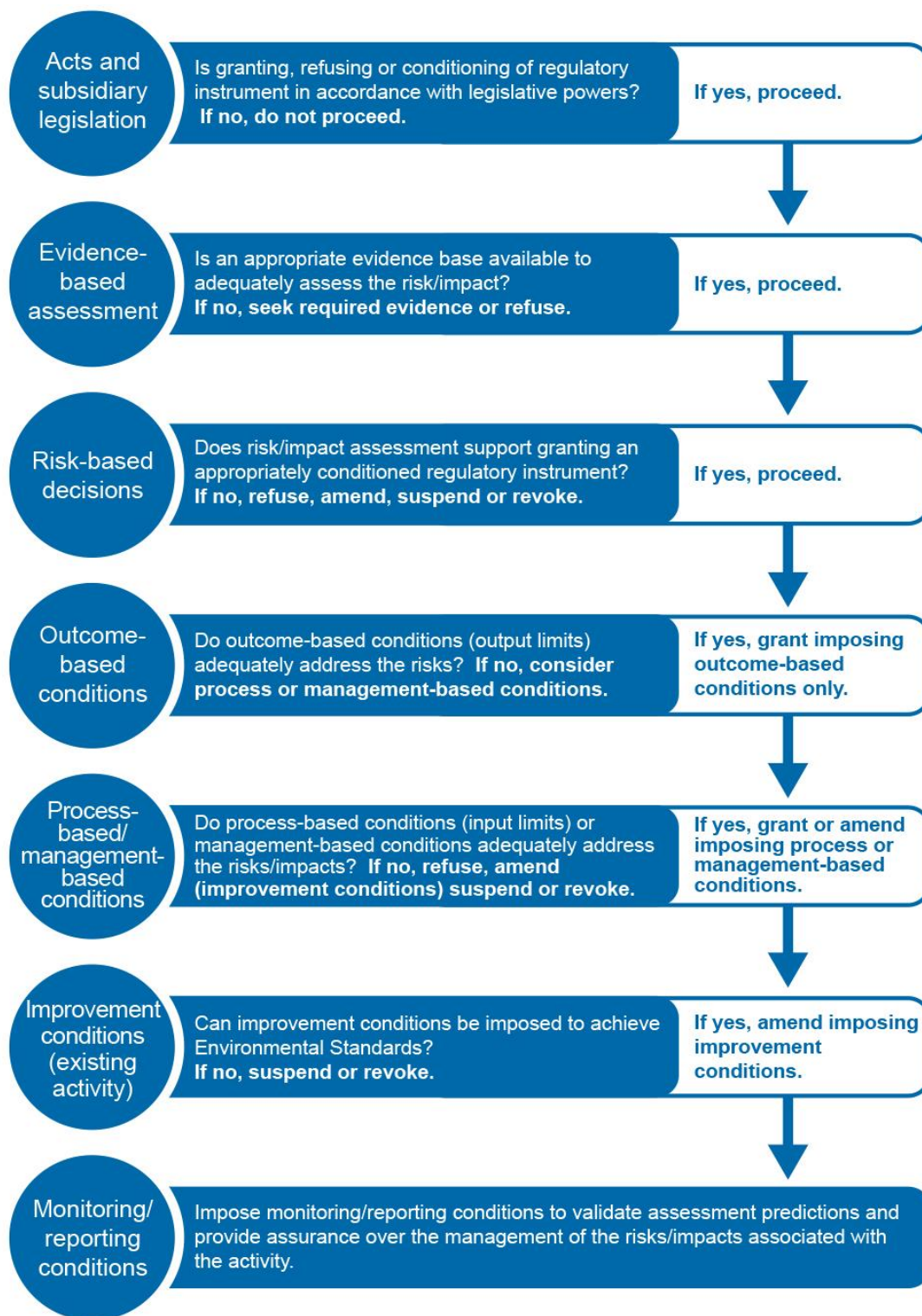


Figure 4: Regulatory principles applied to assessment and determination stages of DER's regulatory cycle

An overview of the application of the regulatory principles to the monitor, enforce and review stages of the regulatory cycle is shown in Figure 5.

