

Compliance and Enforcement Policy

Environmental Regulation Division



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1. Purpose

The Environmental Regulation Division (the Division) in the Department of Environment, Parks and Water Security (the Department) has a range of statutory and regulatory responsibilities directed at supporting sustainable economic development and protecting and managing the Territory's natural resources. The Division supports the Minister for Environment, the CEO of the Department, the Controller of Water Resources and the NT EPA to administer a range of legislation that protects the Territory's water and environmental resources. For convenience, a reference to "the Division" in this policy includes the CEO of the Department, the Minister, the Controller of Water Resources, NT EPA and statutory officers under the relevant legislation.

The Division is committed to providing an excellent regulatory service to Territorians and those we regulate. We aspire to be an effective and efficient regulator that is transparent, consistent and proportionate in applying and enforcing the law. Compliance with the law is not a matter of choice but a requirement, and the Division has a range of tools it uses to promote, monitor and enforce compliance.

This compliance and enforcement policy details the Division's approach to ensuring compliance with the legislation and how it responds to breaches of the law. In enforcing compliance with the law, the Division's objective is to fix underlying problems of harm to the environment and use its compliance and enforcement tools to achieve this outcome.

2. Scope

This compliance and enforcement policy applies to all legislation for which the Division carries out statutory and regulatory functions. It applies to all sectors of the community, including:

- Industry and commercial businesses, both licensed and unlicensed
- Members of the public
- Federal, Territory and local government.

This policy details how the Division undertakes its compliance and enforcement function; however, it is general in nature and does not confine, restrain or limit the discretion of decision makers under the legislation.

3. Our Legislation

The Division assists in the administration of the following legislation as well as regulations and statutory instruments under the legislation:

- *Environment Protection Act 2019*
- *Waste Management and Pollution Control Act 1998*
- *Environment Protection (Beverage Containers and Plastic Bags) Act 2011*
- *Water Act 1992*
- *Marine Pollution Act 1999*
- *Petroleum Act 1984*
- *Environmental Offences and Penalties Act 1996*

In addition to the above legislation, the Division is also responsible for compliance with Regulations and statutory instruments (licences, approvals, permits and plans) made or issued under those acts.

Each of these laws have a wide range of compliance and enforcement tools available and the choice of enforcement tool will depend on the relevant act and the regulatory approach and principles set out in this guideline.

4. Our Regulatory strategy

The Division aims to deliver transparent, consistent and proportionate regulation. The Division will achieve this through:

1. a risk based approach, where compliance and enforcement activities are determined by the severity of risk to health and the environment (section 4.1)
2. applying the principles of regulatory best practice (section 4.2).

4.1. Risk-based approach

The legislation provides a framework for protecting the environment, but the Division has discretion in how its statutory and regulatory functions are exercised and where it directs its resources and activities.

As a risk-based regulator, the Division prioritises its compliance and enforcement efforts to the largest risks and those areas where it can make the biggest difference to the environment of the Territory.

This means that the Division focuses on non-compliance, or potential non-compliance, that has caused, or has the potential to cause, material or significant environmental harm.

The Division uses science and intelligence to assess risks in terms of:

1. the likelihood of the risk occurring; and
2. the impact, or potential impact, to health and the environment if the risk occurred.

In applying a risk-based approach, the Division also prioritises resources to those entities and industries that are less likely to comply. The Division will consider both the particular entity and the industry as a whole when prioritising a particular entity or industry. We will be clear about what are areas of focus are.

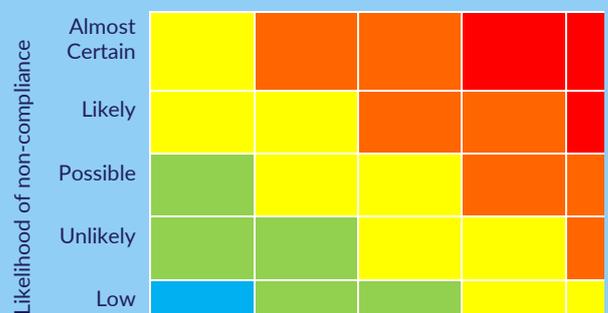
The Division’s knowledge of risk is informed by its understanding of the environment and threats to the quality of the environment and environmental standards. The Department holds extensive information in relation to flora and fauna, water resources, as well as the pastoral and parks estate.

