Government of Western Australia
Department of Water and Environmental Regulation

# Guideline

## Compliance and Enforcement

The application of compliance and enforcement powers for legislation regulated by the Department of Water and Environmental Regulation under the:

*Environmental Protection Act 1986*

*Rights in Water and Irrigation Act 1914*

*Contaminated Sites Act 2003*

*Waste Avoidance and Resource Recovery Act 2007*

Published 6 August 2026

Department of Water and Environmental Regulation
8 Davidson Terrace
Joondalup Western Australia 6027
Telephone +61 8 6364 7000
Facsimile +61 8 6364 7001

National Relay Service 13 36 77
www.dwer.wa.gov.au



**Disclaimer**

This document has been published by the Department of Water and Environmental Regulation. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and Environmental Regulation and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

This publication is available at www.dwer.wa.gov.au or for those with special needs it can be made available in alternative formats such as audio, large print, or Braille.

# Contents

# 1. Purpose

The Department of Water and Environmental Regulation (the department) is Western Australia's primary environment and water regulator. We carry out assurance activities to support the protection and maintenance of the State's environment and water resources, helping sustain a strong economy and thriving communities.

The department aims to balance environmental protection with the responsible use of natural resources for the benefit of the State by being a responsive and credible regulator who consistently applies and enforces the legislation we administer.

This Compliance and Enforcement Guideline (the guideline) explains the department's approach to promoting, monitoring, and enforcing compliance using available regulatory mechanisms; legislation, policy, and instruments. It outlines the **Regulatory Toolkit** and how these tools are applied.

# 2. Scope

Guidelines provide direction on how the department interprets and applies the legislation it administers. The department's guidelines are not mandatory considerations; rather, their purpose is to provide information on how we undertake our functions.

This guideline is general in nature, and does not confine, restrain or limit the discretion of the department.

This guideline should be read together with the department's related publications:

- *Compliance and Enforcement Policy*
- *Prosecutions Guideline*.

This guideline may be relevant to all sectors of the Western Australian community (e.g. State and local government, industry and commercial enterprises, community) and is to be applied across all regions of Western Australia.

Individuals/corporations/others should obtain independent legal advice on their specific legal obligations and circumstances, where needed.

# 3. Context

The department's regulatory approach is guided by the regulatory cycle, which connects our activities to the strategic intent. This cycle supports continuous improvement in assessment and assurance through ongoing feedback and informs the review and delivery of legislation and policies.

Its purpose is to promote sustainable development and responsible governance, meeting community expectations for protecting the State's environment and water resources. The regulatory cycle is presented in Figure 1.

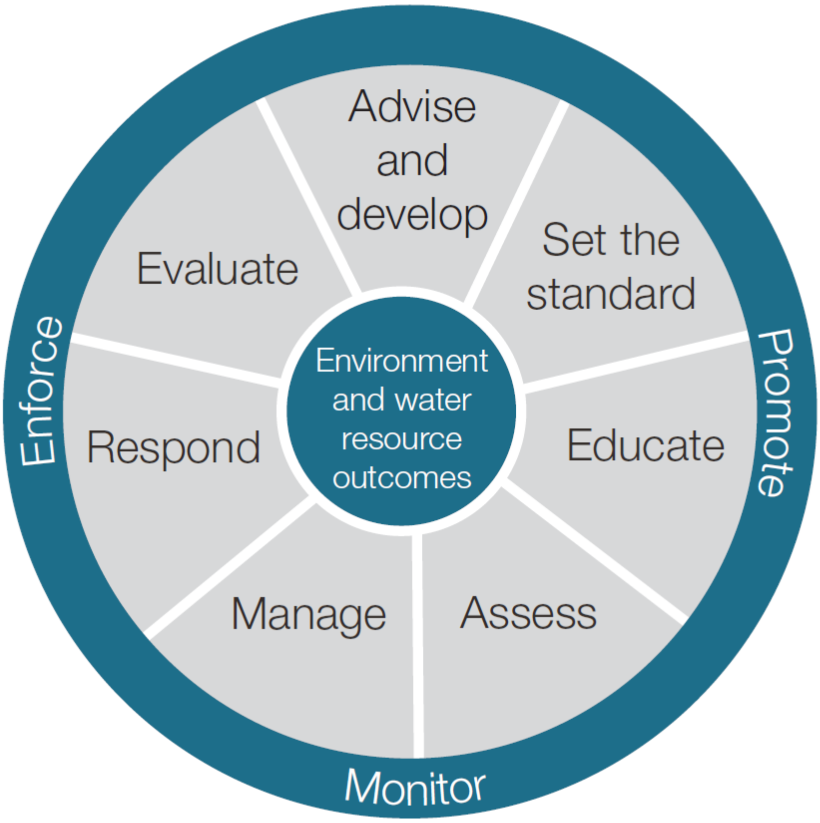


Figure 1: Our Regulatory Cycle

As outlined within the department's Compliance and Enforcement Policy, the department promotes, monitors and enforces compliance through the application of the following principles:

