



Department of  
Primary Industries  
Lands

# Compliance and Enforcement Policy

May 2016



Abrahams Bosom Creek

## Contents

1. Policy statement	3
2. The Department's responsibilities	3
3. Crown land managers	3
4. Policy and legislation	4
4.1 The Department's legislative responsibilities	4
5. Compliance and enforcement	5
5.1 Requirements	5
5.2 Procedures	7
5.2.1 Compliance & enforcement operational procedures	7
5.2.2 Operational compliance priorities	7
5.2.3 Compliance and enforcement options	7
5.2.4 Implementing compliance and enforcement	7
5.2.5 Community education and awareness	8
5.2.6 Monitoring and auditing	8
5.2.7 Penalty Infringement Notices	8
5.2.8 Investigating alleged breaches	8
5.2.9 Taking Appropriate Action when a breach occurs	9
5.2.10 Reassessment of Breach	9
5.2.11 Roles and responsibilities	9
6. Conclusion	10
More information	11

## 1. Policy statement

The purpose of this Policy is to inform the community about how the Department of Primary Industries - Lands (the Department) intends to manage both compliance with the legislation it administers and how these compliance responsibilities can be implemented in a fair and equitable manner for the people of NSW. This policy will guide the Department's compliance activities to ensure they are consistent with the broad role of promoting effective natural resource and Crown land management in the public interest.

The Department is committed to proactively managing and monitoring risks to the Crown land estate through the implementation of this compliance policy and internal operational procedures which are founded on a targeted, transparent and practical approach to compliance, supported by appropriately trained staff and strong enforcement capability if required.

The Principles of Crown land management as contained in section 11 of the *Crown Lands Act 1989* assist to shape compliance and enforcement actions within the Department. The six principles are:

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

## 2. The Department's responsibilities

The Crown land estate constitutes around half of all land in New South Wales. The greater part, approximately 36 million hectares is, "tenured" under lease or license, mainly for farming and grazing.

The Department administers the Crown estate and is responsible for the sustainable and commercial management of Crown land including the 3 nautical mile zone and Western Division land. It is responsible for the professional management of some 72,600 licences and permits state wide, along with approximately 14,800 leases. Licences and leases may be issued for waterfront occupations; commercial purposes; grazing and agriculture; residential; sporting; community purposes; tourism; and industrial purposes. The Department can also provide land information/status and land account services as well as a map and products sale centre.

Approximately 4 million hectares of Crown land is reserved or dedicated for public purposes and must be managed in the broad community interest. This land, either reserved or dedicated, is called the Crown reserve system. There are more than 30,000 Crown reserves managed by local government, community trust boards and a range of community-based corporations (such as Boy Scouts organisations), Livestock Health & Pest Authorities or directly by the Department.

A further area of some 750,000 hectares is set aside for Crown road reserves, much of which is held subject to enclosure permits, which allow land to be used by adjacent land holders without the need for fencing.

## 3. Crown land managers

The Department recognises the expertise of land managers administering Crown land. The Department will provide information and advice to assist land holders manage Crown land or, where applicable Crown land converted to freehold, in accordance with relevant conditions of tenure, covenants or restrictions on use. Other organisations such as local councils also play a large role in managing identified Crown lands within their area, particularly lands valued by their local communities.

The Department also recognises the expertise of other agencies in dealing with specific compliance matters and will develop close working relationships with other agencies, including providing external

authorisations for investigating offences and applying penalties, but only where there is a clear demonstration of the need for such authorisation.

## 4. Policy and legislation

It is the policy of the Department, as the manager of Crown lands, to fully comply with all relevant legislation, laws, regulations, standards, codes and internal policies in the Division's activities, and to require compliance with the same by users and occupiers of Crown lands.

The Department aims to reduce non-compliance with legislation through a strategic application of relevant compliance and enforcement procedures.

Whilst this policy is primarily for dealing with breaches of legislation causing environmental harm of Crown land, it also necessarily applies to compliance with all legislative requirements administered by the Division.

The Department administers a range of legislation applying to Crown land in NSW. The legislation encompasses a variety of statutory requirements containing penalty provisions, and administrative actions for legislative breaches.

The Department has the responsibility to ensure that Crown land is managed in accordance with the principles as mentioned previously, in accordance with the terms and conditions under which it is held, or the purposes for which it is reserved or dedicated. The Department's Compliance and Enforcement Policy has been developed to outline these responsibilities to ensure that they are met.