The Division draws on that information to inform robust and science-based decisions.

The Division uses insights from the community and stakeholders as well as intelligence from operational activities and other regulators.

Likelihood: considers the potential for the non-compliance to occur. It takes into account: (a) the track record of the entity; (b) the systems in place to identify and manage environmental risks; (c) the competence of the entity and its operators; and (d) the resources the entity dedicates to environmental management, compliance and maintenance.

Consequence: considers the actual or potential impacts on health or the environment. It also considers the scale and duration of any harm or impact, the impact to the integrity of the regulatory regime and the level of public concern.



4.2. Regulatory best practice principles

The Division undertakes its compliance and enforcement activities responsibly, in the public interest, and with integrity and professionalism. The Division is guided by eight best practice regulatory principles, which are embedded in its compliance and enforcement actions.

Targeted	We allocate effort and resources to the areas with the potential for most serious harm.
Proportionate	Our compliance and enforcement activities are proportionate to the seriousness of the conduct and the resulting or potential harm.
Transparent	Information about the Division's activities is shared and enforcement actions are made public.
Consistent	Similar circumstances lead to similar enforcement approaches, where appropriate.
Accountable	Activities and decisions are explained and avenues of complaint or review are available and accessible.
Fair	<p>Actions and decisions are impartial, based on available evidence, intelligence and the strategic objectives of the Division.</p> <p>The Division provides support, advice and guidance to assist compliance, where appropriate.</p>
Authoritative	We maintain a trusted understanding of the environment and the level of compliance. We draw on expertise and data from across the Department to inform evidence-based decisions.
Responsive	Compliance and enforcement activities are done as efficiently as possible to avoid delays and uncertainty and to maximise the effectiveness of the activities.

5. Compliance and enforcement priorities

The Division establishes compliance and enforcement priorities to achieve the best outcomes for the environment, while making the best use of available resources. Consistent with the Division's regulatory strategy, prioritisation is determined using a risk-based methodology.

The Division cannot pursue all matters that come to its attention, the Division's role is to focus on those circumstances that will, or have the potential to, have the most serious impact on the environment or that have the potential to undermine the integrity of the regulatory regimes. Consistent with the risk-based methodology, the Division can exercise discretion to direct resources to matters that provide the greatest overall benefit.

5.1. Compliance and enforcement plan

The Division prepares and publishes a **compliance and enforcement plan**, which details its compliance and enforcement priorities over a three year cycle. Priorities are determined following an assessment of existing or emerging issues and their impact or potential impact on the environment or the integrity of the regulatory regimes. In determining its priorities, the Division uses the best available evidence and intelligence to consider the following factors:

- The industry type, nature, scale and complexity
- Compliance history of the industry and of entities and individuals associated with an activity
- The effectiveness of controls and measures an entity or individual has in place to mitigate impacts to the environment, and
- The location of sensitive receptors, including residents, schools, water bodies and their susceptibility to impacts from the activity.

In deciding whether to pursue a matter, the Division will prioritise those matters which fall within its **compliance and enforcement plan**. The Division will also give particular consideration to those matters which also have the following factors:

- Conduct that is of significant public interest or concern
- Conduct that results in material or significant environmental harm
- Conduct that is, or has the potential to become, widespread where the Division’s action is likely to have a wide educative or deterrent effect
- Where its regulatory action will assist to clarify aspects of the law, especially new requirements.

While the Division will always prioritise matters that are in its compliance and enforcement plan, it retains capacity to pursue other matters.