- **Accountable** – consider the conduct of the parties and implications for administration of the legislation.
- **Appropriate** - select enforcement outcomes which are appropriate to the particular circumstance
- **Clear** – state compliance and enforcement requirements in unambiguous terms.
- **Collaborative** – work collaboratively with regulated entities and other relevant regulators.
- **Consistent** – apply enforcement actions consistently across all sectors and embrace impartiality, objectivity and adherence to due process.
- **Effective** - consider the likelihood that the desired outcome will be achieved by the compliance / enforcement activity or action.
- **Risk-based** – utilise available resources to undertake compliance and enforcement actions to achieve the best outcome for the environment and/or water resources by prioritising matters that represent the greatest level of risk.

- **Procedural fairness**- decisions are made in a fair, transparent and reasonable manner, consistent with administrative law principles and the circumstances of each matter.
- **Proportionate**- select compliance and enforcement actions which recognise the magnitude or seriousness of the impact, or potential impact, to the environment and/or water resources.
- **Timely** – make compliance and enforcement decisions in a timely manner to support effective outcomes, public confidence and procedural fairness.

More information about our *regulatory approach* is available on the department's website.

# 4. Legislation

This guideline is applicable to the administration of the following State legislation administered by the department:

- *Environmental Protection Act 1986* (EP Act)
- *Contaminated Sites Act 2003* (CS Act)
- *Rights in Water and Irrigation Act 1914* (RiWI Act)
- *Waste Avoidance and Resource Recovery Act 2007* (WARR Act)

The information contained in this guideline may also have general relevance to other legislation administered by the department.

# 5. Outcome

The department promotes voluntary compliance by providing clear and relevant guidance to help industry and the community understand its regulatory role. Greater understanding supports risk management and transparency, aligning with the department's strategic goals.

This guideline outlines the department's approach to promoting, monitoring, and enforcing compliance using its regulatory tools, legislation, policy, and instruments.

# 6. Regulatory toolkit

The department is empowered through legislation to take various regulatory actions to ensure the objectives of the legislation are achieved. Generally, these regulatory actions can be divided into two categories, being:

- **Remedial Actions** - actions that seek to achieve an environmental or compliance outcome for identified non-compliances or offences.

- **Enforcement Actions** - actions that provide for a penalty to address an alleged offence under environmental legislation, water legislation or a breach of a Statutory Instrument

Where an offence or a breach is established, any Remedial Action or Enforcement Action should be determined in accordance with this guideline and other relevant policies and guidelines. In some circumstances both remedial and enforcement actions may be appropriate, and the completion of remedial actions does not mean enforcement action will not be undertaken.

# 7. Remedial actions

The department may apply Remedial action(s) in relation to an alleged offence.

Remedial actions are generally intended to achieve environmental outcomes by restoring lost environmental values or implementing measures to prevent or mitigate future risks to those values. For example, a Remedial action such as an Environmental field report may be issued to require a proponent to clean up a spill identified during an inspection addressing the immediate risk to the environment.

Where an offence is identified, Remedial actions may be issued alongside an Enforcement action to support environmental outcomes and help return the offender to compliance. These actions are applied proportionately, considering the nature of the offence, environmental impacts, and legislative objectives. Multiple Remedial actions may be used where there are several offences or impacts.

While Remedial Actions may result in financial costs to the relevant person (e.g. land rehabilitation under a Vegetation Conservation Notice), these costs are not considered penalties and do not classify the action as enforcement. However, when determining the appropriate Enforcement Action, the department may consider the financial burden of complying with any associated Remedial Action.[1]

Remedial Actions which are issued under legislation are legally binding. Failure to comply with a requirement outlined within a Remedial Action issued under legislation may constitute a separate offence; for which a separate Enforcement Action can be applied.

For the purposes of this guideline, Remedial actions are described in the context of how they may complement Enforcement actions following an offence under environmental legislation[2]. While they can be applied alongside penalties or warnings to achieve environmental outcomes, many Remedial actions are general legislative provisions and may also be used independently by the department in non-offence

[1] For example, the financial cost to an offender for complying with a Remedial Action (e.g. a Vegetation Conservation Notice) may meet or exceed the maximum penalty for the relevant offence outlined by the legislation. In such cases, the department may consider a lower-level Enforcement Action (e.g. Letter of Warning) together with the Remedial Action (*in lieu* of other high-level Enforcement Actions, e.g. a Prosecution).

[2] To note, many Remedial Actions are general legislative tools and may be used by the Department to achieve an environmental outcome even in circumstances where an offence has not occurred.

situations, such as risk mitigation or environmental restoration. Remedial actions available to the department are described below.

