

Department of Planning, Housing and Infrastructure

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Guideline – Crown land compliance and enforcement

March 2024



Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Foreword

Managing Crown land responsibly supports regional economic growth in New South Wales (NSW). It strengthens local communities and helps to protect the natural environment for future generations.

Users and occupiers of Crown land must comply with the:

- Crown Land Compliance and Enforcement Policy
- *Crown Land Management Act 2016* (the Act)
- Crown Land Management Regulation 2018 (the Regulation)
- *Roads Act 1993*
- other relevant legislation.

These guidelines outline the responsibilities this entails.

There are contact details in this document to help you find more information and support.

These guidelines also outline the responsibilities of the NSW Department of Planning, Housing and Infrastructure (the department) as the manager of Crown land. The department must fully comply with all relevant Acts and regulations relating to the land it manages.

The department decides and acts on compliance and enforcement issues in the interest of the community.

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Overview

These guidelines explain how the NSW Department of Planning, Housing and Infrastructure carries out compliance and enforcement, as outlined in the Crown Land Compliance and Enforcement Policy.

Our goals

The department's goals are to:

- promote compliance with the objects of the *Crown Land Management Act 2016* and other legislation
- promote the principles of compliance
- identify and assess risks that affect regulatory outcomes
- allocate resources according to the level of risk
- tailor its use of enforcement and other regulatory tools based on the severity of the non-compliance and the behaviour driving this
- ensure decisions are transparent
- guide decision-making and action by authorised officers, who must consider the use of a range of compliance and regulatory options
- take an approach to compliance and regulatory activities that is based on risk.

Principles of compliance

The department will make all decisions based on the principles of compliance, which are:

- promoting voluntary compliance
- public interest
- having enough evidence
- lawful and reasonable actions
- duty of care.

Responsibilities

The department is responsible for the sustainable and commercial management of Crown land, including tenured, untenured or reserved lands. These responsibilities include protecting the environment and natural resources. The department must also encourage public enjoyment of and the sustainable use of Crown land.

The department's responsibilities extend, but are not limited to:

- managing risks such as:
 - pollution
 - contamination
 - unauthorised structures and materials
 - encroachments
 - public safety
 - non-compliance with tenure conditions (not following the conditions of a licence or lease)
- ensuring authorised use of Crown land
- helping Crown land managers respond to compliance matters.

Risk-based approach

The department's risk-based approach is based on the objects and principles of the Act and best practice. Our goal is to make sure the community is aware of its rights and responsibilities to follow the relevant legislation. This includes people who hold leases, licences or permits.

When taking a risk-based approach, the department will consider relevant factors including:

- the current or future usefulness of the land
- public health and safety
- actual or potential environmental harm
- public interest and concern
- the person's history of compliance or non-compliance
- similar instances of non-compliance, especially in a local area
- mitigating factors, such as if the:
 - person clearly did not mean to break laws or regulations
 - person acted in line with the advice of staff from the department or another agency
 - person has not broken laws or regulations before and has expressed a clear intent and capability to address the effects of their actions.

The department communicates with, educates and supports stakeholders to help them meet their obligations and avoid accidentally breaking laws or regulations. Where necessary, compliance is achieved through a graduated and proportionate response. The department may use a range of regulatory tools such as directions, notices and stop-activity orders to achieve suitable outcomes including remediation, fines or prosecutions.

If you are not authorised to use or occupy Crown land, you should always contact the department. The department will discuss the matter with you and verify if you can lodge an application to use the land. We will discuss restrictions and prohibited activities with you.

Background

The department is responsible for the sustainable and commercial management of Crown land in NSW. We do this by ensuring the land is used in an approved and authorised way, consistent with the objects of the Act.

The department must also manage resources to achieve compliance consistently and transparently.

For more information about Crown land, visit the department's website, www.crownland.nsw.gov.au

The department has a legislative responsibility to meet the objects of the Act and associated regulations.

