

# Enforcement Guidelines

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Department of Environment and Resource Management

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## Overview

Queensland's economic, social and ecological welfare is reliant upon the sustainable management of its environment and use of natural resources.

The Queensland Government is committed to ecologically sustainable development—protecting the ecological processes on which life depends, while allowing for development that improves the total quality of life, both now and in the future.

In seeking to meet the challenge of protecting Queensland's natural assets, legislation has been introduced to ensure sustainable environmental and natural resource management. The Department of Environment and Resource Management (DERM) is the government's lead agency for the administration of this environmental and natural resource legislation. DERM has produced a solid policy platform on which it has built partnerships with the community and industry to encourage greater understanding of the sustainable environmental and natural resource management practices and support for innovation.

Notwithstanding the co-operative approach taken by DERM, it is sometimes in the public interest for DERM to take enforcement action. The effective management and use of natural resources requires DERM to have a clear guideline for the selection of matters for enforcement.

DERM has an established litigation unit, which works in conjunction with specialist investigation teams, to provide a strong and consistent enforcement response to non-compliance.

To the extent possible in the circumstances, it is the goal of DERM's enforcement responses to:

- reinforce the legal obligations required under environmental and natural resource legislation
- achieve good environmental and natural resource outcomes
- deter non-compliant behaviour from others within the general public.

This enforcement guideline aims to foster a corporate and community culture of positive action, consultation and co-operation with DERM. They are general in nature to provide a broad understanding of how DERM will approach enforcement.

## 1. Introduction

DERM is the lead agency responsible for administering the legislation for the protection of the environment and management of natural resources. The legislation that is commonly the focus of enforcement action by DERM includes:

- *Aboriginal Cultural Heritage Act 2003*
- *Coastal Protection and Management Act 1995*
- *Environmental Protection Act 1994*
- *Forestry Act 1959*
- *Sustainable Planning Act 2009 (with respect to those parts relevant to DERM business)*
- *Land Act 1994*
- *Marine Parks Act 2004*
- *Nature Conservation Act 1992*
- *Place Names Act 1994*
- *Queensland Heritage Act 1992*
- *Recreational Areas Management Act 2006*
- *Survey and Mapping Infrastructure Act 2003*
- *Torres Strait Islander Cultural Heritage Act 2003*
- *Vegetation Management Act 1999*
- *Water Act 2000*
- *Wet Tropics World Heritage Protection and Management Act 1993.*

DERM has focused its attention on compliance and is working with the community and industry to achieve good environmental performance and natural resource management through provision of advice, technical assistance and support of innovation. However, in appropriate cases, DERM will pursue enforcement action against those who ignore their legal obligations with respect to their environmental and natural resource responsibilities.

This guideline explains how DERM determines the enforcement action it will take in any given situation. As far as possible, it provides guidance on what behaviour will result in prosecution or other enforcement action. More specific guidance can be obtained by reference to other guidelines addressing specific pieces of legislation. This guideline has been published to ensure that DERM's enforcement responses are:

- proportionate to the conduct
- consistent with past responses for similar conduct
- occur in a timely fashion.