**Education and non-statutory notices** (e.g. Environmental field report or Letter of education)

General or specific advice on how to protect or minimise impacts to environmental values, to improve compliance actions. Education and non-statutory notices have no statutory standing (i.e. not prescribed for by legislation).

**Statutory notice or direction**

A Statutory notice or direction is a written notice which requires certain steps/actions to be taken, or to be ceased, within a specified timeframe. Failure to comply with a Statutory notice or Direction may result in a further action being taken by the department. Examples of Statutory notices and Directions include:

- Environmental Protection Notice (s65 EP Act)
- Environmental Protection Direction (s71 EP Act)
- Prevention Notice (s73A EP Act, s72 WARR Act)
- Noise Abatement Direction (s81 EP Act)
- Vegetation Conservation Notice (s70 EP Act)
- Stop Work Notice (s48 EP Act)
- Closure Notice (s68A EP Act)
- Direction Notice (s22, s25, s26G, s26GC, cl18 Sch1 RiWI Act)
- Investigation Notice (s49 CS Act)
- Clean Up Notice (s50 CS Act)
- Hazard Abatement Notice (s51 CS Act)

**Changes to conditions of a Statutory instrument**

Changes can be made to a granted Statutory instrument (like a Licence) to amend, remove or add conditions that better protect the environment or reduce harm to environmental values.

**Revocation or suspension of a Statutory instrument**

The department may revoke or suspend a Statutory instrument, such as a Works approval, Licence, or Clearing permit, if an offence has occurred or if it is necessary to protect the environment.

**Physical intervention**

In certain situations, the department may intervene to mitigate, contain, or remediate impacts due to risks to the environment or water resources. This may include physical works or other measures. The department will seek to recover the costs of these actions from the parties responsible.

**Court injunctions and orders**

The department may apply to the court for an injunction to stop certain activities for a specified period, particularly where there is a risk to the environment. Following a successful prosecution, the department may also seek orders requiring the offender to carry out specific actions to restore or protect environmental values. These orders may be issued alongside, or instead of, financial penalties.

# 8. Enforcement actions

Legislation provides for various Enforcement actions that may be taken by the department. The purpose of an Enforcement action is to respond to an offence under legislation by applying the appropriate penalty or outcome.

Where an investigation finds sufficient evidence to suggest that an offence has occurred (*prima facie* evidence or the establishment of a *prima facie* case), the department may consider taking an Enforcement action for the offence in line with its legislative responsibilities.

The department seeks to take proportionate Enforcement action against those who do not comply with the requirements of environmental legislation and granted Statutory Instruments.

The department can take an Enforcement action against a body corporate or an individual engaging in an activity that does not comply with these requirements. The department may also seek to extend its Enforcement action to individuals (officers) of a body corporate if the actions (or inaction) of those individuals substantially contributed to an offence by a body corporate.

**Appendix 1** provides a summary matrix identifying the Enforcement actions that are available for common offences identified under the listed environmental legislation.

The types of Enforcement actions available to the department are described below, listed in order of increasing penalty (lowest to highest).

## 8.1 Letter of non-compliance

A Letter of non-compliance is a written notice issued by the department to a regulated entity to formally acknowledge that a non-compliance has occurred. It may be used for a range of non-compliances, including those that are minor, administrative or technical in nature, and does not preclude the department from taking additional enforcement action where warranted.

A Letter of non-compliance may also require the regulated entity to undertake specified actions to address the non-compliance and prevent recurrence.

It is intended to raise awareness of the issue and prompt corrective action. It does not carry a financial penalty and is not considered an admission of guilt. However, it is recorded by the department and may be considered in future compliance assessments or enforcement decisions.

## 8.2 Letter of warning

A Letter of warning is a formal written notice issued by the department to an alleged offender in response to an offence under legislation. While it does not impose a financial penalty, it represents a more serious enforcement action than a Letter of non-compliance.

A Letter of warning may be issued where the offence is administrative, technical, or minor, and where, following assessment of decision-making considerations, a warning is deemed appropriate. Although not prescribed by legislation, it is a recognised enforcement tool used by regulatory authorities across Australia.

This letter communicates the department's concern regarding the offence, reinforces statutory obligations, and provides an opportunity for corrective action. It reflects the department's view that the offence warrants formal recognition, even if not pursued through punitive measures such as a modified penalty or prosecution.

Receipt or acknowledgment of a Letter of warning does not constitute an admission of guilt, and no conviction is recorded.

However, the department retains records of all Letters of warning issued, which may inform future enforcement decisions in the event of further non-compliance (refer to Section 9: Decision-making considerations).

## 8.3 Infringement notice

An Infringement notice is issued by the department to an individual or body corporate alleging that an offence has been committed. The Infringement notice requires the alleged offender to pay the infringement notice (typically $250 or $500, depending on the circumstances) or if they elect, to have the matter heard in court.