The objects of the Act (s. 1.3) are to:

- provide for the ownership, use and management of the Crown land
- provide clarity concerning the law applicable to Crown land
- require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land
- provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales
- facilitate the use of Crown land by the Aboriginal people of NSW because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land, and
- provide for the management of Crown land having regard to the principles of Crown land management.

For the purposes of the Act, the principles of Crown land management are that:

- environmental protection principles be observed in relation to the management and administration of Crown land
- the natural resources of Crown land including water, soil, plants, animals and scenic quality be conserved wherever possible
- public use and enjoyment of appropriate Crown land be encouraged
- where appropriate, multiple use of Crown land be encouraged
- where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity
- Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the state, consistent with the above principles.

Code of Conduct

The department promotes and upholds the NSW Public Sector's core values of service, integrity, trust and accountability. These values are part of all aspects of its compliance and enforcement regulatory activities. All officers must comply with the department's *Code of Conduct*, which provides an ethical framework for decisions, actions and behaviour.

Help

Call the department's Business Centre on 1300 886 235 for help.

Contact hours are Monday to Friday, from 8.30 am to 4.30 pm.

You can also email or write to the department.

Email: enquiries@crowmland.nsw.gov.au

Post: PO Box 2185 Dangar NSW 2309.

Approach to compliance

The department's goal is to ensure the community complies with the Acts it administers. This includes tenure-holders (people licencing or leasing Crown land) and other users.

Where the department finds non-compliance, it may consider enforcing compliance through regulatory action. The department achieves compliance through a graduated and proportionate response, using a range of regulatory tools to achieve suitable outcomes. These responses include:

- directions
- notices
- stop-activity orders
- remediation
- fines
- prosecutions.

The department may act on a compliance matter, no matter how it is detected.

To carry out the policy, the department will:

- promote voluntary compliance through community education and engagement
- monitor compliance of Crown land-related activities across NSW
- identify individual compliance issues
- assess and prioritise risks that affect regulatory outcomes
- investigate matters of non-compliance
- take appropriate, risk-based regulatory action when non-compliance occurs
- measure and report on performance
- evaluate the compliance approach.

Figure 1 below illustrates the department's approach to compliance and enforcement.¹

When undertaking compliance, the department will be guided by the Department of Industry Regulatory policy. We will also be guided by the assessment of risk attributed to the matter, which will determine the appropriate regulatory action.

¹ Department of Planning, Housing and Infrastructure Regulatory Policy - IND-0-233 - specific terminology used in the above figure is indicative but not limited to the actions that the department may take.