### 4.1 The Department's legislative responsibilities

The Department has regulatory responsibilities under the following Acts:

#### *Crown Lands Act 1989*

The *Crown Lands Act 1989*, in conjunction with the Crown Lands Regulation 2006 and Crown Lands (General Reserves) By-Law 2006 contain provisions that regulate activities on Crown land.

Leases granted under the Crown Lands Acts and its predecessors may be special leases, term leases, perpetual leases or oyster leases. Regulatory responsibilities in relation to leased Crown land involve enforcement of lease conditions, detection and management of unauthorised activities, and general land management actions. Special Leases and perpetual leases are regulated under the *Crown Lands (Continued Tenures) Act 1989*.

Licences may be granted by the Department for a number of uses, including gravel extraction, communications towers, grazing, pipelines & infrastructure and domestic waterfront structures. Regulatory responsibilities in relation to licensed Crown land involve enforcement of licence conditions, detection and management of unauthorised activities, and general land management actions.

Crown land can be reserved or dedicated for a variety of purposes, such as public recreation, environmental conservation, foreshore and coastal lands, caravan parks, racecourses, showgrounds or regional reserves which are multiple purposes. Regulatory responsibilities in relation to reserved lands include land management, detection and management of unauthorised activities, protection of public land (rubbish dumping etc), contaminated sites, collection of fees, inspection /maintenance of infrastructure, camping, compliance with conditions of use by the public and enforcement of lease and licence conditions. There is also a compliance role in ensuring that the reserve trust managers appointed to manage reserved Crown land abide by administration and financial management requirements arising in the Act and regulations. Primary responsibility for environmental compliance lies with reserve trusts where appointed to manage a reserve.

Regulatory responsibilities under this Act comprise enforcement of conditions that have been imposed on enclosure permits or other approvals, and management of unauthorised activities on, and illegal occupation of, Crown road reserves.

#### *Crown Lands (Continued Tenures) Act 1989*

Regulatory responsibilities under this Act involve enforcement of conditions, detection and management of unauthorised activities and illegal occupations in relation to permissive occupancies and other holdings permitted by the provisions of this Act.

### *Conveyancing Act 1919*

Perpetual leases converted under the *Crown Lands (Continued Tenures) Act 1989*, the sale of Crown roads or the sale of other Crown land, become freehold land. Where covenants have been placed on the title of these former Crown lands, those covenants may bind the purchaser and subsequent owners of the land, under section 88D or 88E of the *Conveyancing Act 1919*. Regulatory responsibilities in relation to enforcement of covenants and land management restrictions arise under the provisions of the *Conveyancing Act 1919* and Part 4A of the *Crown Lands Act 1989*.

### *Roads Act 1993*

The Minister administering the *Crown Lands Act 1989* is a roads authority in relation to Crown roads, and has the authority under the *Roads Act 1993* to open and close roads and to consent to construction works on Crown roads.

### *Commons Management Act 1989*

The provisions of this Act apply to Crown land set aside as commons, and operate to regulate activities and use of commons. The regulatory responsibilities include ensuring sound financial and administrative management by trusts established in respect of commons, as well as land management and the protection of public land.

### *Western Lands Act 1901*

Nearly all the land in the Western Division is held under Western Lands Leases, granted under the *Western Lands Act 1901*. The primary purpose of the Act is to ensure appropriate land administration and land management in this fragile environment. Its administration is the responsibility of the Minister for NSW Department of Industry, Skills and Regional Development (Department of Industry).

Regulatory responsibilities under this act involve auditing and monitoring of compliance with Western Lands Lease conditions and associated lease purpose, and compliance with conditions of other approvals under the Act.

## 5. Compliance and enforcement

The Department will implement its compliance and enforcement role through:

- raising and maintaining community education and awareness;
- monitoring and auditing;
- investigating alleged breaches;
- taking appropriate action when a breach occurs to prevent recurrence of compliance failures;
- review and reporting of breaches and compliance actions.

The Department will undertake compliance monitoring and enforcement in conjunction with other state government agencies, Local Land Services, local councils, peak bodies and industry groups to achieve desired outcomes. This will result in coordinated, consistent and cost effective compliance programs.