An Infringement notice may be issued where the impact to environmental values is not significant, the event/matter is quickly rectified, not continuing, and an Infringement notice is likely to sufficiently deter future offences by the alleged offender.

If the alleged offender elects to have the matter heard in court or fails to pay the Infringement notice within the specified timeframe without making such an election, the department may withdraw the Infringement notice and initiate prosecution for the offence (see Prosecution section).

## 8.4 Modified penalty notice

A Modified penalty notice is a written allegation of an offence, where the alleged offender can choose to pay a reduced penalty rather than have the matter proceed to court. A Modified penalty notice is applicable only to specified 'prescribed offences' under the EP Act. These prescribed offences include some Tier 1 offences and all Tier 2 offences. The department will only issue a Modified penalty notice if all the legislative criteria for the offence have been met.

In consideration of a modified penalty notice, the department will have regard to:

- the actual or potential impact to environmental values,
- notification of the event/matter given by the alleged offender,
- whether the alleged offender took reasonable and practicable steps to minimise or remedy environmental impacts and
- any potential for reoccurrence, and cooperation afforded to the department by the alleged offender (refer to Section 99A of the EP Act for details).

In addition, the department will also have regard to other considerations outlined within Section 9 *Decision-making Considerations* (below).

The financial penalty under a Modified penalty notice for a first offence is set at 10 per cent of the maximum penalty value, with this financial penalty increased to 20 per cent of the maximum penalty value for any subsequent offences. The modified penalty under a Modified penalty notice is substantially higher than the penalty under an Infringement notice, with a modified penalty (for first offences) of up to $25,000 for individuals and up to $50,000 for corporations as it relates to the significant offences of pollution and environmental harm.

If the modified penalty identified by a Modified penalty notice is paid within the timeframe specified, then the matter is considered to have been finalised (i.e. the offence has been dealt with). Payment of the modified penalty is not considered an admission of guilt, however, if the alleged offender elects to have the matter heard in court or fails to pay the modified penalty within the specified timeframe, the department may withdraw the notice and initiate prosecution for the offence (see Prosecution section).

## 8.5 Prosecution

Prosecution is the highest level of enforcement action available under environmental legislation.

Prosecution involves the Chief Executive Officer (or delegated officer) of the department referring the offence to a court of law for determination, thereby allowing the evidence to be tested and a judgement made (i.e. guilty or not guilty). Prosecutions for environmental legislation are heard in the Magistrates Court.

The outcome of a prosecution, where a guilty plea is submitted or guilty verdict is reached, typically involves a conviction being recorded and a financial penalty (fine) being imposed. The potential penalties determined by the court vary depending on the legislation and offence type. In some circumstances, the court may also impose other penalties such as court orders (e.g. for restoration or clean-up costs incurred by someone other than the offender) and/or imprisonment.

Prosecution serves as a general deterrent to promote compliance with environmental legislation. The maximum penalty for prosecution under environmental legislation can range up to $1,000,000 for a body corporate, and for an individual, up to $500,000 and/or 5 years imprisonment (under the EP Act).

The department applies prosecution where it is seen as an appropriate response to the circumstances of an event/matter. Prosecution is not applied only as a last resort, but rather, is considered an enforcement 'tool' that may be applied for specific offences and circumstances, and where other enforcement actions may not be considered sufficient.

This guidance should be read together with the department's Prosecutions Guideline and the Director of Public Prosecutions' Statement of Prosecution Policy and Guidelines.

# 9. Decision-making considerations

In determining the most appropriate Enforcement action for an offence, the department may consider a variety of criteria (or factors) in its decision-making. Broadly, these criteria cover the general themes of Seriousness, Behaviour and Prior History.

Under these general themes, detailed criteria considered by the department may include:

- The seriousness of the event/matter, including the location, severity, quantity, extent and duration of any impact to environmental values (including cumulative impacts).
- The Enforcement action necessary to ensure general compliance with, and promote the objectives of, the relevant legislation (including any need for specific and/or general deterrence).
- Voluntary action taken by the offender to mitigate any environmental impact, as well as any mechanisms established to prevent a potential reoccurrence of the event/matter.
- Notification provided by the offender to the department of the event/matter (or delayed notification, or failure to notify).
- Cooperation and/or assistance (or failure to comply or assist) with the department with regards to the investigation of the event/matter.
- The attitude of the alleged offender, including whether the event/matter was intentional or opportunistic, and whether false or misleading statements have been made.
- Compliance with (or failure to comply with) any informal requests, lawful directions or notices given by the department.
- Willingness of the alleged offender to commit to appropriate Remedial actions to restore environmental values.
- The existence and effective implementation of an environmental management system, or other measures or procedures (e.g. restoration and rehabilitation systems) to address potential impacts to environmental values.