Figure 2 below illustrates the department's compliance and enforcement process

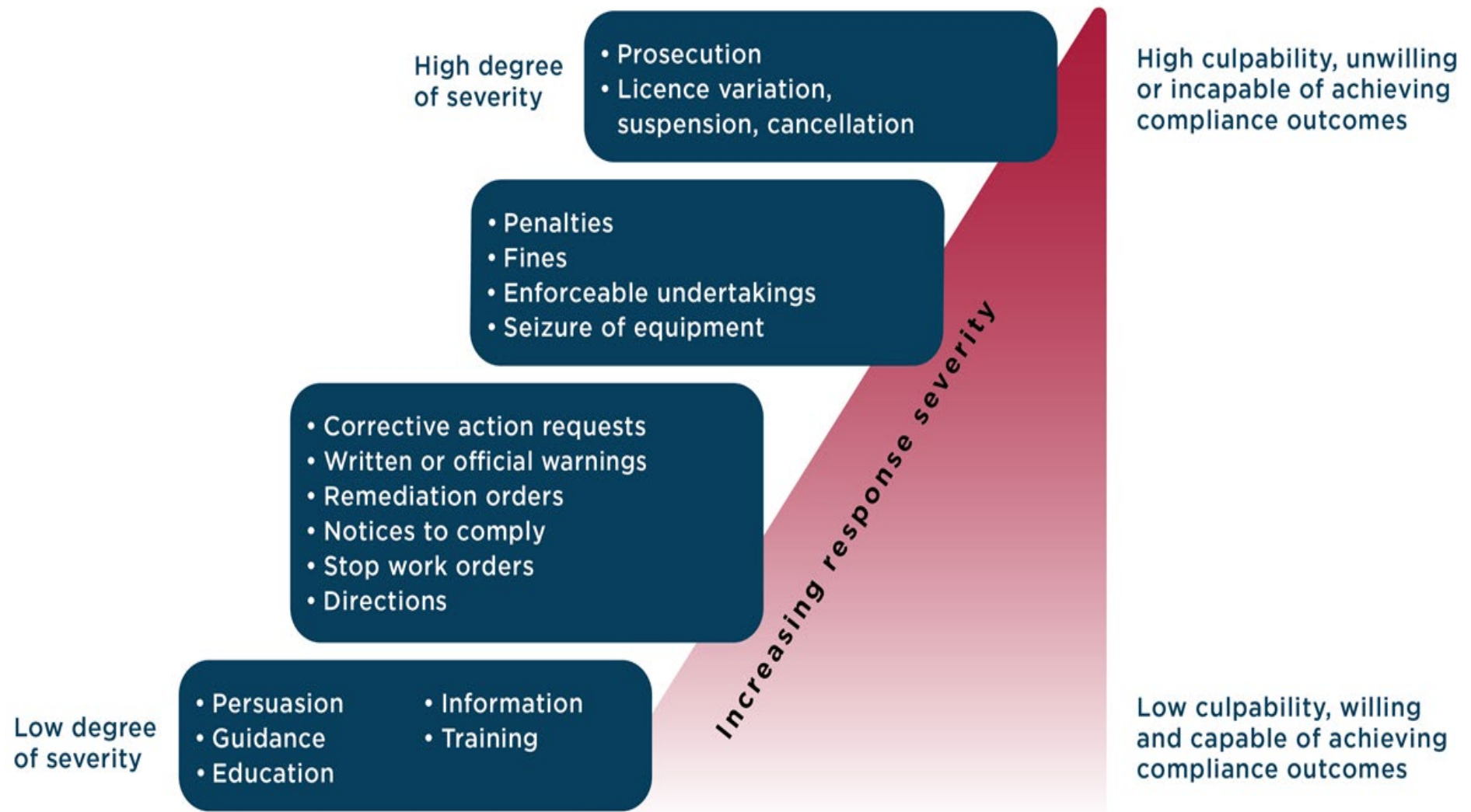


Figure 1. The department's approach to compliance and enforcement

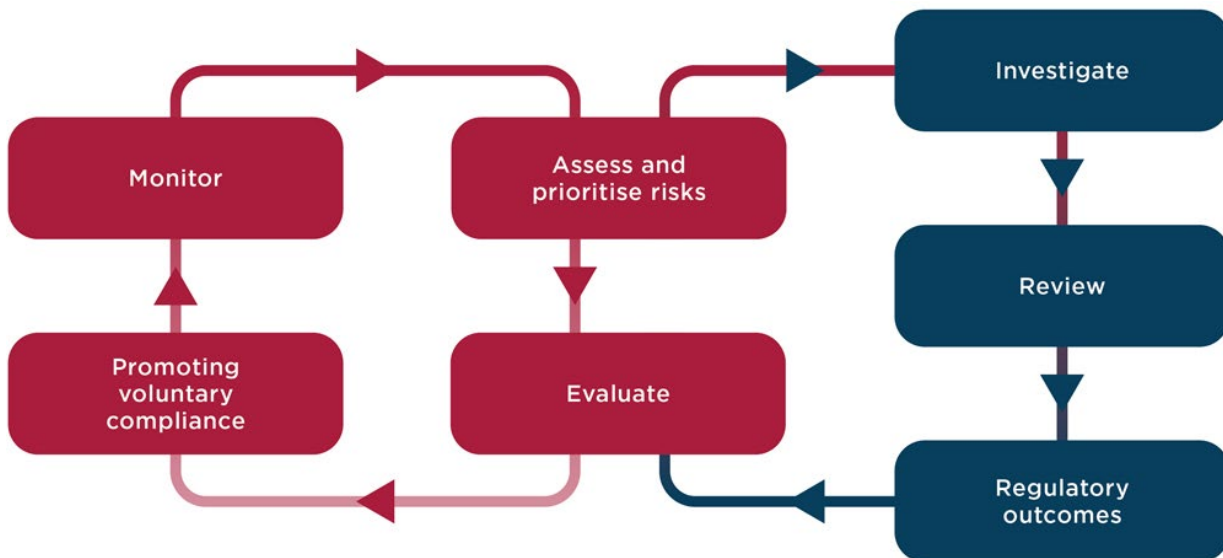


Figure 2. The department's compliance and enforcement process

Promote voluntary compliance

The department will promote voluntary compliance through a range of education, information and training activities. These aim to build the capacity of the community to play an informed and active role in complying with the Act.

These activities may include:

- giving Crown land managers and users information, resources and tools to help them
- engaging with stakeholders to build capacity (site visits, website, media releases and information sessions)
- promoting and reinforcing best regulatory practice, including the:
 - benefits of complying with the legislation
 - potential consequences of not complying with the legislation
- working with willing stakeholders to rectify non-conformance, where appropriate.

Monitor

The department will carry out a range of proactive activities and respond to issues that it is made aware of, including through complaints or reports. The department may do such things as:

- auditing tenures on a risk- based approach
- inspecting tenures upon transfer
- inspecting reserves

- using imagery
- doing coordinated monitoring with other agencies.

Irrespective of how the department is made aware of the compliance matter, the department will record and deal with it in keeping with departmental policy and procedures.

If you are aware of non-compliant activities on Crown land, please contact the department.

Assess and prioritise

The department will prioritise all instances of alleged non-compliance with legislation for investigation using a risk-management approach.

We use the risk assessment and prioritisation process to:

- assess instances of non-compliance
- prioritise actions according to the level of risk of non-compliance and its effects
- efficiently allocate limited compliance resources to deal with the highest priority activities, or matters where regulatory action is likely to be most effective
- identify trends in non-compliance that may require a planned response
- improve business and community support and guidance for compliance on important issues.

The department will assign a lower-level priority where the risk of the non-compliance is lower, or the impacts are lower.

We will assign a higher-level priority where the risk of non-compliance and the effect on regulatory outcomes is greater.