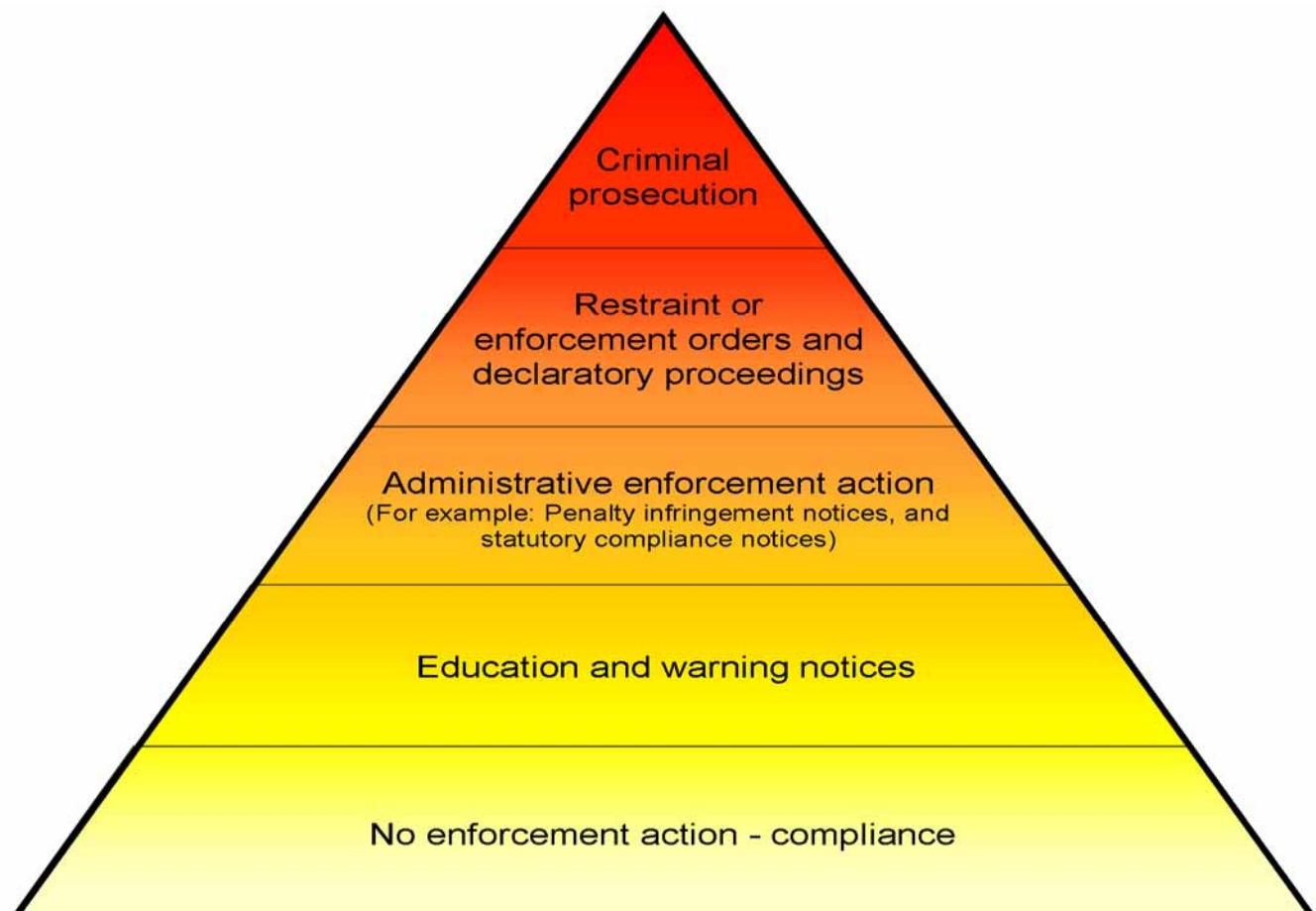
## 2. Enforcement approach

DERM takes a comprehensive approach to environmental and natural resource regulation. Enforcement is one of the measures used by DERM to achieve the objectives of the legislation it administers. It is not the only tool and will be used with restraint. If an alternative to enforcement action will be more effective in achieving the objectives of the Act being administered, then that alternative will be considered. Sometimes a number of enforcement measures are used in combination. In order to determine whether enforcement action will be taken, DERM will investigate all significant breaches of the law and then exercise its discretion in a consistent and logical fashion.

DERM has a wide range of enforcement measures available to it. Each piece of legislation has its own suite of enforcement measures, but generally they consist of the following:

- encouraging voluntary compliance through education and self regulation
- strategic compliance audits and site impact programs
- working with other agencies
- verbal warnings and warning letters
- infringement notices
- administrative and court orders to stop an activity or to take action to remedy a breach or both
- cancellation, suspension or amendment of licence, lease or other permits
- prosecution.