- Compliance history of the alleged offender with environmental legislation and granted Statutory Instruments (e.g. occurrence and frequency of any prior non-compliance).
- If costs have been avoided and/or profits realised as a result of actions (or inaction) by the alleged offender.
- Level of public concern regarding environmental impacts and/or environmental values.
- The availability of Remedial actions that may assist to achieve an environmental outcome (e.g. vegetation restoration) that can assist to mitigate any impact to environmental values.
- Legal precedents which may guide the department towards a specific type of Enforcement action.

The criteria listed above are not ranked or exhaustive. The department recognises that enforcement responses must be tailored to the specific circumstances, as not all offences carry the same significance.

Determining the appropriate Enforcement action requires professional judgment, considering the criteria, the nature of the event, and alignment with the principles outlined in the department's *Compliance and Enforcement Policy* and broader assurance framework.

**Appendix 2** provides some hypothetical case examples of offences and how the department may practically consider the above criteria in applying Enforcement Actions and Remedial Actions.

# 10. Consistency of decisions

The department aims to ensure consistent decision-making in Enforcement actions, applying similar outcomes in similar circumstances. This consistency builds trust, accountability, and predictability in environmental compliance enforcement, while promoting effectiveness, efficiency, transparency, and fairness.

The Assurance Directorate Operating Framework and Our Commitment provide a structured approach to ensure all compliance and enforcement activities align with legislation and policy and are conducted objectively and based on evidence.

Consistency is maintained through Director and Manager-level reviews, in consultation with internal investigators and environmental experts. For proposed prosecutions, the department also consults the State Solicitor's Office.

# 11. Documenting decisions

The department keeps records of all Enforcement actions and Remedial actions, along with the rationale behind each decision. Documenting these decisions supports consistent enforcement across time and regions and enables effective review and oversight.

# 12. Publication of decisions

The department publishes information on its Enforcement and remedial actions, where considered appropriate.

Publication provides for education on environmental matters, promotes environmental protection, and informs industry and the community on actions taken by the department regarding compliance and enforcement of the legislation it administers.

Low-level Enforcement actions, such as Letters of warning or Infringement notices, are generally not published unless there is a clear public interest, such as promoting environmental awareness or deterring non-compliance.

In contrast, the department typically publishes details of high-level Enforcement actions, including Prosecutions. These publications usually include the type and location of the offence, relevant circumstances, the enforcement Action taken, and any associated Remedial actions. The name of the accused is generally disclosed only when a guilty plea has been entered, or a guilty verdict has been reached.

The department publishes certain statutory notices, including Environmental protection notices and Vegetation conservation notices.

Where an event/matter is raised by a third-party (e.g. a report by community members) and has a high level of community concern or interest, the department, on occasion, will communicate the outcome or updates of the event/matter with regard to any Remedial or Enforcement actions taken.

# 13. Cooperation with other government agencies and stakeholders

Protection and maintenance of the environment and water resources is a shared responsibility between the department, other State Government agencies/entities, Local Government, industry and the community.

The department works cooperatively with Local Government and State Government agencies to achieve the environmental objectives of the legislation administered by the department. This includes consultation with the Environmental Protection Authority in relation to Ministerial Statements to ensure accurate interpretation of Ministerial conditions and post assessment frameworks.

Through the EP Act, both Local Government and State Government agencies may be assigned or delegated specific responsibilities under legislation administered by the department (e.g. regulation of noise, regulation of native vegetation clearing).

# Document implementation

The Assurance Directorate of the department is responsible for the implementation of this guideline.

The department collects, uses, stores and shares personal information in accordance with the *Privacy and Responsible Information Sharing Act 2024*.

This guideline comes into effect on the day it is published (6 August 2026).

# Related documents

| Author | Title |
|---|---|
| **WA State Parliament** | *Environmental Protection Act 1986* |
| | *Rights in Water and Irrigation Act 1914* |
| | *Contaminated Sites Act 2003* |
| | *Waste Avoidance and Resource Recovery Act 2007* |
| | *Noise Abatement Act 1972* |
| | *Water Agencies (Powers) Act 1984* |
| | *Rights in Water and Irrigation Regulations 2000* |
| **Director of Public Prosecutions** | *Statement of Prosecution Policy and Guidelines* |
| **Department of Water and Environmental Regulation** | *Compliance and Enforcement Policy* |
| | *Prosecutions Guideline* |
| | *Assurance Directorate Operating Framework* |
| | *Assurance Directorate Our Commitment* |

# Custodian and review

The currency of this document will be continuously evaluated and reviewed no later than three years from the date of issue or sooner as required.

| **Document details** | |
|---|---|
| Lead group (custodian) | Assurance Directorate |
| Current version | Final published 6 August 2026 |
| Corporate file folder | Assurance Services SharePoint |