The Division is not a complaint handling body and rarely becomes involved in individual disputes. It is unlikely to pursue:

- one-off, isolated events, unless the conduct involves wider implications for the environment
- conduct that has caused no or minimal harm
- individual environmental nuisance issues
- matters that are more appropriately resolved directly between the parties (eg noisy neighbours)
- issues that are better considered by industry-specific regulators that have the regulatory focus and expertise to properly assess the issue (for instance noise or litter from premises licensed under the *Liquor Act 2019*).

6. Compliance monitoring activities

Compliance monitoring is a fundamental role of the Division and it uses a variety of tools to monitor compliance with environmental legislation and other statutory instruments such as licenses and approvals.

Compliance information will be assessed and analysed and will be used in informing the Division’s **compliance and enforcement plan**. Information obtained from compliance monitoring activities may also be used to drive regulatory change, such as amending conditions and improving policies and plans.

Inspections	<p>Field and desktop assessments, including inspections and analysis of aerial and satellite imagery, to gather information and assess compliance.</p> <p>The Division undertakes both proactive and reactive inspections. Sometime inspections may be unannounced. Proactive inspections are planned inspections that are scheduled to address the Division’s compliance and enforcement priorities. Reactive inspections are undertaken, including in response to reports of incidents. Not all incident</p>
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	reports will result in an inspection, the Division will determine whether an inspection is required based on its policy for triaging pollution reports .
Audits	<p>Audits can be field or desktop based and may be undertaken by accredited auditors or by the Division itself.</p> <p>A desktop audit is usually conducted by the Division and includes a targeted review of documents and records provided to the Division. Documents may be provided to the Division voluntarily, to meet the requirements of a statutory instrument (such as a licence or approval), or in response to a power to compel an individual or business to provide information.</p> <p>Alternatively, an audit may be conducted by a qualified person attending a site and assessing the procedures and processes that are in place to manage environmental risks. These audits may be conducted voluntarily by a business or individual or may be required under environmental legislation. This type of audit generally results in an audit report, which describes the methodology and outcomes of the audit.</p>
Community reports and complaints	<p>Members of the public are encouraged to report pollution through the NT EPA Pollution Hotline.</p> <p>The Division will receive, record and acknowledge all reports and assess the risk posed to the environment. Based on this assessment, the Division will determine an appropriate level of response in line with its compliance and enforcement priorities and its policy for triaging pollution reports.</p>
Information from other regulators and agencies	Potential non-compliance may be detected and reported by officers from other regulators and agencies, such as local government, NT WorkSafe, and Water Resources. The Division will consider this information as part of its compliance monitoring and will determine the appropriate response in line with its compliance and enforcement priorities.
Self-monitoring and reporting	Some legislation and statutory instruments administered by the Division, require certain entities or individuals to report on compliance with environmental legislation and/or their statutory instrument.

7. Investigations

Investigations are undertaken for a range of reasons, such as to determine the causes of an incident, to assess compliance with environment legislation, to determine what action may be needed to prevent further occurrences or to determine what action may be appropriate to enforce compliance with environment legislation.

Lessons learnt from investigations also inform development of guidance and policy material and may inform future changes to environment legislation.

Prior to determining whether to prosecute an alleged offence, the Division will undertake a comprehensive investigation to determine whether a contravention of the environment legislation has occurred that may warrant prosecution or an alternative punitive action.

The Division employs authorised officers, environmental officers and inspectors. These personnel have statutory powers that include powers to:

- require information
- enter and inspect premises
- examine, operate and test equipment
- take photographs, audio-visual recordings
- take measurements and samples
- seize property, including documents; and
- apply for, and execute, search warrants.

The information collected through these powers may be used for monitoring compliance and as evidence in an investigation. The way in which these personnel carry out their duties and exercise their statutory powers is governed by the relevant environment legislation and by the Division's authorised officer policy.

8. Enforcement tools

Enforcement is a response to identified non-compliance with environment legislation (including permits, licences, approvals or non-compliance with the general environmental duty), and involves a range of different actions to deter and punish offenders, support compliance, reduce the risk of existing or ongoing impacts and rehabilitate damage to the environment.

