

***DEPARTMENT OF THE  
ENVIRONMENT, WATER,  
HERITAGE & THE ARTS***

***COMPLIANCE AND  
ENFORCEMENT POLICY***

**Department of the Environment, Water,  
Heritage & the Arts  
Compliance and Enforcement Policy**

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## Introduction

This document sets out the policy framework The Department of the Environment, Water, Heritage and the Arts (DEWHA) will use when dealing with possible contraventions of Australian Government environment and heritage legislation. The legislation includes a number of different statutory regimes containing a range of criminal, civil and administrative penalty provisions.

The purpose of this policy is to inform the public of the factors that will be taken into account in determining appropriate responses to contraventions, including whether legal proceedings will be pursued. The Department's approach and procedures for individual cases may vary where there are specific legislative requirements.

This policy sits within the broader Australian Government law enforcement policy context and should be read in conjunction with other relevant documents, including:

- *Prosecution Policy of the Commonwealth;*
- *Commonwealth Fraud Control Guidelines;*
- *Australian Government Investigations Standards;* and
- *Attorney-General's Department - Overarching Principles for Selecting Cases for Investigation and Administrative, Civil and Criminal Sanctions.*

## Objectives

The objectives of the Department's compliance and enforcement policy are that compliance and enforcement activities and arrangements:

- help achieve the objectives of legislation and management plans;
- maximise compliance with legislation;
- enhance the community's capacity to protect the environment and heritage and conserve biodiversity;
- are generally accepted as appropriate by stakeholders and the wider community.

## **The Department and the Public**

In the course of implementing this policy the Department will:

- have relevant personnel available during normal office hours to assist with enquiries about legislation it administers;
- respond to requests for technical assistance and advice from applicants seeking approvals and permits;
- provide the most accurate, up to date information available;
- respond in an appropriate manner and time in accordance with the DEWHA service charter;
- handle all information in compliance with all relevant legislative obligations relating to security, including the *Privacy Act 1988*, the *Freedom of Information Act 1982*, the Commonwealth Fraud Control Guidelines, and the Commonwealth Protective Security Manual;
- administer and enforce its legislation in a coherent, consistent and objective manner; and
- operate as efficiently, effectively and transparently as possible so as to be accountable to the Government and the community;

Final responsibility for compliance with legislation, including ensuring the accuracy of all relevant information and advice, lies with the individual person or organization.

## **Compliance and Enforcement Approach**

To achieve its compliance and enforcement objectives, the Department uses a range of flexible and targeted measures to promote self regulation.

Compliance measures such as a communication and education activities, timely provision of information and advice, persuasion, cooperative assistance and collaboration are designed to encourage the community to abide by legislation.

The Department encourages industries and individuals to go beyond compliance with the formal requirements of the legislation it administers. Where possible, the Department develops partnership agreements with particular companies or industry sectors. The Department also encourages industry-wide codes of practice that promote world's best practice environmental standards.

Where these compliance approaches fail, enforcement mechanisms may need to be used. The Department employs a range of responsive enforcement sanctions that escalate in severity as the need arises. These sanctions rely on the deterrent effect of penalty-based instruments such as suspension or cancellation of permits, injunctions, remediation orders, pecuniary penalties, and criminal prosecution.

The Department recognises that both compliance and enforcement mechanisms are necessary to provide an effective and flexible regulatory system that enables the most appropriate response to be chosen for a given issue or incident.

The Department will regularly review its compliance and enforcement policy and procedures, and incorporate lessons learned back into the policy, procedures and the legislative process.

## **Detecting Contraventions**

The Department monitors compliance with and detects contraventions of Australian Government environment, water, heritage and arts legislation by analysing information from sources such as the general public, non-government organisations and other government agencies. The Department recognises the importance of information provided to it by the general public and the importance of awareness and education campaigns.

Monitoring may take place through:

- regular and random patrols;
- audits;
- targeted investigations;
- regular and random inspections;
- observations by departmental officers or other government agencies; and
- analysis of information reported as a condition of permits, licences, approvals and other authorities issued.

Where possible strategic partnerships with other agencies will be developed to maximise cooperation where monitoring responsibilities overlap. The Department will also work closely with agencies with specific expertise in law enforcement or other relevant areas.