# Appendices

## Appendix 1 - Enforcement actions under legislation

Note: The table identifies key offence provisions and enforcement actions for the legislation considered in this guideline. The list of offence provisions is not exhaustive; refer to relevant legislation for all offence provisions. The section number and section headings of the legislation are identified. A tick (✓) indicates where an Enforcement Action is an applicable option for the offence.

| | Enforcement Action<br>Low | → Increasing level of enforcement → | | | High |
|---|---|---|---|---|---|
| **Legislation** | **Letter of Non-Compliance** | **Letter of Warning** | **Infringement Notice[3,4]** | **Modified Penalty Notice[5]** | **Prosecution** |
| Environmental Protection Act 1986 | | | | | |
| Part IV – Ministerial Statements | | | | | |
| s47. Duties of proponents after service of Ministerial statement | ✓ | ✓ | - | ✓ | ✓ |
| s48. Control of implementation of proposals | ✓ | ✓ | - | ✓ | ✓ |
| Part V Division 1 – Pollution and Environmental Harm | | | | | |
| s49. Causing pollution and unreasonable emissions | ✓ | ✓ | - | ✓ | ✓ |
| s49A. Dumping waste | ✓ | ✓ | - | ✓ | ✓ |
| s50. Discharging waste in circumstances likely to cause pollution | ✓ | ✓ | - | ✓ | ✓ |
| s50A. Causing serious environmental harm | ✓ | ✓ | - | ✓ | ✓ |
| s50B. Causing material environmental harm | ✓ | ✓ | - | ✓ | ✓ |
| s51. Occupiers of premises, duties as to emissions | ✓ | ✓ | - | - | ✓ |
| Part V Division 2 – Clearing of Native Vegetation | | | | | |
| s51C. Unauthorised clearing of native vegetation | ✓ | ✓ | - | ✓ | ✓ |
| s51J. Contravening clearing permit conditions | ✓ | ✓ | - | ✓ | ✓ |
| Part V Division 3 – Prescribed Premises, Works Approvals and Licences | | | | | |
| s52. Changing premises to become prescribed premises requires approval | ✓ | ✓ | - | ✓ | ✓ |
| s53. Prescribed premises, restrictions as to changes to etc. | ✓ | ✓ | - | ✓ | ✓ |
| s55. Contravening conditions of works approvals | ✓ | ✓ | - | ✓ | ✓ |
| s56. Occupiers of prescribed premises to be licensed for emissions etc. | ✓ | ✓ | - | ✓ | ✓ |
| s58. Contravening licence conditions | ✓ | ✓ | - | ✓ | ✓ |
| Part V Division 4 – Notices, Orders and Directions | | | | | |
| s65. Environmental protection notices, issue and effect | ✓ | ✓ | - | ✓ | ✓ |
| s69. Stop orders, issue and effect of | ✓ | ✓ | - | ✓ | ✓ |
| s70. Vegetation conservation notices, issue and effect of [by reference to s70(8) read with s65(4)-(7)] | ✓ | ✓ | - | ✓ | ✓ |
| s71. Environmental protection directions, issue and effect of | ✓ | ✓ | - | ✓ | ✓ |
| s72. Duty to notify CEO of discharges of waste | ✓ | ✓ | ✓ | - | ✓ |
| s73A. Prevention notices, issue and effect of | ✓ | ✓ | - | - | ✓ |

[3] Infringement Notice under the *Environmental Protection Act 1986* for Tier 3 offences as per Section 99H.

[4] Infringement Notice under the *Rights in Water and Irrigation Act 1914* for 'prescribed offences' as per Regulation 50 of the *Rights in Water and Irrigation Regulations 2000* and Section 103 of the *Water Agencies (Powers) Act 1984*.

[5] Modified Penalty Notice under the *Environmental Protection Act 1986* for Tier 1 and Tier 2 'prescribed offences' as per Section 99AA.