Rather than focusing on one particular enforcement response, this guideline provides general principles that can be applied to assist in choosing the appropriate enforcement tool in any given situation. The enforcement pyramid below (adapted from the model made famous by Ayers and Braithwaite) demonstrates the path of escalation in the enforcement response that has been adopted by DERM.



From this pyramid, it is clear that prosecution may occur where alternative enforcement measures have not been successful. Consideration needs to be given to whether money is better spent on preventing a problem or remediating the impacts of an unlawful activity rather than undertaking costly prosecution actions. In some cases, DERM may decide to negotiate a prompt and satisfactory environmental or natural resource outcome. However, negotiation does not necessarily suspend investigation. Where DERM is satisfied that negotiation is not leading to a satisfactory and prompt outcome, higher level enforcement tools may be the preferred course of action.

If the impact of the conduct is of a minor or trivial nature, enforcement action from lower down the pyramid is more likely. Higher level enforcement action, such as prosecution, may be the preferred option for unlawful conduct:

- involving dishonesty
- involving an attempt to deceive DERM or the provision of false information to it
- involving intentional, negligent or reckless behaviour
- where that unlawful conduct was motivated wholly or partly by commercial considerations
- where there has been a failure to assess, manage or mitigate risk associated with commercial and industrial activities
- resulting in clear commercial gain
- resulting in severe or irreversible harm to the environment or natural resources
- if the impact is unacceptable or dangerous.

Ultimately, DERM has the discretion to determine the appropriate response to unlawful conduct under the legislation administered by it.

## 2.1 Public interest considerations

DERM may take into account the following public interest considerations when deciding on an appropriate enforcement response:

- the seriousness, the triviality, or 'technical nature' of the offence
- the harm or potential harm to the environment caused by the offence
- any mitigating or aggravating circumstances
- the degree of culpability of the alleged offender
- the availability and effectiveness of any alternatives to enforcement action
- whether the offender has been dealt with previously without enforcement action and, if so, what level of enforcement action
- whether the breach is a continuing or second offence
- whether the offence is ongoing
- whether the administrative action or court orders are necessary to prevent a recurrence of the offence
- the prevalence of the alleged offence and the need for deterrence of the offence
- the length of time since the alleged offence occurred
- the age and physical or mental health of the offenders
- whether there are counter-productive features of the proposed enforcement tools
- in cases involving Aboriginal and Torres Strait Island cultural heritage issues, the views of the traditional owners of the area or object.

The following are further factors that should be considered specifically in the case of considering prosecution:

- the length and expense of any court hearing
- the likely outcome in the event of a conviction having regard to the sentencing options available to the court
- any precedent which may be set by not instituting proceedings
- whether the consequences of a conviction would be unduly harsh or oppressive

- whether proceedings are to be instituted against others arising out of the same incident
- the sentencing principles set out in the *Penalties and Sentences Act 1992*.

DERM adopts the overriding principle that enforcement tools must not be instituted (or not instituted) for improper purposes. A decision whether or not to use an enforcement tool will not be influenced by:

- any elements of discrimination against the person, such as ethnicity, nationality, political associations, religion, sex or beliefs
- personal feelings towards the offender or, alternatively, the victim
- possible political advantage or disadvantage to a government or any political group or party
- the possible effect of the decision on the personal or professional circumstance of those responsible for the enforcement response decision.

## 2.2 Determining who is liable for prosecution or other enforcement action

### 2.2.1 General principles

Some general considerations in determining who is liable to prosecution or other enforcement action are:

- who was primarily responsible for the offence—that is, who committed the act, who formed the intention (if relevant) and who created the material circumstances leading to the breach
- where a person is liable because the law creates strict liability—what was the role of the potential recipient
- the likely effectiveness of the enforcement tool against the potential recipient.

