



# Enforcement and prosecution policy

August 2010

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## APPLICATION OF POLICY

The Department of Mines and Petroleum (DMP) is the lead agency in developing and managing the State's industrial and resources sector for the benefit of all Western Australians, while helping care for workers, the public and the environment.

As part of its role, DMP is responsible to the Minister for Mines and Petroleum for administering various Acts of Parliament relating to the mineral and petroleum industries.

This policy applies to those Acts and regulations administered by DMP that relate to the mining and petroleum sectors, including royalties, environmental and resource management, and tenement and titles obligations.

- *Mining Act 1978*
- *Mines Safety and Inspection Act 1994*
- *Petroleum and Geothermal Energy Resources Act 1967*
- *Petroleum Pipelines Act 1969*
- *Offshore Petroleum and Greenhouse Gas Storage Act 2006*
- *Petroleum (Submerged Lands) Act 1982*
- *Dangerous Goods Safety Act 2004*

The primary focus of the mineral and petroleum legislation administered by DMP is to ensure resources development in Western Australia is carried out in a way that is safe for workers and the public, facilitates appropriate access to the resources, ensures an appropriate return to the community, maintains the integrity of the resources, and protects the natural environment.

The legislation provides a range of enforcement and prosecution measures to help achieve this. When required, enforcement or prosecution action is taken to ensure the primary focus is met.

## ENFORCEMENT

Enforcement is an essential element in controlling or regulating activities and gaining compliance with statutory requirements. This is done by detecting breaches, bringing them to the attention of the alleged offender, requiring corrective or preventative action, applying penalties (directly or through the courts) and providing deterrence.

The legislation administered by DMP allows it to determine when enforcement is required and what measures are appropriate to encourage compliance. This policy statement is the basis on which enforcement decisions are made.

### Principles of enforcement

In deciding whether enforcement action is required in the public interest and what measures should be adopted, DMP will use the following principles:

- **Objective:** Enforcement action will achieve a clear outcome.
- **Proportionality and responsiveness:** Enforcement action will be responsive, timely and in proportion to risk and potential impact.
- **Transparency:** Enforcement measures will be transparent so that parties understand what is expected of them.
- **Consistency:** Enforcement action will be administered fairly, consistently and equitably, taking into account the attitude and actions of the alleged offender and any history of previous incidents or breaches.
- **Targeting:** Regulatory effort will be directed primarily towards those whose activities generate significant risk, serious harm or significant breaches of the legislation, with action primarily focused on lawbreakers and those directly responsible for the risk.

- **Due process and natural justice:**

Enforcement action will be carried out within the powers and processes of the legislation, applying principles of natural justice.

- **Cost-effectiveness:** Enforcement action will be exercised to produce the desired outcome with cost effective use of public resources.

- **Policy compatibility:** Enforcement will be carried out within the context of wider Government policy and other statutory requirements, and consistent with the national framework.

### Enforcement criteria

If, on investigation, it appears that an offence under the legislation has occurred, the alleged offender will be informed about what enforcement action may be taken. On-the-spot direction to take corrective action may also be given.

The need for further enforcement actions will be considered using the following criteria and applying the above principles:

- seriousness of breach;
- failure to comply with either a legal direction or notice;
- culpability;
- level of broad public concern;
- due diligence procedures in place;
- voluntary action taken to mitigate any harm;
- cooperation and willingness to take remedial action;
- need for both specific and general deterrence;
- precedent that may be set by failure to take enforcement action;
- enforcement measures necessary to ensure compliance; and
- failure to notify.



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## Enforcement measures

Under its legislation, DMP's enforcement options include:

- **Warnings:** Written warnings or verbal warnings, which may be given where the breach is minor and can be rectified quickly.
- **Notices:** Require compliance with the legislation, either by ceasing certain activities or carrying out certain measures within a specified time.
- **Amendment to licence conditions:** May arise from a breach of the legislation or licence. Conditions on the licence may require action to be taken to bring the operation into compliance within a specified time.
- **Directions:** Issued under the legislation and used in situations where there is imminent risk of harm to a person, the environment or a resource. They can include an order to stop work until further notice.
- **Suspension or revocation of licence:** A licence may be suspended or revoked following:
  - contravention of any imposed licence conditions, or
  - where there exists an unacceptable risk to people, the environment, or both.
- **Infringement notices:** Certain offences contravening regulations may result in an infringement notice and a fine.
- **Prosecution:** May be initiated following breaches of the legislation.

## PROSECUTION

Prosecution is an important part of enforcement. It aims to punish wrongdoing, avoid recurrence and act as a deterrent.

DMP may use prosecution in conjunction with other enforcement measures.

DMP recognises that prosecution is a serious matter, and decisions will have regard to the most recent *Director of Public Prosecutions Act 1991* Statement of Prosecution Policy and Guidelines (see [www.dpp.wa.gov.au](http://www.dpp.wa.gov.au)).

## Matters that may be prosecuted

Where there is sufficient evidence, DMP may prosecute for matters including:

- Incidents or breaches having significant consequences for people, the environment, royalty collections, or resource integrity;
- Operating without a relevant licence;
- Persistent breaches of regulatory requirements;
- Failure to comply with an approved or accepted safety case, safety management plan or environmental management plan;
- Failure to comply with prescribed remedial requirements;
- Reckless disregard for standards;
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information; and
- Obstructing investigators or authorised officers.

## Decision to prosecute

Prosecution may occur if DMP is satisfied there is sufficient, admissible and reliable evidence that an offence has been committed, and that it is in the public interest to proceed.

The following public interest factors will be used to help decide whether to prosecute:

- Potential to impact on people's safety or health, the environment, royalty collections, or resource integrity;
- Foreseeability of the offence;

- Intent of the offender;
- History of offending; and
- Deterrent effect.

## Companies and individuals

Criminal proceedings will be brought against the person/s responsible for the offence. It will be usual practice to prosecute the company where the offence resulted from its activities. However, DMP will also consider any part played in the offence by the officer/s of the company, including directors and managers. Action may also be taken against individuals (as well as the company) where it can be shown the offence was committed with their authority, permission or consent, or was due to their neglect.

## Penalties

Depending on the legislation, the Court may impose a fine, injunctive relief, enforceable undertaking or prison sentence.

## Publicity

DMP will draw media attention to any conviction that could serve to illustrate the need to comply with requirements of legislation administered by it, or act as a deterrent for engaging in similar illegal conduct.

## Working with other regulators

DMP will liaise with other Government agencies to ensure effective enforcement and compliance with legislation.

## Contact details

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