| | Enforcement Action | | | | |
|---|---|---|---|---|---|
| | Low | → Increasing level of enforcement → | | | High |
| **Legislation** | **Letter of Non-Compliance** | **Letter of Warning** | **Infringement Notice[3,4]** | **Modified Penalty Notice[5]** | **Prosecution** |
| Part V Division 4 – Miscellaneous | | | | | |
| s79. Unreasonable noise emissions from premises | ✓ | ✓ | ✓ | - | ✓ |
| s81. Noise abatement, powers for | ✓ | ✓ | ✓ | - | ✓ |
| s84. Excessive noise emissions from vehicles or vessels | ✓ | ✓ | ✓ | - | ✓ |
| s85. Excessive noise emissions from equipment | ✓ | ✓ | ✓ | - | ✓ |
| Part VI – Enforcement | | | | | |
| s90. Powers of inspectors to obtain information | ✓ | ✓ | ✓ | - | ✓ |
| s91. Entry powers of inspectors for s. 86 | ✓ | ✓ | ✓ | - | ✓ |
| s91A. Stopping etc. vehicles and vessels, powers of inspectors and authorised persons as to | ✓ | ✓ | ✓ | - | ✓ |
| s92. Inspectors may require details of certain occupiers and others | ✓ | ✓ | ✓ | - | ✓ |
| s93. Obstructing etc. inspectors or authorised persons | ✓ | ✓ | ✓ | - | ✓ |
| Rights in Water and Irrigation Act 1914 | | | | | |
| Part III Division 1A Ownership and Control of Waters | | | | | |
| s5C. Taking of certain water without right or licence, offence | ✓ | ✓ | ✓ | - | ✓ |
| Part III Division 1B Certain Surface Waters | | | | | |
| s17. Obstruction etc. of watercourse etc. without authority, offence and Minister’s powers as to | ✓ | ✓ | - | - | ✓ |
| s18. Discharge etc. of sludge etc. into watercourse, offence | ✓ | ✓ | - | - | ✓ |
| Part III Division 2 Other Surface Waters | | | | | |
| s25. Obstruction etc. of watercourse etc. on Crown land, offence and Minister’s powers as to | ✓ | ✓ | - | - | ✓ |
| Part III Division 3 Underground Waters | | | | | |
| s26A. Artesian well constructed or altered without licence, offence | ✓ | ✓ | - | - | ✓ |
| s26B. Non-artesian well in certain areas etc. constructed or altered without licence etc., offence | ✓ | ✓ | - | - | ✓ |
| s26E. Non-artesian well completed after 15 Feb 1985, Minister to be informed about | ✓ | ✓ | ✓ | - | ✓ |
| s26F. Altering licensed well or contravening licence, offence | ✓ | ✓ | - | - | ✓ |
| s26G. Water from s. 26B(3) well, Minister’s powers to control waste etc. and rate of use of | ✓ | ✓ | ✓ | - | ✓ |
| s26GC. Taking and use of certain water, Minister’s powers to restrict etc. | ✓ | ✓ | ✓ | - | ✓ |
| Part XI — General Provisions | | | | | |
| s70. Obstructing official, offence | ✓ | ✓ | - | - | ✓ |
| s71. Refusing to give up possession of works, offence 85 | ✓ | ✓ | - | - | ✓ |
| Contaminated Sites Act 2003 | | | | | |
| Part 4 Investigation, Clean up and Hazard Abatement Notices | | | | | |
| s43. Notice to be complied with | ✓ | ✓ | - | - | ✓ |
| Part 5 Provisions relating to Remediation and Notices | | | | | |
| s54. Where entry to a site, or the taking of action, to comply with notice or to remediate refused | ✓ | ✓ | - | - | ✓ |

| | Enforcement Action | | | | |
|---|---|---|---|---|---|
| | Low | → Increasing level of enforcement → | | | High |
| **Legislation** | **Letter of Non-Compliance** | **Letter of Warning** | **Infringement Notice**[3,4] | **Modified Penalty Notice**[5] | **Prosecution** |
| Part 7 Contaminated Sites Auditors | | | | | |
| s74. Offences relating to mandatory auditor's reports | ✓ | ✓ | - | - | ✓ |
| Part 10 General | | | | | |
| s95. Victimisation | ✓ | ✓ | - | - | ✓ |
| Waste Avoidance and Resource Recovery Act 2007 | | | | | |
| Part 5 Product Stewardship | | | | | |
| s46. Extended producer responsibility schemes | ✓ | ✓ | - | - | ✓ |
| s47E. Requirement for supply agreement, container approval, refund mark and barcode | ✓ | ✓ | - | - | ✓ |
| s47ZN. Scheme Account | ✓ | ✓ | - | - | ✓ |
| s47ZV. Providing assistance | ✓ | ✓ | - | - | ✓ |
| s47ZZC. Power to require information or material | ✓ | ✓ | - | - | ✓ |
| Part 6 Waste Services | | | | | |
| s64. Subject matter of local laws | ✓ | ✓ | - | - | ✓ |
| s69. Waste collection not to be carried out by unauthorised persons | ✓ | ✓ | - | - | ✓ |
| s70. Obstruction or hindrance | ✓ | ✓ | - | - | ✓ |
| s71. Services to be provided in accordance with waste plan or permit | ✓ | ✓ | - | - | ✓ |
| s72. Accumulation of waste — prevention notice | ✓ | ✓ | - | - | ✓ |
| Part 7 — Collection and Application of Levy | | | | | |
| s78. Evading levy | ✓ | ✓ | - | - | ✓ |
| s80. Application of moneys in WARR Account | ✓ | ✓ | - | - | ✓ |
| Part 8 — Enforcement | | | | | |
| s82. Power to require information or material | ✓ | ✓ | - | - | ✓ |
| s83. Inspectors | ✓ | ✓ | - | - | ✓ |
| s85. Audit may be directed by CEO | ✓ | ✓ | - | - | ✓ |