### 2.2.2 Corporate liability

The law normally makes legal entities and individuals liable for breaches committed by employees, agents or officers in the course of their employment. Where evidence available to DERM indicates an offence was committed with the employer's knowledge, or the employer failed to take adequate steps to avoid the harm, the employer may be the subject of an enforcement response. DERM will also consider the existence and effective implementation of management programs aimed at ensuring the compliance of the corporation to Queensland's environmental and natural resource laws. This is considered in greater detail in the next section.

### 2.2.3 Liability of employees

Employees cannot use as a defence the fact that they were acting under direction from a supervisor. Acting under orders might, however, be a mitigating factor in determining the appropriate enforcement response. The guiding principle in deciding whether to pursue an employee is the degree of culpability or responsibility involved. Factors to be considered in assessing the degree of culpability include:

- whether the employee knew or should have known that the activity was probably illegal or inappropriate
- whether the employee feared the loss of livelihood if they did not breach, or continue acting in breach, of the legislation
- the seniority of the employee and the scope of the employee's employment duties
- whether, having regard to the employee's seniority and employment duties, the employee had taken reasonable steps to draw to the attention of the employer or any other relevant person the impropriety of the practice
- whether the employee has taken reasonable steps endeavouring to mitigate or prevent any harm (if it was in the employee's power to do so).

Where employees in good faith and without negligence endeavour to follow specific requirements set by legislation or a licence or permit condition, and an offence occurs, they should not be the subject of an enforcement response.

### 2.2.4 Liability of directors and executive officers

When determining whether to institute any enforcement response against executive officers, in accordance with a provision that creates executive officer liability, the crucial issue will be whether the person had actual control or influence over the conduct of the corporation.

As a general policy, DERM will institute proceedings under the executive officer liability provisions only where evidence links the person with the corporation's illegal activity. That linkage needs to show:

- intent to engage in the unlawful conduct
- that the action or omission was negligent or reckless
- there was a failure to monitor or periodically assess and manage risks associated with the corporation's relevant activities or review supporting systems and programs
- there was intent to defraud.

The general legislative exceptions to executive officer liability are:

- the executive officer was not in a position to influence the corporation's conduct
- the officer took all reasonable steps to ensure that the corporation complied with the law.

DERM may take the view that reasonable steps were taken if executive officers ensured that:

- the corporation had an effective environmental or natural resource risk management system in place, which was aimed at ensuring compliance with relevant legislative requirements
- all staff were aware of the system
- the system had been effectively implemented throughout the corporation
- the system was under regular review and was amended when necessary.

The better the corporation's documentary evidence of these matters, the stronger the executive officer(s)'s defence.

## 2.2.5 Liability of lenders, liquidators and trustees

Although there are few situations in which lending institutions might attract liability under the law for an offence, the guiding principle for DERM is the culpability of potential recipients of an enforcement response in relation to an offence. Legal liability is necessary as a pre-requisite to any statutory enforcement response.

DERM acknowledges that in framing the law the intention was not to restrict legitimate commercial activities of lending institutions. DERM takes the view that if the lender did no more than lend money to the corporation under normal commercial processes, and did nothing that led to the causing of the unlawful activity, no enforcement action should be instituted against the lender. The closer the lender is to the management decisions that caused the unlawful activity, the greater the chance of liability.

Where a company has gone into liquidation, the lender might have day-to-day management responsibility for the company. If the lender becomes aware that the company's current activities are unlawful, or were unlawful in the past, then the lender has an obligation to take steps to stop or mitigate the impacts of the activities on the environment. The most appropriate way of doing this, and also the most effective way of ensuring that DERM will not consider the lender to be liable for unlawful environmental or natural resource impacts, is to immediately notify DERM and take steps to prevent future unlawful activities. By mitigating the impacts of unlawful activity on the environment, lenders will not only fulfil their obligations under the law but also maintain the value of their assets.

Similarly, trustees and liquidators that take over the management responsibilities of a company must ensure the company's action comply with Queensland's natural resource and environmental legislation.

