

NSW DEPARTMENT OF INDUSTRY—LANDS & WATER

# Guideline—Crown land compliance and enforcement policy

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**More information**

NSW Department of Industry—Lands & Water

[www.industry.nsw.gov.au/lands](http://www.industry.nsw.gov.au/lands)

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# Foreword

The responsible management of Crown land supports regional economic growth in New South Wales (NSW), strengthens local communities and helps to protect the natural environment for future generations.

These guidelines outline the responsibilities of users and occupiers of Crown land to comply with the Department of Industry—Crown Land Compliance and Enforcement Policy, the *Crown Land Management Act 2016* (the Act), the Crown Land Management Regulation 2018 (the Regulation) and other relevant legislation. Contact details are provided in this document to help you find additional information and support.

These guidelines also outline the responsibilities of the NSW Department of Industry—Lands & Water (the department) as the manager of Crown land to 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

This guideline explains how the department implements compliance and enforcement as outlined in the Crown Land Compliance and Enforcement Policy.

The department's goals are to:

- promote compliance with the objects of the Act, other legislation and 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 and behavioural drivers of non-compliance
- ensure decisions are transparent
- guide decision-making and action by Authorised Officers considering the use of a range of compliance and regulatory options
- take a risk-based approach to compliance and regulatory activities.

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

- promotion of voluntary compliance
- public interest
- sufficiency of evidence
- lawful and reasonable actions
- duty of care.

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 and also encouraging 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 and non-compliance with tenure conditions
- ensuring authorised use of Crown land
- assisting Crown land managers respond to compliance matters.

The risk-based approach is based on the objects and principles of the Act and best practice, with the goal of ensuring the community (including lease/licence/permit holders) are aware of their rights and responsibilities to comply with the relevant legislation.

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

- the current or future utility of the land
- public health and safety
- actual or potential environmental harm
- public interest and concern
- the responsible person's history of compliance or non-compliance
- the existence of similar instances of non-compliance, especially in a local area
- mitigating factors, such as if the:

- breach was clearly unintentional
- responsible person acted in accordance with the advice of staff from the department or another agency
- responsible person has not committed a previous breach and has expressed a clear intent and capability to address the effects of their actions.

The department is focused on communication, education and support to help stakeholders meet their obligations and avoid inadvertent non-compliance. Where necessary, compliance is achieved through a graduated and proportionate response and 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 are able to lodge an application to use the land and discuss restrictions and prohibited activities.

## Background

The department is responsible for the sustainable and commercial management of Crown land in NSW by ensuring the land is being used in an approved and authorised manner consistent with the objects of the Act.

The department must also manage resources to achieve compliance in a consistent and transparent manner.

More information regarding Crown land is accessible on the department's website, [www.industry.nsw.gov.au/lands](http://www.industry.nsw.gov.au/lands).

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, flora, fauna 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, which are embedded in all aspects of its compliance and enforcement regulatory activities. All officers are required to comply with the Department of Industry *Code of Conduct*, which provides an ethical framework for decisions, actions and behaviour.

## Assistance

For assistance, please contact the department's Business Centre on 1300 886 235. Contact hours are Monday to Friday, from 8.30 am to 4.30 pm.

Alternatively, contact the department by email at [enquiries@crowland.nsw.gov.au](mailto:enquiries@crowland.nsw.gov.au) or by post at PO Box 2185 Dangar NSW 2309.