The department allocates resources according to the level of risk. This approach addresses the compliance issue. It also mitigates potential risks to the health and safety of the community and the environment, and increases the level of compliance with legislation.

Irrespective of the level of risk, the department will endeavour to resolve compliance matters appropriately. In some cases, the appropriate resolution may be to record the matter only and investigate no further.

Investigate

The department will train and appoint authorised officers to investigate instances of non-compliance. The department uses statutory provisions (legal conditions) and other methods to support appropriate outcomes.

Any staff from the department or any other state or federal agency may take part in an investigation, not only authorised officers.

Authorised officers

Authorised officers who have completed training or have the competency required by the Minister for Lands and Property may take enforcement action. Authorised officers must carry their identity cards when exercising a function under the Act. The authorised officer will present their identity card if any person subject to a compliance activity asks them to do so.

Authorised officers may conduct site inspections and collect information or evidence from any person with knowledge of the offence, including tenure-holders, in keeping with departmental procedures.

Evidence may include:

- observations – authorised officers should record evidence of observations in notes taken at the time
- physical evidence – evidence of tangible items (by seizure or recording by photograph)
- documentary evidence – evidence recorded within documents and records
- digital evidence – evidence recorded in digital format, recorded interviews, databases, websites, CCTV footage, videos, surveillance and photographs.

Authorised officers have a range of powers available to them to help them gather evidence.

This includes the power to:

- enter land
- require information or records
- question and identify persons
- use search warrants.

Authorised officers can exercise a power under the Act within their delegated authority. The department expects authorised officers to exercise their powers and collect evidence in a fair and reasonable manner. The use of a power must be justified and appropriately recorded. On each occasion when authorised officers are issuing directions or serving notices, they must warn the person that failure to comply is a breach.