## 2.2.6 Liability of state and local governments

The legislation administered by DERM binds all people including state and local governments. The decision to commence enforcement action against state and local governments will depend on whether it is in the public interest. The laws in place are to be equally applied to both private and public sectors. The public has an interest in everyone abiding by these laws and public authorities have a greater responsibility to lead by example. One factor relevant to public interest is the potential cost of enforcement action to the taxpayer; this becomes a significant consideration as this involves a consideration of the costs of both parties.

### 3. Voluntary compliance

DERM recognises that one way to enhance environmental and natural resource protection is to protect companies that continuously improve their management practices and move beyond ‘compliance’. To this end, DERM encourages companies to audit and monitor their operations. To maximise protection from higher level enforcement action, companies can follow these steps:

- implement (not just document) an appropriate risk management system that caters for routine and non-routine situations
- have contingency plans in place
- practise ‘due diligence’
- comply with all statutory instruments
- have strategies in place to move towards industry best practice environmental management
- notify DERM immediately of any non-compliance
- give formal notice to DERM that the non-compliance will be appropriately dealt with and rectified.

#### 3.1 Disclosure and co-operation

Encouraging voluntary disclosure and co-operation is in the public interest. DERM recognises that early notification of an incident and full co-operation with any investigation often mitigates the impact of the non-compliant activity. Accordingly, these factors will be taken into account when considering enforcement action.

#### 3.2 Duty to notify and voluntary disclosure

The law creates a duty on all citizens to notify DERM, as soon as they become aware, of any actual or threatened environmental harm arising from an activity. Where this occurs, failure to notify DERM is an offence.

DERM wants to establish a culture of environmental and natural resource stewardship in the community where problems are reported before irreparable harm is caused. In determining whether to use information that a person has disclosed about themselves to initiate an enforcement response, DERM will consider whether the person or corporation made a voluntary, timely and complete disclosure of the incident giving rise to the offence. Specifically:

- whether the person promptly notified DERM
- whether the information assisted in the control or mitigation of any harm caused to the environment or natural resource
- whether the information substantially aided DERM’s investigation of the incident
- whether the information was available from other sources
- whether the disclosure occurred prior to DERM or any other regulatory body obtaining knowledge of the non-compliance.

#### 3.3 Without prejudice negotiations with alleged offenders

From time to time, it will be necessary for DERM to enter into ‘without prejudice’ discussions with alleged offenders about the type of enforcement tool to be employed in response to the unlawful conduct. The driving consideration in these discussions should be to achieve the best environmental or natural resource outcome. No agreement can be reached with an alleged offender who is not prepared to take responsibility for the impacts of the unlawful conduct. When taking part in these discussions, DERM may take into consideration the public interest considerations outlined above and in particular:

- the costs of the enforcement response relative to any outcome achieved
- whether a negotiated response sets an unsatisfactory precedent for DERM’s response to the conduct
- whether a negotiated response provides an adequate deterrent for similar conduct.

## **General guideline on the enforcement tools**

### **4. Administrative response (education and warnings and other statutory enforcement tools)**

There are a number of non-statutory tools available to DERM to enhance regulatory compliance with Queensland's environmental and natural resource laws. As most of the community and industry are concerned with protection of the environment and natural resources, the majority of minor non-compliance can be dealt with by way of educating them regarding their obligations. Warning letters and notices are also an effective means to ensure that the recipient is made aware of their responsibilities in this respect.

There are a range of other statutory tools that provide an appropriate regulatory response to situations requiring a stronger response. Generally, the legislative provisions mandate certain criteria that have to be met prior to the use of these tools. Specific guidance on when these tools should be used is contained in separate guides prepared by DERM.

## 5. Infringement notices

### 5.1 Background

Infringement notices are a way of dealing with common breaches of the law where the impacts are not serious enough for court action. Some of these could be traversing a State forest without a permit, exceeding noise limits, working outside given hours, emitting black smoke from chimneys, or failing to carry out monitoring. The State Penalties Enforcement Regulation 2000 nominates the infringement notice offences and penalties under the law.