# Approach to compliance

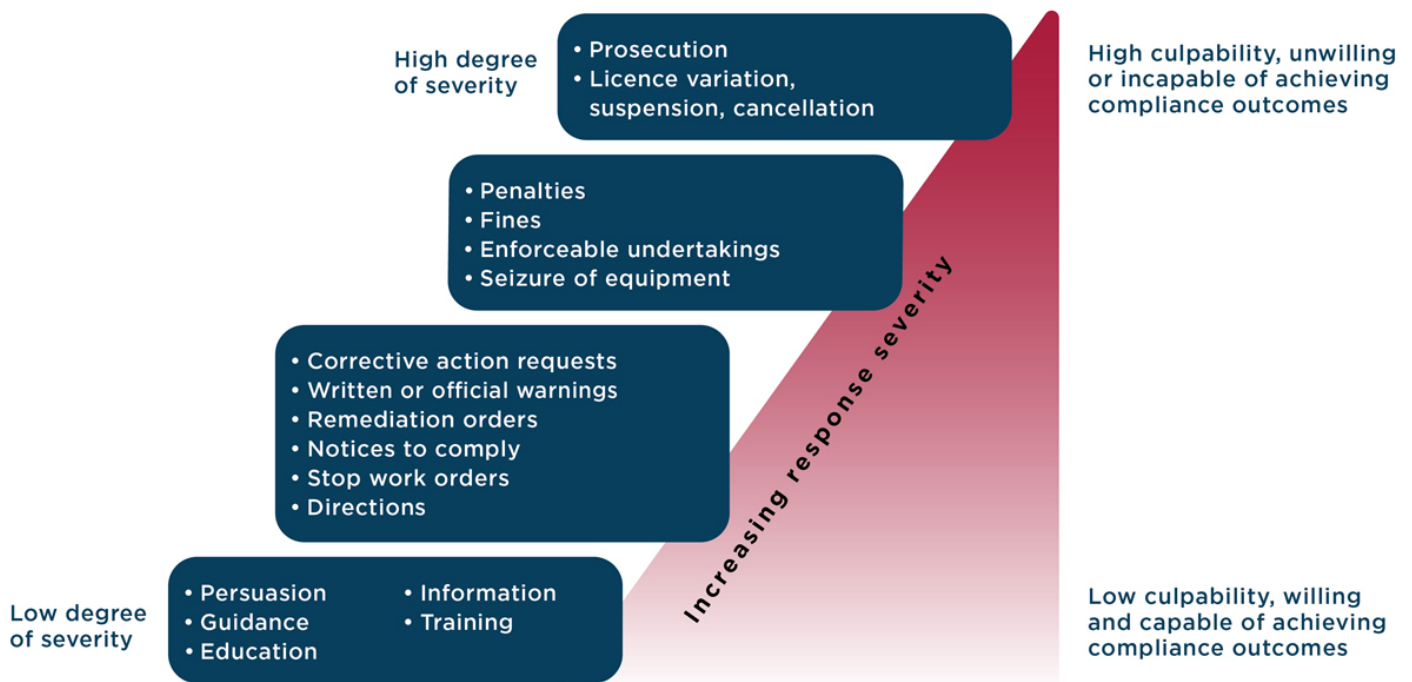
The department's goal is to ensure the community, including tenure holders and other users, comply with the Act. Where the department finds non-compliance, it may consider enforcing compliance through regulatory action. As stated, the department achieves compliance through a graduated and proportionate response, using a range of regulatory tools such as directions, notices and stop-activity orders to achieve suitable outcomes. These include remediation, fines or prosecutions.

The department may act in respect of a compliance matter irrespective of how it is detected.

To implement 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<sup>1</sup> below illustrates the Department of Industry's approach to compliance and enforcement.



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

<sup>1</sup> Department of Industry Regulatory Policy - IND-0-233 - specific terminology used in the above figure is indicative but not limited to the actions that may be taken.

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

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



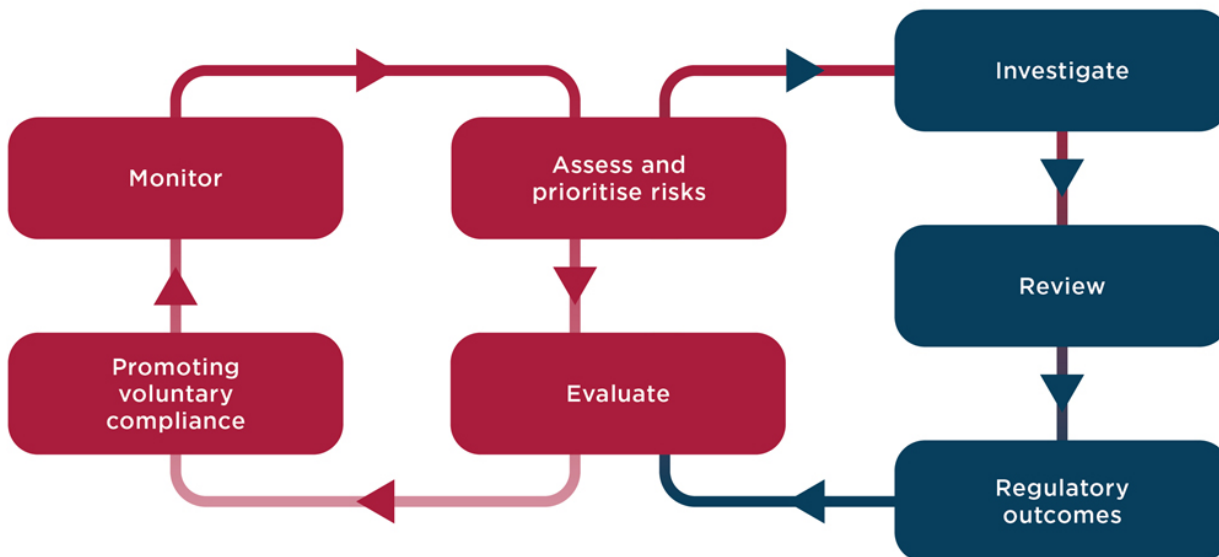


Figure 2. The department's compliance and enforcement process

## Promote voluntary compliance

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

These activities may include:

- providing information resources and tools to assist Crown land managers and users
- engaging with stakeholders to build capacity (site visits, website, media releases, information sessions, etc.)
- 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 undertake 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 and undertaking coordinated monitoring with other agencies.

Irrespective of how the department is made aware of the compliance matter, it will be recorded and dealt with in accordance 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.

The risk assessment and prioritisation process is used to:

- assess instances of non-compliance
- prioritise actions according to the level of risk of non-compliance and its impacts

- 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. A higher-level priority will be assigned 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, 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.

## Investigate

The department will train and appoint Authorised Officers to investigate instances of non-compliance using statutory provisions and other methodologies to facilitate appropriate outcomes.

Participation in an investigation is not limited to Authorised Officers and could involve any staff from the department or any other state or Commonwealth agency.

Authorised Officers who have undergone training or have the competency required by the Minister may take enforcement action. Authorised Officers are required to carry their identity cards when exercising a function under the Act. The Authorised Officer will present their identity card if requested to do so by any person subject to a compliance activity.

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

Evidence may include:

- observations—evidence of observations made by Authorised Officers should be recorded in contemporaneous notes.
- physical evidence—evidence of tangible items (by seizure or recording by photograph, etc.)
- 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 assist in the evidence-gathering process, including the power to enter land, require information or records, to question and identify persons and the use of search warrants.

Authorised Officers can exercise a power under the Act within their delegated authority. Authorised Officers are expected 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

Consideration will be given to the evidence gathered through the investigation process. Legal proceedings will only be commenced where there is sufficient 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, the culpability of the offender, the history of prior offending, aggravating circumstances and the legislation.

The applicability of and weight to be given to each of the above factors depends on the circumstances of each particular case. Authorised Officers determine the level of significance with reference to internal policies, peer reviews as well as supervisor support. Authorised Officers operate within their delegated authority.

## Regulatory responses

When an investigation of a matter determines non-compliance, the department will take appropriate action to prevent or correct that non-compliance. The regulatory action for a matter will be determined in accordance 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 assist and support compliance
- **issuing warning letters**—issued when an investigation establishes 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 assist and support compliance
- **issuing penalty infringement notices**—are a fine that can be issued by an Authorised Officer for an offence where an infringement notice is deemed appropriate in the circumstances. The amount of the fine is fixed by regulations and is potentially less than the maximum penalty that may be imposed by a court. The recipient may elect to seek review or appeal a penalty notice in court
- **issuing statutory directions, orders and notices**—can be issued by an Authorised Officer in respect to 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 the officer 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
  - commencing proceedings to enforce undertakings
  - respond to court elected penalty notices
  - commence prosecutions
  - preparing for appeals.
- **undertaking an administrative review process** – when a person is unable to appeal or request an administrative review through a statutory process, an internal review may be considered by the department.

Where appropriate, potentially affected parties will have the opportunity to provide information relating to 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 past 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 component 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 accordance with the legislation. This allows the department to understand and respond to emerging risks.

## Review and complaint handling

Any person not satisfied with the department's compliance actions may request an internal review, where applicable, by contacting the Business Centre on 1300 886 235. Alternatively, contact the department by email at [enquiries@crowland.nsw.gov.au](mailto:enquiries@crowland.nsw.gov.au) or by post at PO Box 2185 Dangar NSW 2309.

If you are dissatisfied with the review process or wish to lodge a complaint, you may contact the NSW Ombudsman by emailing [nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au) or by phoning 1800 451 524. The Ombudsman will ensure the action taken by the department was in accordance with the Act and that the action taken is appropriate considering the findings of the investigation.

## Definitions

Definitions related to this policy are detailed in the Crown Land Compliance and Enforcement Policy.

## Related material

- Crown Land Compliance and Enforcement Policy
- Department of Industry Regulatory Policy—IND-0-233
- *Crown Land Management Act 2016*
- Crown Land Management Regulation 2018
- *The Fines Act 1996*
- Department of Industry Strategic Plan 2015–19
- *Conveyancing Act 1919*
- *Roads Act 1993*
- *Ombudsman Act 1974*