### 5.1 Requirements

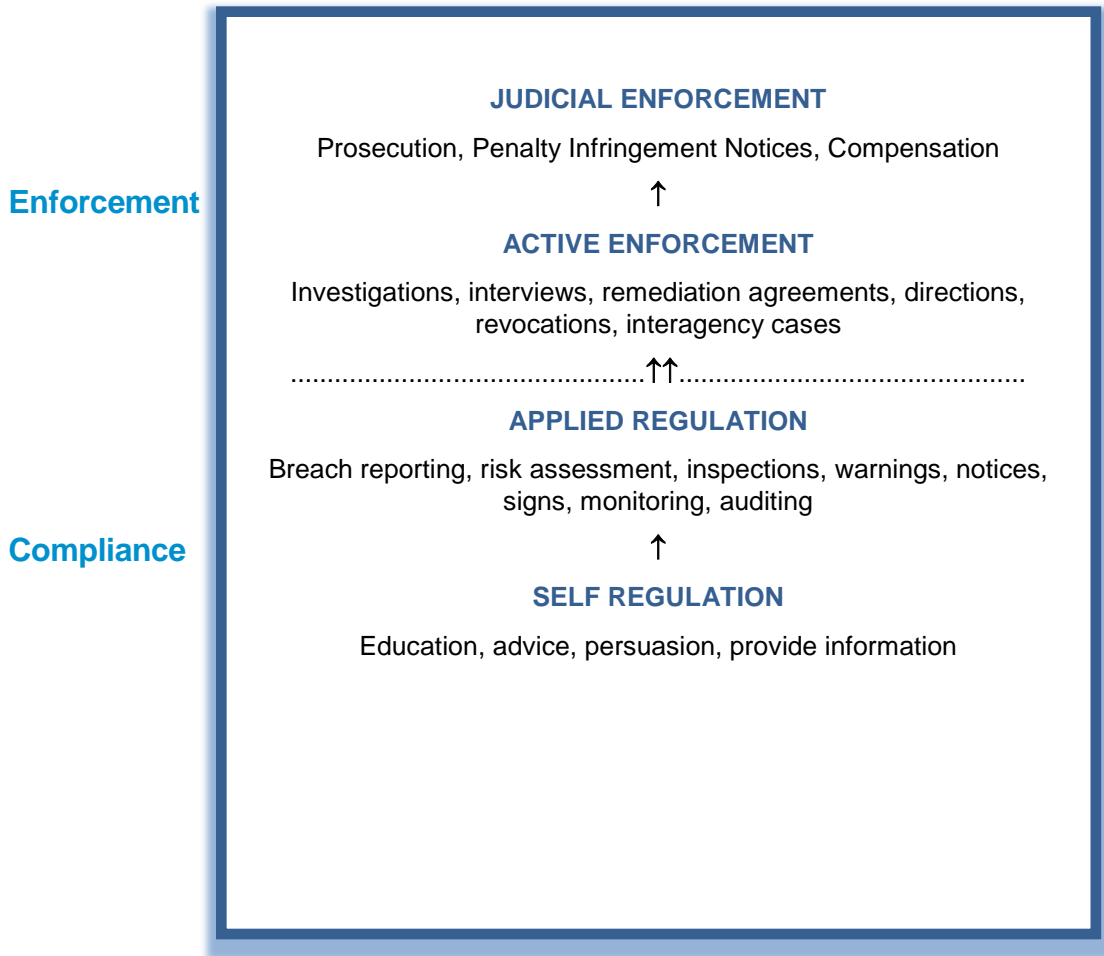
**Compliance** is the broad term used for a regulatory mechanism, and includes both direct and indirect processes taken to inform, persuade and assist people to comply, as well as initial breach reporting, assessing breach risk, inspections, referral to other agencies and lower level regulatory action including warnings, notices, and revoking licences.

The compliance function is delivered by all staff, with assistance and training from the Natural Resources Services Compliance Unit.

**Enforcement** is a subset of the compliance process that involves responses to breaches including investigations, evidence collection, remediation agreements, injunctions, fines and prosecutions.

The enforcement function is coordinated and assisted by the Natural Resources Services Compliance Unit.

The following model shows the hierarchy and relationship between ‘compliance’ and ‘enforcement’ functions.





## 5.2 Procedures

### 5.2.1 Compliance & enforcement operational procedures

Operational procedures will continue to change and develop over time consistent with this Policy and in accordance with changes in the Department's priorities, legislation, and operational structures.

The Department's operational staff are responsible for undertaking monitoring and auditing, inspections or investigations according to this policy and internal operational procedures. Staff will carry out duties in accordance with relevant training and authorisation in cooperation with the Natural Resource Compliance Unit.

Four tools will be used to administer Crown land

- Education and awareness
- Monitoring
- Auditing
- Compliance investigations

### 5.2.2 Operational compliance priorities

Operational priorities focus on the prevention of breaches and non-compliance in order to avoid impacts on Crown land resources and assets, and to minimise staff and other resources required for enforcement actions.