Review

The department will consider evidence gathered through the investigation process. The department will only begin legal proceedings where there is enough evidence to establish the criminal standard of proof.

The type and extent of regulatory action taken depends on the:

- seriousness of the environmental harm or impacts
- culpability of the offender
- history of prior offending
- aggravating circumstances
- legislation.

The applicability of and weight to be given to each of the above factors depends on the circumstances of each case. Authorised officers decide the level of significance with reference to internal policies, peer reviews and supervisor support. Authorised officers work within their delegated authority.

Regulatory responses

When an investigation determines there has been non-compliance, the department will act appropriately to prevent or correct it. The regulatory action for a matter will be determined in keeping with the principles of compliance. Regulatory responses may include:

- **issuing advisory letters** – reminds the recipient of their legal responsibilities and is not an accusation that they have breached any law. Advisory letters may refer to guidance material that is available to help and support compliance
- **issuing warning letters** – issued when an investigation shows a breach has occurred, to avoid escalation or continued breaches, or to achieve voluntary compliance. Warning letters may refer to guidance material that is available to help and support compliance
- **issuing penalty infringement notices** – are a fine that an authorised officer can issue for an offence where they consider an infringement notice is appropriate in the circumstances. Regulations fix the amount of the fine, which may be less than the maximum penalty that may be imposed by a court. The recipient may choose to seek review or appeal a penalty notice in court
- **issuing statutory directions, orders and notices** – can be issued by an authorised officer for unauthorised, unsafe activities or a threat to the environment on Crown land
- **seizing or impounding** – an authorised officer may take any necessary action on Crown land for a compliance purpose
- **issuing forced licence** – a licence may be issued to a person without their consent to allow them to use Crown land in a situation where they are currently using the land without lawful authority
- **removing trespassers** – an authorised officer may apply to the local court for an order authorising them to deal with a person as a trespasser on specified Crown land

- **accepting civil undertakings** – are a written, legally binding agreement proposed by a person. The undertaking may be agreed to when it is the appropriate regulatory outcome
- **court proceedings**, including:
 - applying for court orders
 - beginning proceedings to enforce undertakings
 - responding to court-elected penalty notices
 - beginning prosecutions
 - preparing for appeals
- **completing an administrative review process** – when a person is unable to appeal or request an administrative review through a statutory process, the department may consider an internal review.
- take no action other than to record the matter.

Where appropriate, potentially affected parties will have the opportunity to give information about a matter before the department makes a regulatory decision. The department will inform all relevant stakeholders of outcomes (considering privacy and confidentiality requirements) and return property, where appropriate.

Evaluate

The department will measure the performance of its compliance functions so it can:

- report on activities
- learn from experience and continually improve the effectiveness and efficiency of its approach to compliance
- identify emerging compliance issues and trends.

In particular, the department will measure:

- the number and type of reported or detected instances of non-compliance
- regulatory outputs, such as the number of stop-activity orders, remediation notices and penalty infringement notices.

Monitoring and evaluating compliance with the Act is an essential part of the department's regulatory role. This approach enables the department to evaluate the overall effectiveness of its compliance function and individual compliance programs in keeping with the legislation. This allows the department to understand and respond to emerging risks.

Review and complaint handling

If you are not satisfied with the department's compliance actions, you may request an internal review, where applicable.

Contact our Business Centre

Phone: 1300 886 235

Email: enquiries@crownland.nsw.gov.au

Post: PO Box 2185 Dangar NSW 2309.

If you are not satisfied with the review process or would like to lodge a complaint, you may contact the NSW Ombudsman.

Contact the NSW Ombudsman

Phone: 1800 451 524

Email: nswombo@ombo.nsw.gov.au

The Ombudsman will ensure that the steps the department took were in keeping with the *Crown Land Management Act 2016*. The Ombudsman will also ensure that the department's actions are appropriate, considering the findings of the investigation.

Definitions

Refer to the [Crown Land Compliance and Enforcement Policy](#) for related definitions.