

Compliance and enforcement

○ What to expect from the Department's Compliance Team

October 2016

While the Department of Planning and Environment had an important role in assessing major projects, the Department's Compliance team also monitors, and if necessary, enforces the conditions attached to project approvals.

This document outlines the clear principles for choosing an enforcement response appropriate for any breach and the role our Compliance officers have in identifying, recording and investigating potential breaches. This information sheet is provided as a summary to outline our expectations of proponents and to provide information on **the role of the Department of Planning and Environment's Compliance team**. For more information on the Compliance team's functions, policies and outcomes, go to <http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Compliance-functions>.

About the compliance team

The Department of Planning and Environment's Compliance team works in communities across NSW to ensure state significant development and infrastructure projects are meeting the strict conditions included in their approval.

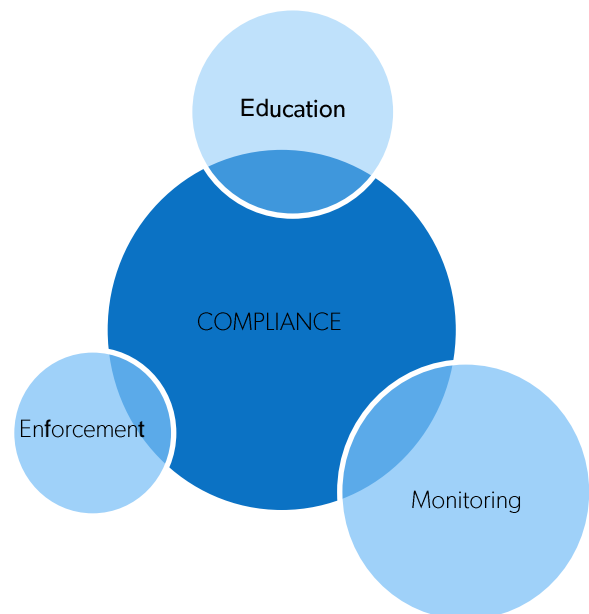
The team uses a risk-based approach to ensure that its monitoring activities target projects that are assessed to be higher risk.

The team works closely with the community, local councils and other state and federal government agencies to investigate potential breaches and carry out enforcement where necessary.

Strong local based enforcement, engagement and education with industry and the community ensures that compliance is managed fairly and consistently.

Information from community members is an important way the team learns about issues to investigate.

Enforcement can range from improving compliance through voluntary undertakings, issuing penalty notices and in serious cases, criminal prosecutions.



Compliance Officer inspects open cut mine project in Hunter region.

Enforcement activities are also reported monthly and are viewable on the Department's website (see link above). While the onus of ensuring compliance with all conditions of approval and other required documents is on the proponent, the Compliance team plays an important role in educating proponents, community members and other stakeholders about the Department's compliance functions.

Education sessions allow the Department to reinforce expectations; better understand industry-specific issues; the systems used to ensure compliance; listen to community concerns; provide feedback on sector or company performance; and promote best practice across all industry sectors.

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How is compliance monitored?

Self-monitoring	Project approvals often require proponents to monitor, audit and report regularly on compliance, and the Department reviews and responds to these reports. Conditions may also require proponents to commission independent experts to audit compliance, assess environmental performance and make recommendations to improve environmental performance.
Compliance audits	A compliance audit is a detailed evaluation of compliance following formal auditing procedures. Audits may involve an assessment of all approval conditions or may focus on specific issues. Audits often involve extensive consultation with the proponent, other regulatory agencies, local councils and other relevant stakeholders.
Inspections	Inspections can often be used to identify unapproved development and are also used to evaluate compliance with approval conditions. Inspections may be undertaken without notice at any time in order to determine a projects level of compliance.
Active monitoring	Compliance monitoring can also be done remotely via aerial photography or drones.

How does the Department investigate breaches?

When the Department has information about a suspected breach, it will conduct an analysis of available information. This analysis may be followed up with an inspection or a request to the proponent for information about the alleged breach. Officers can use their formal investigative powers to request information or formal interviews. This preliminary assessment may provide sufficient information to establish whether or not a breach has occurred or is likely to have occurred. Based on that information, the Department may choose to proceed with an enforcement response without further investigation. Alternatively, it may determine no response is required.

Where a breach is identified, the significance of the breach will guide the appropriate enforcement response and a company will be provided the opportunity to respond through the show cause process. Natural justice, also known as procedural fairness, is a fundamental principle considered by the Compliance team.

Factors to determine the significance of the breach are the degree of harm and the culpability of the offender. The degree of harm includes the potential for harm and the impact on the integrity of the

planning system. Culpability includes performance history and motivation.

Suspected breaches will then be classified as low, medium or high. Enforcement options are then considered. The range of enforcement options and the significance of the breach are outlined over the page.



Compliance officers may follow up on a suspected breach with a site inspection.

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Penalty notice

The Department can issue the highest on-the-spot fines in the country for breaches of conditions. A penalty notice can be issued and fines apply for actions such as carrying out unapproved development and non-compliance with conditions of approval. Fines can range from \$3000 to \$15000 depending on the timing of the offence. Once a penalty notice is issued, the matter is dealt with by the State Debt Recovery Office (SDRO). The recipient has 21 days to pay once the penalty notice is issued, they can request a review of the matter by the Department or appeal the matter in court.

Prosecutions

Companies can also be prosecuted in court for breaching conditions, with the most severe breaches attracting fines of up to \$5 million and criminal convictions. Given the seriousness of a conviction and the significant penalties that can be imposed, the decision to prosecute is carefully considered. Consideration is given to whether the prosecution is in the public interest, specifically, failure to protect the environment and the health of the community. Consideration is also given to whether the offence is ongoing and whether previous enforcement actions have not deterred the offender.

Enforcement options summary table

Action	Significance of breach		
	High	Medium	Low
Prosecution	*		
Court Orders	*		
Order	*	*	
Penalty notice	*	*	
Official Caution		*	
Voluntary Undertaking		*	*
Negotiated outcome		*	*
Warning letter			*
Record the breach			*

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What are the common areas of non-compliance?

Every month, the Compliance team carry out inspections and surveillance activities. Common breaches where either penalty notices or prosecution may be considered include:

- commencement of construction/activities occurring prior to an approval being granted or where Management Plans are required to be submitted and/or approved by the Secretary prior to carrying out the development
- not implementing commitments contained within approved management plans
- not undertaking monitoring required in management plans or monitoring programs
- failing to undertake required consultation with other relevant government agencies in relation to management plans or other approval requirements
- where production limits are exceeded
- clearing of vegetation or works being undertaken outside the approved disturbance boundary or project boundary or failing to submit environmental rehabilitation bonds

Responsibilities and powers of compliance officers?

Departmental Investigation officers have a number of powers to conduct site inspections and audits on a proactive basis, or to investigate issue-specific potential breaches of the Act. All investigation officers also receive specialised training regarding their duties and obligations under the law.

Under the Environmental Planning and Assessment Act 1979, departmental investigation officers are authorised to enter and search premises and do anything they think is necessary for an investigation purpose including seize anything connected with an offence, obtain information and records by written notice, and require persons to answer questions in relation to matters being investigated.

Where are the compliance teams located?

Our compliance officers are located in Sydney, Wollongong, Queanbeyan and Singleton.

- To contact the compliance team, please call 1300 305 695.
- Email: compliance@planning.nsw.gov.au

Where can I find out more?

- You can refer to www.planning.nsw.gov.au
- Call our Information Centre on 1300 305 695.
- If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.