The Department will endeavour to minimise the occurrence of breaches by clearly communicating responsibilities to all Crown land users and by assisting individuals and the public to manage the Crown estate in accordance with specific obligations.

### 5.2.3 Compliance and enforcement options

The Department will utilise a range of compliance and enforcement options with the intent to achieve a high level of protection and equitable use of Crown land resources if required.

The appropriate compliance or enforcement option taken will depend on the individual circumstances of each case. An example would be the extent of environmental damage which has occurred as a result of unauthorised activity on Crown land.

### 5.2.4 Implementing compliance and enforcement

The Department will implement its compliance and enforcement role through:

- Providing appropriate staff training.
- Continually developing and deploying appropriate practices.
- Raising and maintaining community education and awareness by increased use of the NSW Department of Industry Communications and Engagement Branch.
- Monitoring and auditing Crown land consents, tenure conditions and land and asset use.
- Continue to implement and promote breach reporting, investigation and enforcement actions consistent with NSW Government standards for the protection of public land.
- Actively participate in membership of Australasian Environmental Law Enforcement and Regulators Network (AELERT).
- Maximising compliance with legislation, including cooperation with other agencies, referral to other agencies through Memorandums of Understanding and agreements, and using legislative provisions to achieve best environmental outcomes.
- Prioritising environmental remediation as a preferred enforcement outcome.
- Providing a credible and effective regulatory guide for stakeholders and the wider community by documenting clear tenure details and responsibilities.

The Department will ensure that compliance and enforcement activities are undertaken in a manner that are:

- in accordance with the law;

- effective and appropriate;
- fair and impartial;
- respectful of individuals; and
- within officers (staff) authority.

The Department promotes self-regulation and encourages the community and individuals to act in accordance with the rules and regulations applying to any Crown land. Self-regulation through monitoring agreements and electronic reporting will be increasingly promoted.

### 5.2.5 Community education and awareness

Engaging the community in the management of the Crown estate will be a high priority for the Department in order to minimize the occurrence of breaches and negative impact on Crown land. The following are approaches that may be utilised:

- Through media releases/information sheets – when appropriate e.g. the notification of where information/advice can be obtained, where information sessions will be held, specific information sheets.
- Through community committees – liaise and meet with groups including Local Land Services, NSW Farmers, National Parks Association, and Local Government.
- By meetings with licensees/landowners at strategic localities – initiate small group meetings at selected localities.
- By advising the public through media releases of any convictions or remediation directions resulting from serious high risk cases.

### 5.2.6 Monitoring and auditing

Monitoring and auditing is an essential part of the Department's compliance role. The main purpose is in order to educate the community, to provide management information to ensure that acceptable standards of environmental protection are being achieved, improve compliance with tenure conditions and prevent potential breaches.

The Department will work with other agencies, such as Local Land Services, the Office of Environment and Heritage and local government, which undertake compliance monitoring of environmental management activities to avoid unnecessary duplication, minimise disruption to land managers and achieve efficiencies and synergies wherever possible.

### 5.2.7 Penalty Infringement Notices

Section 162 of the *Crown Lands Act 1989* makes provision for penalty notices to be given on the spot or soon after the event for certain offences against the *Crown Lands Act 1989*, the *Crown Lands Regulation 2006* and the *Crown Lands (General Reserves) By-law 2006*. These offences include prohibited actions on public land and reserves and are listed under Schedule 5 of the *Crown Lands Regulation 2006*.

Penalty notices may be issued when the breach is considered minor and evident. Penalty notices offer the person who has been served with the notice to pay the fine instead of having the matter determined in court.

Penalty infringement notices are issued by authorised persons who have attended both internal Departmental compliance training and online training administered by the State Debt Recovery Office. Reserve Trust members and employees who are authorised persons are guided by policy POL001 Self-Enforcing Infringement Notice Scheme policy and procedure found on the Departments website.

### 5.2.8 Investigating alleged breaches

Largely (apart from penalty infringement notices) alleged breaches of legislation administered by the Department are prioritised for investigation using a risk assessment framework. The framework consists initially of an alleged breach report being entered into the Crown Lands Information Data Base. A risk assessment is then undertaken by the Natural Resource Compliance Unit to ensure the most efficient allocation of the Department's resources during any potential investigation. The risk assessment allocates levels of risk based on the following categories;

- Timing of the alleged offence



- Environmental Impact
- Culpability
- Repeat Offender
- Aggravating factors
- Mitigating factors
- Equity Factors

The individual categories of risk are tallied to provide an overall level of risk of Low, Moderate, High or Extreme.