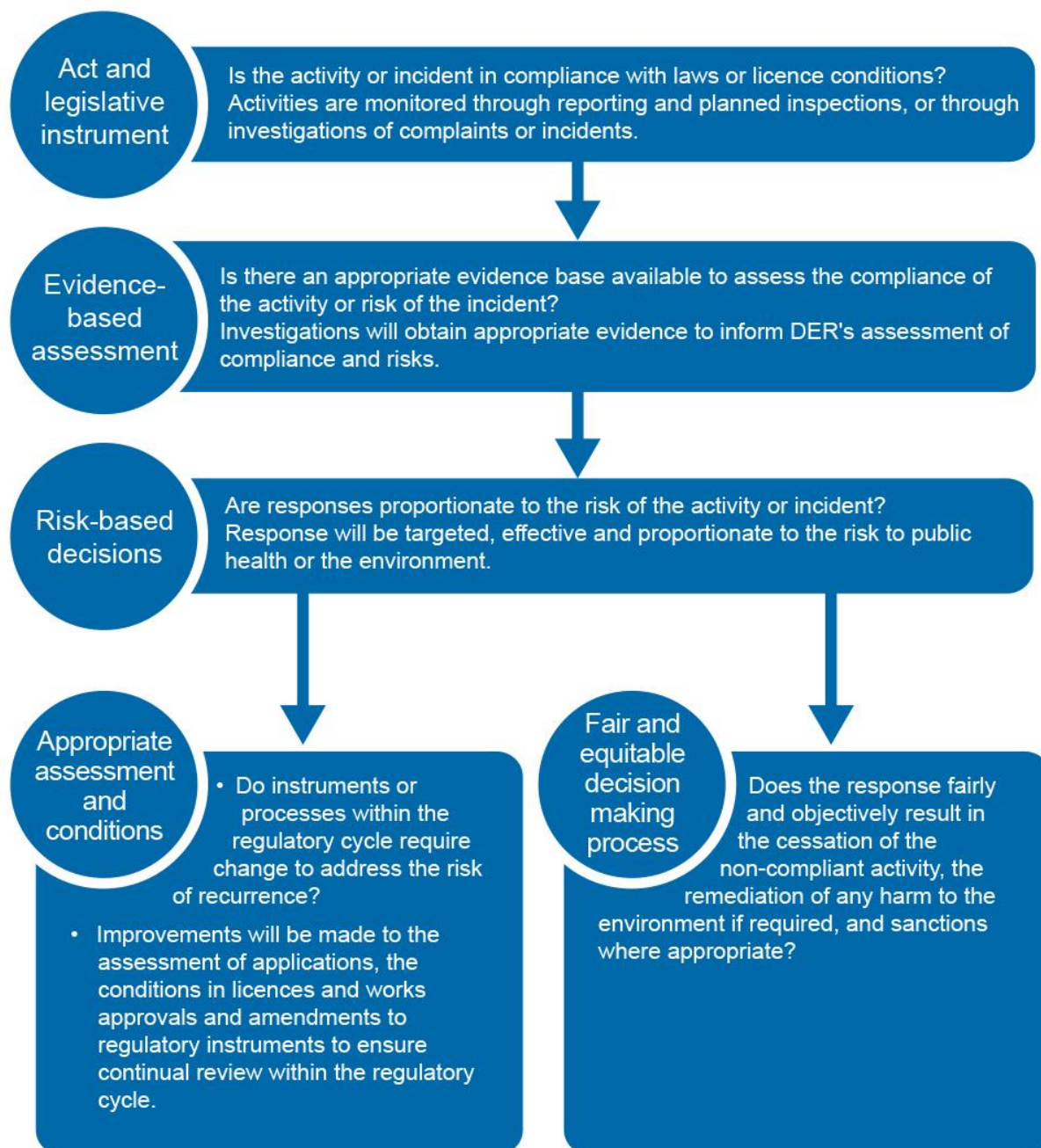


Figure 5: Application of regulatory principles to monitor, enforce and review stages

Implementation

The Department's principles as set out in this guidance statement will guide the development and implementation of regulatory policies and procedures and are to be reflected in DER's regulatory decision-making processes.

Industry regulation, clearing regulation and noise regulation decisions and supporting documents are to demonstrate application of these principles in DER's decision-making.

Compliance and enforcement activities of DER are to demonstrate application of these principles in practice.

Commencement

This guidance statement is to take effect from 13 July 2015.

Review

This guidance statement is to be reviewed no later than as soon as practicable following the fifth year of its commencement.