## Investigating Contraventions

The Department investigates all reported or detected contraventions of legislation it administers. This is undertaken by a preliminary examination and analysis of relevant facts and likely impacts in order to decide on the likelihood that a contravention has occurred or is about to occur, its seriousness and its likely consequences. Based on the outcome of this initial investigation and the relevant provisions of legislation, the Department determines the appropriate level, if any, of further investigation and response.

The Department's investigations aim to:

- determine whether or not there has been a contravention of law;
- gather evidence which would be admissible in criminal prosecutions, or administrative or civil proceedings;
- satisfactorily prove or disprove allegations or achieve acceptable conclusions;
- deal appropriately with suspects;
- improve controls for prevention of contraventions;
- deter suspects or others from further or similar action;
- improve public confidence in the integrity of the Department; and
- be completed within a reasonable time and at reasonable cost, according to legislative requirements and the nature of the investigation.

The Department investigates serious contraventions to the point where enough information is available to determine whether a criminal prosecution should be pursued. Alternatively, administrative or civil action may be considered.

In particular instances the Department may refer suspected contraventions to the Australian Federal Police or other enforcement agencies for investigation. These agencies in turn may refer matters involving multi-jurisdictional organised crime to the National Crime Authority. During such investigations, the Department provides support to the relevant investigating agencies on matters relating to administration of Australian Government environment and heritage legislation.

## **Media Inquiries into Matters under Investigation**

All media inquiries will be dealt with in accordance with Departmental Media Guidelines and the Departmental Compliance and Enforcement Procedures Manual.

Departmental staff will comply with the intent of the *Australian Government Investigations Standards* regarding information provided to the media concerning matters under investigation or that have been investigated. Procedural fairness and the presumption of innocence will be maintained.

Particularly, no comment will be made to the media that may:

- prejudice a person's right to a fair hearing or legal process;
- impinge upon the privacy or safety of others involved in the investigation (such as complainants, witnesses and suspects); or
- prejudice any past or future actions of the Department.

The investigating officer may publicise a matter as part of the investigative or compliance process (for example, to seek information from potential witnesses).

The Department's policy is that even after completion, the details of an investigation should remain confidential. The actual outcome of an investigation may, however, be publicised, for example, in accordance with Section 498 of the *Environment Protection and Biodiversity Conservation Act 1999*.

## **Reports of Investigations**

Departmental reports of investigations and reports from or to the Commonwealth Director of Public Prosecutions, the Australian Federal Police or any other enforcement agency remain strictly confidential and will be dealt with in accordance with broader Australian Government security provisions.

## **Responding to Contraventions**

The Department employs a range of responses that escalate according to the severity of the contravention or if non-compliant activities continue. Generally, education and/or warnings are used in response to first and less serious contraventions; this ensures that suspected offenders become aware of legislative requirements. For serious or continuing contraventions, deterrent sanctions are used that may include suspension or cancellation of permits or approvals, injunctions, remediation orders, pecuniary penalties, and criminal prosecution.

## ***Criteria for Determining Appropriate Responses***

In determining appropriate responses to suspected contraventions of Australian Government environment and heritage legislation the Department considers such factors as:

- objectives of the relevant legislation and the specific penalty provisions;
- seriousness of the harm caused by the alleged contravention, both to other people and to the environment or cultural heritage;
- the level of malice or culpability of the suspect – was the contravention intentional, reckless, negligent, or a mistake?;
- whether the suspect has a history of prior contraventions;
- whether the matter was self-reported;
- whether the suspect has cooperated with authorities when the contravention was detected;
- the cost to the Australian Government or general community of the contravention;
- the commercial value of the contravention to the suspect;
- the time elapsed since the contravention;
- the standard of evidence that has been collected;
- the likelihood of the contravention continuing or being repeated;
- the prevalence of the type of contravention;
- the likely public perception of the breach and the manner with which it is dealt;
- the most appropriate response to ensure an effective deterrent against continuing contravention or contravention by others,
- the cost of the proposed response option compared to the benefits of that option;
- whether the proposed response option could be counter-productive in terms of maximising compliance with legislation; and
- whether the use of the response option in a specific case would create a desirable precedent;

Where legislation provides for parallel civil and criminal penalty provisions, the Department considers the most appropriate legal path based on the particular circumstances of the case. In determining the most appropriate course of action, consideration will be given to whether legal action is being pursued under other legislation or by another person or jurisdiction and whether there is any potential for multiple punishments for the same conduct.

