



Northern
Territory
Government

DEPARTMENT OF
NATURAL RESOURCES, ENVIRONMENT AND THE ARTS

Compliance Policy

Natural and Cultural Resource Legislation



Compliance Policy

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Compliance Policy

Introduction

The Department of Natural Resources, Environment and the Arts is a Northern Territory Government Department with offices in regional centres throughout the Territory and the head office in Palmerston. The main role of the Department is to improve the environmental sustainability, the economic performance and the quality of life for the Northern Territory community through balanced management of the Territory's natural and cultural resources.

The Department will work collaboratively with the community to protect the interests of legitimate natural and cultural resource users. The Department is committed to resolving competing claims for these resources in ways that sustain the environment and support economic growth.

The legislative framework in the Northern Territory aims to conserve and encourage wise use of natural and cultural resources. The Department will work cooperatively with landholders wherever possible to achieve these broad aims. Compliance will be sought by education and encouragement wherever possible, but, where appropriate, enforcement measures will be used for significant breaches or non compliance.

The purpose of this Policy is to inform the community about how the Department intends to manage compliance with the legislation it administers and implement its compliance responsibility in a fair and equitable manner. It will guide the Department's compliance activities to ensure they are consistent with its broader role of promoting effective natural and cultural resource management in the public interest.

This Policy will be supported by operational and enforcement guidelines and procedures that guide the Department's compliance officers in the implementation of individual Acts.

A handwritten signature in black ink, appearing to read 'David Ritchie', with a long horizontal stroke extending to the right.

Dr David Ritchie
Chief Executive
Department of Natural Resources,
Environment and the Arts



Compliance Policy

The Department's roles and responsibilities

The Department has regulatory responsibility under a number of Acts, including:

Territory Parks and Wildlife Conservation Act,

Weeds Management Act,

Pastoral Land Act,

Water Act,

Bushfires Act,

Waste Management and Pollution Control Act,

Environmental Assessment Act,

Soil Conservation and Land Utilisation Act,

Planning Act, (relating to clearing of native vegetation provisions) and

Heritage Conservation Act.

The Department of Natural Resources, Environment and The Arts implements its compliance role by:

- **community education and engagement** to promote voluntary compliance,
- **monitoring** natural and cultural resource activities across the Territory to deploy pro-active programmes and to identify potential breaches in a timely manner,
- **investigating alleged breaches,**
- **taking appropriate action** when a breach occurs. Where possible, emphasis will be placed on remedying environmental damage resulting from breaches, and
- **review and reporting.**



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Community education and engagement

Providing education and information to resource users and the general community encourages voluntary compliance, as this knowledge enables them to comply.

The Department will promote compliance by:

- removing barriers to compliance (eg lack of knowledge regarding legislative requirements and how to comply with them) and promoting the principles of the legislation,
- overcoming factors that encourage non-compliance (eg lack of public support for, or the misunderstanding of, natural and cultural resource management objectives), and
- raising awareness of the benefit of complying with the legislation and the potential consequences of not complying.

The Department will, in conjunction with government agencies, peak bodies, the community, industry groups and local councils, seek to facilitate community access to information about natural and cultural resource requirements. This will maximise the benefit and outcomes of activities promoting compliance and also provide feedback on the Department's programmes.



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Monitoring

Monitoring compliance with natural and cultural resource legislation is an essential part of the Department's regulatory role. Monitoring helps the Department to:

- determine the level of compliance and trends for regulated activities,
- detect possible breaches and identify where action may be required to avoid or mitigate environmental harm,
- identify whether, and what type of, education campaigns or enforcement action may be required, and
- assess the effectiveness of its operations and programmes and also to identify opportunities for improvement.

The Department undertakes three types of monitoring activities:

1. Detection

The Department's detection activities include both aerial and ground survey, aerial photography and the use of high resolution satellite images.

2. Audit and review of approvals

A large number of approvals are granted under relevant legislation. In most instances, these approvals provide benefit to the holder and contain conditions designed to protect the environment and the resource base that other landholders rely on. The Department conducts audits and reviews to verify compliance and to improve the quality and effectiveness of its approvals.

3. Reports of possible breaches

The Department receives reports of alleged breaches from external sources including members of the public, local councils and other government bodies. All alleged breaches detected, or reported, are recorded, assessed and considered for action in accordance with this Policy.



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Investigating alleged breaches

When an alleged breach is recorded, initial desktop assessment and prioritisation (into low, medium and high risk) is conducted. This assessment comprises:

- a review of the Department's records for applications, approvals, previous compliance investigations and any other documentation relating to the land as well as the people that may be involved. Relevant material such as recent and historic aerial photography, satellite imagery, maps, plans and previous reports may also be examined, and
- an assessment of the likely environmental harm, impacts on other resource users and the effect on the integrity of a consent and/or the regulatory system.

Further investigation may be warranted and may involve a site inspection and collecting information from the landholder. Before undertaking a site inspection, wherever possible, officers will contact the landholder to arrange a visit to the property. During an investigation, compliance officers will gather evidence of the incident in order to establish whether an offence has occurred and the identity of the person(s) who may be responsible. This evidence may take the form of videos, photographs, samples and physical evidence, witness statements and records of interview, consistent with legislative powers.

The Department's compliance officers will undertake their investigations in a professional manner that is:

- objective, fair and impartial,
- consistent with the presumption of innocence,
- within their delegated authority and in accordance with the law, and
- respectful of individuals.



