



Government of **Western Australia**
Department of **Mines and Petroleum**

Enforcement Policy

(June 2015)

1. Overview – Objective and Purpose

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

As part of its role, the Department is responsible to the Minister for Mines and Petroleum for administering various Acts of Parliament relating to the dangerous goods, minerals and petroleum industries, including setting appropriate penalties in legislation in accordance with the Penalties Policy Guide. http://www.dmp.wa.gov.au/documents/Application_Of_Statutory_Penalties.docx

The following key Acts and their associated Regulations are administered by the Department:

- *Dangerous Goods Safety Act 2004;*
- *Mining Act 1978;*
- *Mines Safety and Inspection Act 1994;*
- *Mining Rehabilitation Fund Act 2012;*
- *Offshore Minerals Act 2003;*
- *Petroleum and Geothermal Energy Resources Act 1967;*
- *Petroleum and Geothermal Energy Safety Levies Act 2011; Petroleum Pipelines Act 1969; and*
- *Petroleum (Submerged Lands) Act 1982.*

This regulatory framework recognises and promotes a culture of safety and best practice environmental management in relation to dangerous goods, mining and petroleum operations in Western Australia.

This policy is to guide the Department in exercising its enforcement responsibilities. It is also to explain to stakeholders and the community how the Department approaches its statutory enforcement responsibilities.

The policy sets out the principles adopted by the Department and sits within the broader Western Australian Government law enforcement policy context.

The policy is further supported by the Department's Prosecution Guidelines (March 2015), which have been developed to provide practical guidance in determining whether it is in the public interest to charge a person or corporation with an offence.

The Enforcement Policy should therefore be read in conjunction with those Guidelines, when a prosecution is being considered.

The objective of the Enforcement Policy is to maximise compliance with the relevant legislation by setting the overarching policy framework that enables effective and appropriate enforcement activities.

This is achieved by encouraging a community and corporate culture of positive action, accountability, consultation and cooperation with the Department.

2. Principles

As a regulator, the Department will encourage individuals and companies to comply with the relevant legislative requirements and to understand their rights and obligations by providing information and education.

Enforcement action will be undertaken by the Department with integrity and professionalism in the interests of the public.

Where the Department is perceived to have acted fairly, consistently with their functions and objectives, and with the actions taken by the Department as a whole, it should lead to compliant behaviour.

The following key principles guide the Department's approach:

- **Accountability**

Decision-making will take place in accordance with guidelines, procedures and corporate governance processes.

- **Consistency**

Procedures and processes will guide consistent decision making so the system is equitable and fair. As far as possible, the Department will determine appropriate responses in a similar manner across the industry, and over time.

- **Proportionality**

Regulatory responses will be proportionate to the risks posed by any non-compliance and any damage or injury that has been caused. The Department will take into account the intent and conduct of individuals and companies, including their compliance history.

- **Targeting**

Targeted regulatory effort will be directed towards activities or trends which generate significant risk, serious harm or result in significant breaches of the legislation, with action primarily focused on those directly responsible.

- **Transparency**

Enforcement measures will be transparent so that all parties understand what is expected of them, and to create community confidence in the Department's performance by ensuring communities have a solid understanding of the Department's enforcement activities.

3. Criteria

The legislation listed above provides the Department, as the regulator, with a range of enforcement powers.

It provides for criminal sanctions for individuals or companies found to have breached offence provisions contained in legislation administered by the Department.

Decisions to use enforcement action will take into account a number of factors.

These factors include the following:

- cooperation and willingness to take remedial action;
- culpability - whether there is significant risk, serious harm or an activity that results in significant breaches of the legislation;
- due diligence procedures in place;
- failure to notify the Department;
- failure to comply with either a legal direction or notice, or previous non-compliance;
- level of public concern or interest;
- mitigating or aggravating circumstances;
- need for specific or general deterrence; and
- precedent which may be set by any failure to take enforcement action.

4. Enforcement Measures

Regulatory enforcement strategies generally commence with enforcement from a presumption of cooperation. Depending on the seriousness of the breach and the result, persons showing the will and ability to repair any harm caused, and to reform and engage with compliance, may face less severe sanctions.

Failure to cooperate may require escalation to actions with greater deterrent effect.

While a minimum level of necessary intervention is preferred, enforcement action will not necessarily commence by employing the least serious sanction.

The Department determines the most appropriate measure or measures to be used, depending on the circumstances of the breach.

Some of the available measures include, but are not limited to, the following:

- (a) giving advice on compliance and seeking voluntary compliance;
- (b) negotiating responses and requesting action;
- (c) issuing a direction or warning;
- (d) issuing an improvement or prohibition notice;
- (e) issuing a remediation notice or an improvement notice;
- (f) issuing an infringement notice and fine;
- (g) accepting an enforceable undertaking;
- (h) amending permit or tenement conditions;
- (i) revoking, suspending or cancelling authorisations or licences;
- (j) seeking an order or injunction;
- (k) commencing forfeiture proceedings;
- (l) commencing a criminal prosecution; and
- (m) publishing enforcement actions and outcomes.

An escalating scale of enforcement measures are used, which are proportional to the seriousness of the breach.

The Department's Enforcement Review Panel is an advisory panel which considers high level cases referred to it, and advises whether or not it considers enforcement action should be taken, in the public interest. The final decision whether to take action remains the responsibility of the relevant statutory decision maker.

Figure 1 ¹below sets out the Department's approach.

Figure 1



5. Prosecution Guidelines

The Department's [Prosecution Guidelines](#) provide more detailed information in relation to how the Department undertakes a prosecution against an individual or company.

¹ Figure 1 copied courtesy of  safe work australia