# Appendix 2 - Hypothetical case examples

**Case example 1**

A farmer cleared approximately 0.5 hectares of native vegetation on their property without obtaining a Native Vegetation Clearing Permit. The department was alerted to the incident and conducted a thorough investigation, including satellite imagery analysis and a vegetation survey. The survey revealed that the cleared vegetation was of high environmental value, serving as habitat for threatened species and being regionally rare due to historical clearing.

The farmer cooperated fully with the investigation and acknowledged the mistake. Given the environmental significance of the area and the farmer's willingness to restore the site, the department issued a **Letter of Warning**. Additionally, a **Vegetation Conservation Notice** was served under Section 70 of the *Environmental Protection Act 1986*, requiring the farmer to rehabilitate the land. After considering the circumstances the Enforcement and Remedial Actions were considered an appropriate outcome.

**Case example 2**

A mining company operating under a licence issued under *Environmental Protection Act 1986* self-reported a spill that resulted in the death of native vegetation near their site. The company promptly notified the department and provided detailed information about the cause, extent, and immediate containment actions taken.

The department's investigation confirmed the environmental impact and established that an offence under section 50B(2) of the EP Act of causing environmental harm had been committed and there was sufficient evidence to support an allegation of that offence. Due to the actions of the company including its transparency, cooperation, and proactive steps to prevent a recurrence, the department determined to issue a **Modified Penalty Notice** under Section 99A of the *Environmental Protection Act 1986*. This approach balanced accountability with recognition of responsible corporate behaviour.

**Case example 3**

A company was found to have extracted more than 50% above its licensed water allocation, significantly impacting local water resources. The department's investigation revealed that the overuse was not accidental but a result of deliberate corporate decision to disregard its licence conditions. The company had a history of similar breaches and had previously been warned.

Given the scale of the overuse, the environmental consequences, and the company's poor compliance history, the department determined that a **Prosecution** was the appropriate enforcement response. The case was pursued under Section 5C of the *Rights in Water and Irrigation Act 1914*, with the aim of ensuring accountability and provide a deterrent for others.

**Case example 4**

A gold mining project was given approval under a Ministerial Statement. The Ministerial Statement contained conditions requiring preparation and submission of Environmental management plans (EPMs) related to surface water, groundwater, dust, noise and flora and vegetation. The conditions required the EMPs to be submitted by a specified deadline and approved prior to commencement of construction and mining activities.

In its Compliance Assessment Report the company self-reported submission of one of the required EMPs after the required deadline and commencement of some activities on the site prior to the approval of that EMP.

The department's investigation determined the non-compliance to be administrative and of low environmental risk because management measures were still implemented and no environmental harm was identified. The company was issued a **Letter of non-compliance** outlining their requirements and requesting them to implement various administrative changes to ensure their documentation was submitted on time.

# Glossary

The following definitions are provided to explain the terms used in this Guideline.

| | |
|---|---|
| **Enforcement action** | An action taken in response to an offence. |
| **Event/matter** | The action (or inaction) or occurrence giving rise to an offence. |
| **Non-statutory** | Not provided for under legislation. |
| **Offence** | An act or omission that is contrary to the requirements of environmental legislation.<br>In the context of this guideline, the term ‘offence’ refers to an alleged offence. |
| **Non - compliance breach** | An act or omission that is contrary to the requirements of a statutory instrument. |
| ***Prima facie* case** | A serious, as opposed to a speculative case which has a real possibility of ultimate success. |
| ***Prima facie* evidence** | The sufficiency of evidence upon which a person could be convicted of an offence or taking the evidence of the prosecution at its highest, evidence which is capable of proving the elements of the offence beyond reasonable doubt. |
| **Remedial action** | In the context of this guideline, an action taken to achieve an environmental outcome (which may, or may not, be connected to an offence). |
| **Statutory** | As provided for by legislation. |
| **Statutory instrument** | An approval or authority issued under legislation (e.g. Licence), generally including legally-binding limits and/or conditions. |

# References

Department of Water and Environmental Regulation (2025) *Compliance and Enforcement Policy*. June 2025.

Department of Water and Environmental Regulation (2025) *Prosecutions Guideline*. June 2025.

Department of Water and Environmental Regulation (n.d.) *Assurance Directorate Operating Framework*.

Department of Water and Environmental Regulation (n.d.) *Assurance Directorate Our Commitment*.

Director of Public Prosecutions (2022) *Statement of Prosecution Policy and Guidelines*. *July 2022*.