## ***Administrative Action***

In response to relatively minor contraventions of Australian Government environment and heritage legislation, or where the suspect has been particularly cooperative, it may be appropriate to pursue administrative rather than legal remedies.

Administrative measures do not involve court action and include:

- cautions and educational messages;
- requiring a person to leave an area, such as a Commonwealth reserve;
- formal advisory or warning letters seeking future compliance;
- infringement notices;
- varying, revoking, or imposing further conditions on permits, licences or approvals;
- suspending or cancelling permits, licences or approvals;
- retaining bonds or securities lodged as a condition of permits, licences or approvals, to remediate any harm caused by a violation;
- directed environmental audits;
- conservation or other agreements to compensate for the contravention or to prevent future contraventions;
- Ministerial orders to correct a contravention; and
- seizure of items (e.g. illegal specimens).

## ***Civil Action***

Where the Department's investigations have produced sufficient evidence of a serious civil contravention, appropriate civil sanctions may be sought through the Federal Court. Such sanctions include injunctions, court orders for repair and mitigation of damage to the environment, and civil penalty orders.

A serious civil contravention has at least one of the following attributes:

- it involves a blatant disregard for or significant degree of indifference to the civil law;
- it resulted in or had the potential to result in significant real harm or detriment to the Australian Government or the community, including substantial harm to the environment, cultural heritage, economy, resources, assets, or well being of Australia or Australians;
- the Australian Government or the community expects that the matter will be dealt with by way of enforcement action;

- it is of such a nature or magnitude that it is important to deter other potential contraveners and/or educate the public.

Civil action on behalf of the Australian Government is normally initiated by the Minister. The Australian Government Solicitor, or other legal service provider, administers the civil action, acting on the instructions of the Minister.

### ***Criminal Action***

Where the Department's investigations have produced sufficient evidence to prove both the physical and fault elements of a serious offence beyond reasonable doubt, criminal prosecution may be sought. A serious offence is one for which:

- there is a significant degree of criminality on the part of the offender; or
- previous administrative or civil responses to contraventions by the suspect have not resulted in compliance; and
- where the Australian Government or the community expects that a crime will be dealt with by prosecution conducted in public before a court and usually carries the risk of imprisonment in serious cases, and
- the crime produced significant real or potential harm to the Australian Government or the community, including harm to the environment, cultural heritage, economy, resources, assets, or well being of Australia or Australians; or
- the crime is of such a nature or magnitude that is important to deter potential offenders and prosecution will act as a very effective deterrent.

The Director of Public Prosecutions has responsibility for the conduct of prosecutions for offences against Australian Government law. If the Department considers criminal prosecution to be the most appropriate course of action and sufficient evidence is gathered, a brief of evidence is prepared for submission to the Director of Public Prosecutions. The Department also seeks assistance and advice from the Director of Public Prosecutions about investigating serious offences, particularly in large and complex matters.

The final decision on whether or not a prosecution is to be instituted or continued rests with the Director of Public Prosecutions. This decision is taken in accordance with the Prosecution Policy of the Commonwealth, the primary criterion being whether or not prosecution is in the public interest. In taking this decision, the Director of Public Prosecutions takes into account the views expressed by the Department on the issue.

## **Australian Government Environment and Heritage Legislation**

The Department deals with matters arising under legislation administered by the Minister for the Environment, Water, Heritage and the Arts of which the following Acts, or regulations and ordinances made under them, contain offence or penalty provisions:

*Aboriginal and Torres Strait Islander Heritage Protection Act 1984*

*Antarctic Marine Living Resources Conservation Act 1981*

*Antarctic Treaty (Environment Protection) Act 1980*

*Australian Antarctic Territory Act 1954*

*Environment Protection and Biodiversity Conservation Act 1999*

*Environment Protection (Sea Dumping) Act 1981*

*Fuel Quality Standards Act 2000*

*Hazardous Waste (Regulation of Exports and Imports) Act 1989*

*Heard Island and McDonald Islands Act 1953*

*Historic Shipwrecks Act 1976*

*National Environment Protection Measures (Implementation) Act 1998*

*Protection of Movable Cultural Heritage Act 1986*

*Sea Installations Act 1987*

*Water Act 2007*

*Water Efficiency Labelling and Standards Act 2005*

Further information about compliance and enforcement aspects of these Acts can be obtained from the Department's website at <http://www.environment.gov.au/index.html>, or by contacting the Community Information Unit on 1800 803 772