### 5.2.9 Taking Appropriate Action when a breach occurs

If after a full investigation, it is considered that a breach has occurred, the Department will take action appropriate to the significance of the breach and according to internal operational procedures.

The Department's decision to commence prosecution action or civil proceedings will be made by the Director of Infrastructure and Land Management or Director Regional Services, Lands after considering a number of issues including whether the public interest is best served by the pursuit of a prosecution and the gravity of the offence is such that prosecution is the appropriate response.

Where a breach involves a reserve trust, the Department will consider appropriate action including a review of the management structure and possibly appointment of new trustees.

### 5.2.10 Reassessment of Breach

During the course of investigation and subsequent compliance actions new information may come to light which may change the initial risk assessment. The case is then reassessed using the risk assessment framework to determine any change in risk.

### 5.2.11 Roles and responsibilities

#### 1. Professional conduct

Departmental staff are required to comply with the NSW Trade & Investment Code of Conduct when carrying out all components of their duties. Compliance decisions will be made in accordance with public sector procedures and to the highest ethical and professional standards.

#### 2. Capacity strengthening

Compliance training will be delivered by both electronic means and face to face to relevant staff, reserve trusts, and in specific cases, externally appointed agencies requiring authorisation under the *Crown Lands Act 1989*.

Compliance training is reviewed annually to ensure that staff, including externally authorised persons and reserve trusts, are trained appropriately for the tasks they perform.

#### 3. Review and analysis of compliance

To ensure that conditions of tenure and land management plans and covenants are achieving the desired land management outcomes in the most effective way, the Department undertakes review and analysis of environmental management and compliance across tenure conditions and covenant types. This will:

- measure the nature and extent of compliance and non-compliance in different circumstances and in accordance with a range of environmental management requirements;
- compare the effectiveness of different tenure conditions and covenants;
- enable the Department to refine tenure conditions and covenants;
- enable the Department to improve the quality and effectiveness of environmental management programs.

#### 4. Recording and reporting

Recording and reporting of compliance monitoring activities, alleged non compliances, investigations and actions taken is a critical part of measuring outcomes and ensuring continuous improvement. In November 2014 a centralised system for the reporting and tracking of alleged breaches and compliance

investigations was introduced. The Department personnel enter alleged breaches of the *Crown Lands Act 1989* into this system which is located within the Crown Lands Information Database (CLID).

CLID is electronically linked to:

- terms and conditions of existing and new tenures (e.g. licences and leases);
- Crown reserve purposes and associated environmental management requirements;
- restrictions on use, conditions and covenants imposed on the sale of Crown land and the grant of applications to purchase Crown holdings.

The Department will record and report annually on:

- all reports of alleged non-compliance from internal and external sources including Departmental staff or others acting as agents for the Department, members of the public, local councils, Local Land Services and other government bodies; and
- all investigations and action taken in relation to alleged non-compliance.

## 6. Conclusion

This policy has no legal status and is not legally binding on the NSW Department of Industry, Skills and Regional Development (NSW Department of Industry). The policy cannot be used to limit the discretion of the NSW Department of Industry to take any enforcement action.

This policy is only to be interpreted as general guidance in how the Department of Primary Industries – Lands will undertake its compliance and enforcement function for the protection of public lands (Crown land).

### Definitions

WH&S: Work Health & Safety (Work Health and Safety Act 2011)

AELERT: Australasian Environmental Law Enforcement and Regulators Network

CLID: Crown Land Information Database

### Legislation

*Crown Lands Act 1989*

*Crown Lands (Continued Tenures) Act 1989*

*Conveyancing Act 1919*

*Roads Act 1993*

*Commons Management Act 1989*

*Western Lands Act 1901*

### Related policies

This policy is informed by other NSW Department of Industry, Skills and Regional Development (NSW Department of Industry) and Department of Primary Industries – Lands policies particularly relating to:

Code of Conduct IND-P-184

Work health and Safety TI-A-140

Complaints Handling Policy TI-A-134

Records Management Policy IND-1-177

Fraud and Corruption Prevention Policy TI-A-146

Privacy Management Plan TI-G-155

Please see the NSW Department of Industry website for further information on these policies at <http://www.industry.nsw.gov.au/policies>

### **Review date**

August 2015 (2 years from issue date)

February 2016

February 2018 (2 years from last review)

### **More information**

Please contact us at the Department of Primary Industries - Lands Customer Service: 1300 886235

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (May 2016). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

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