Enforcement has two elements:

- Remedy: fix the problem or 'make good'
- Sanction: punish, deter and change behaviour.

A number of tools are available to compel a person to remedy any harm caused by a contravention and to sanction a person for a contravention. These tools may be used alone or in combination.

Figure 2 represents the relative proportionate use of enforcement tools available and the ability to escalate intervention to achieve the desired outcome. However, this does not mean that any individual enforcement action will commence at the lower levels of the pyramid before progressing. Enforcement action is commenced using the most appropriate tools for the particular circumstances. The Division's enforcement guideline provides more detailed guidance on the enforcement tools and the considerations that are applied when determining which tools are appropriate.

The lowest level of the pyramid involves education, engagement and guidance, which are preventative tools, most often used before non-compliance. Prosecution and cancellation of statutory instruments (at the top of the pyramid) are applied for the most serious offences, where there is a high degree of culpability, or a high risk of harm to the environment from the conduct.



Figure 2 Compliance and enforcement pyramid

Decisions about which enforcement tool or tools are applied are guided by the Division's regulatory strategy in Section 4. In addition, when enforcement action:

- involves litigation, the Division is bound by the Northern Territory Government's Model Litigant Policy. The principles ensure that, when conducting litigation, the Territory meets the community's and the courts' expectations that it will conduct itself in a manner which exemplifies the principles of justice, and that the Territory's power will be used in the public interest
- involves prosecution, the Division is bound by the Guidelines of the Director of Public Prosecutions. These guidelines ensure a consistent approach to the prosecution of serious offences throughout the Northern Territory and set standards against which the performance of prosecutors may be measured.

The Division is guided by the overriding principle that enforcement action must not be taken for improper purposes. A decision on whether or not to take enforcement action will **not** be influenced by factors such as:

- the alleged offender's gender, ethnicity, nationality, political associations, religion or beliefs
- an employee's personal feelings towards the alleged offender or the victim
- possible political advantage or disadvantage to a government or any political group or party; or
- the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

In line with the Division's enforcement principle of transparency, if the Division uses its enforcement tools, it will usually provide public information about the details of the enforcement action (what action was taken and who it was taken against) and the reasons why enforcement action was taken.

The Division's enforcement guideline provides detailed information about:

- the enforcement tools
- the considerations for selecting enforcement tools
- how the Division assesses the seriousness of a breach, and

- how the Division selects the appropriate entity for enforcement action.

9. How we work with other divisions and agencies

The Division may consult the other agency to determine which agency should lead any investigation, and which agency would be the appropriate agency to take any enforcement action. There may be circumstances in which it is appropriate for a joint investigation to take place, and for each agency to take its own enforcement action.

The Division may be the appropriate agency to lead an investigation or take enforcement action where one or more of the following applies:

- the subject matter is more closely aligned with the Division's portfolio of responsibilities than that of the other agency
- enforcement action by the Division would more effectively prevent or remedy the contravention and its impacts
- the penalties that apply for the offence under the Division's legislation reflect the seriousness of the offence more accurately than the penalties under the other agency's legislation.

The Division may refer a matter to a local government for investigation or enforcement action where the matter is the responsibility of the local government.

Where dishonesty or other criminal offences are involved, the Division may refer the matter to the police or other authorities as appropriate.

10. Related documents

Compliance and enforcement plan: sets the objectives and priorities of the Division over the planning cycle (likely 3 yrs), provides clear, simple explanation of the focus of the Division and where it will prioritise resources for the life of the plan.

Enforcement guideline: provides detail on the different enforcement tools and the considerations relevant to the exercise of those powers.

Policy for triaging pollution reports: will provide a process/procedure and policy principles to help guide what happens to pollution reports.

Authorised officer policy: provides information on how AOs are appointed, their powers, making complaints about conduct etc.

Compliance and Enforcement Committee TORs: ensures consistency in decision making across the whole division.