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Taking appropriate action

If, after full investigation, it is considered that a breach has occurred, the Department will take appropriate action depending on the significance of the breach. In determining significance, the Department will consider:

- the degree of environmental harm or potential harm,
- issues of the equitable use of natural and cultural resources,
- the severity of the breach,
- the integrity of the consent and/or the regulatory system, such as; avoiding a poor precedent being set, and
- an unreasonable or extreme interpretation in relation to a condition of consent,
- the public interest including for example; if action would be perceived as counter-productive by bringing the law into disrepute (eg where a change in the law is imminent which would make the activity permissible),
- the level of public concern, and
- the need for either general or specific deterrence,
- any aggravating factors, including for example; whether an individual is culpable (eg they should be aware that they are committing a breach and continue regardless),
- whether an individual has a history of prior breaches where the Department has taken action, and
- whether the breach is ongoing,
- any mitigating factors, including for example; whether the individual had acted in accordance with Department advice;
- whether the individual is not culpable, and
- whether the individual is willing to co-operate and the extent to which they have already done so.

The applicability of, and weight to be given to, each of the above factors will depend on the circumstances of each particular case. In all prosecutions in which the Department is involved, the burden of proof to secure a conviction rests with the Department. All matters in which the Department exercises its regulatory role are criminal in nature. Therefore, the standard of proof required to enable a court to find that an offence has been proved, is proof 'beyond reasonable doubt', as to the elements of the offence.

Senior Officers will make their determination on the level of significance with reference to internal policies, peer review as well as managerial and executive support. Officers will only operate within their delegated authority. The Department has available a wide range of measures it can use in response to breaches such as warning letters, penalty notices, remediation directions and prosecution.

After consideration of all appropriate factors, alleged breaches are classified as being of low, medium and high significance in accordance with the Department's risk management framework. This classification guides the action to be taken.



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Low significance

In events determined to be of low significance the following actions may be taken:

- finalise the case (only where the degree of harm is low to very low, there are no aggravating circumstances, the public interest does not compel further action and some mitigating circumstances exist),
- send an advisory letter to the alleged offender to assist that person to meet their duty of care in the future,
- send a warning letter to the alleged offender to encourage that person to meet their duty of care in the future, and
- negotiation of a corrective request.



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Medium significance

In breaches determined to be of medium significance the Department will focus on achieving outcomes that repair any harm that has been caused, by negotiating remediation agreements or by issuing orders.

Other options available for dealing with these breaches could include one or more of the following:

- issue of a Notice to Cease, Stop Work Order, or similar where available and where the activity is continuing (and the landholder has been asked to stop), or there is a risk that the landholder will recommence the activity,
- issue of a Penalty Infringement Notice or similar in relation to the breach,
- negotiation of a corrective request, remedial plan, or
- suspend or revoke any relevant license, approval or consent.



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High significance

In cases determined to be of high significance the Department may use one or more of the following responses:

- issue a Notice to Cease, Stop Work Order or similar,
- require remediation of the harm arising from the breach. Landholders will be given an opportunity to comment on the intended outcomes of a notice or plan and unless there are reasons to issue a notice urgently, the terms of the notice or plan will be negotiated. If agreement cannot be reached, The Department will issue a remediation notice or remedial management plan,
- issue a Penalty Infringement Notice. Penalty Infringement Notices should not be used in relation to the more serious breaches where prosecution is the more appropriate outcome,
- commence proceedings in the Magistrates Court or in an appeals tribunal as appropriate, or cancel, revoke or suspend any relevant licence, approval or consent or to direct work to be carried out.

The Department's decision to commence prosecution action will be made by the Executive Director of the relevant division and proceedings shall ultimately be endorsed by the Chief Executive or the Minister where appropriate, having regard to whether the public interest is best served by pursuit of a prosecution and where the gravity of the offence is such that prosecution is the appropriate response.



Compliance Policy

Principles and code of conduct

Department staff shall at all times operate in accordance with the **Northern Territory Public Sector Principles and Code of Conduct** when undertaking compliance and enforcement activities. Compliance decisions will be made in accordance with Public Sector guidelines and to the highest ethical and professional standards. Any approaches to bribe, influence or engage officers in corrupt or unlawful behaviour will be reported immediately and will be investigated by the appropriate authority.

Review and reporting

The Department is committed to implementing this Policy in a transparent and accountable manner. The Department will review the implementation of this Policy and its compliance programme on a regular basis and will report on compliance and enforcement activity in the Annual Report.

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Copies of this policy or further information can be obtained from:

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Available compliance responses

REGULATORY OPTION	LEGISLATION									
	TPWC	WM	PL	WA	BA	WMPC	EA	SCLU	PA	HC
Advisory letter	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Warning letter	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓
Corrective request/ directive	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Notice to Cease or Stop work order	✓	✓	✓	✓	✗	✓	✗	✓	✓	✓
Impound materials removed from land/seizure	✓	✓	✗	✗	✗	✓	✗	✗	✗	✓
Remediation notice, remedial plan or emergency plan	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓
Penalty infringement notice	✓	✓	✗	✗	✓	✓	✗	✗	✗	✗
Suspension of a licence/permit/ approval/consent	✓	✓	✗	✓	✓	✓	✗	✗	✗	✗
Cancellation of a licence/permit/ approval/consent	✓	✓	✓	✓	✓	✓	✗	✗	✓	✗
Forfeiture of Lease	✗	✗	✓	✗	✗	✗	✗	✗	✗	✗
Prosecution	✓	✓	✓	✓	✓	✓	✗	✓	✓	✓

TPWC *Territory Parks and Wildlife Conservation Act*

WM *Weeds Management Act*

PL *Pastoral Land Act*

WA *Water Act*

BA *Bushfires Act*

WMPC *Waste Management and Pollution Control Act*

EA *Environmental Assessment Act*

SCLU *Soil Conservation and Land Utilisation Act*

PA *Planning Act* (clearing of native vegetation provisions)

HC *Heritage Conservation Act*