The infringement notice system modifies the traditional legal system. A notice is served because it appears an offence has been committed. However, payment of the penalty does not lead to the recording of a criminal conviction. Non-payment of the fine is not dealt with by a jail sentence but is recoverable as a civil debt. On the other hand, if a person elects to have the matter heard, proceedings are commenced in the criminal jurisdiction of the Magistrates Court.

Infringement notices can be issued by authorised officers. These can include officers from organisations, such as local governments and DERM. DERM has no direct control over how authorised officers from other organisations carry out their duties. However, for fairness and consistency, DERM's authorised officers will implement the infringement notice guidelines set out here.

### 5.2 Operation

Just as there is discretion to use any other enforcement tool, there is discretion whether to serve an infringement notice. Any discretion by individual officers must take into account the intention of the legislation to penalise those breaches that, in the past, might have gone unpunished, and to recognise those active in managing and minimising their environmental and natural resource use impacts.

Infringement notices are designed primarily to deal with one-off breaches that can be remedied easily. They are usually a first response when a preventable breach is discovered. Issuing successive infringement notices for multiple statutory breaches is generally inappropriate, unless the breaches are unrelated. In such circumstances, even though each breach might be comparatively minor, there is probably a major and continuing compliance problem. Such a problem needs to be dealt with through other enforcement measures if a past infringement notice has not motivated the recipient to successfully address the underlying issue.

The legislation does not set a time by which infringement notices have to be issued. Since serving a notice might be the first notification a person has of an alleged breach, it should be issued promptly out of fairness and courtesy.

The *State Penalties Enforcement Act 1999* gives DERM the discretion to withdraw an infringement notice after serving the notice. This allows for two possibilities:

- A more serious breach of the law might have taken place without the authority's knowledge when the notice was issued. The notice can be withdrawn to allow the more serious breach to be pursued.
- A mistake of fact was made and the notice should not have been issued. In such a case, the State Penalties Enforcement Regulation 2000 allows the authority to withdraw the notice, even if the penalty has been paid.

Withdrawal provisions should be seen as a safety net, not a mechanism to be applied regularly.

### 5.3 Summary

Infringement notices are generally appropriate when the following conditions are met:

- the breach is minor
- the facts are apparently indisputable
- the breach is a one-off situation easily remedied
- inspection discovers a breach that normal operating procedures should have prevented
- where the issuing of an infringement notice is likely to act as a deterrent.

Infringement notices should not be issued in the following circumstances:

- where large-scale habitat or environmental damage has occurred
- where the breach is continuing and not within the alleged offender's ability to remedy quickly
- where the penalty seems inadequate for the severity of the offence

- where the extent of the harm to the environment cannot be assessed immediately
- where the evidence is so controversial or insufficient that court action is unlikely to succeed
- where there has been substantial delay since the alleged breach
- where another authority has issued a notice for the same or similar offence in the same period
- where a notice, direction or order has been issued by DERM to do specified work within a time limit and the limit has not expired
- where multiple breaches have occurred, unless all are minor
- where the offence took place under a proposal approved by DERM.

## 6. Court orders

Many of the Acts administered by DERM provide a power to seek orders from a court to ensure compliance with legislative requirements. These orders may take a variety of forms, including declaratory orders, enforcement orders, restraint orders or orders resulting from a criminal prosecution. Court orders are amongst the strongest enforcement tools available to DERM and will only be sought where other alternatives have failed or where the conduct is of such a serious nature that DERM considers it necessary. The public interest considerations listed above (at section 2.1) should be considered by DERM when deciding whether court orders are appropriate.

### 6.1 Model litigant

As a Queensland Government department, DERM is bound to follow the model litigant principles, which can be found on the Department of Justice and Attorney General website. The principles ensure that when conducting litigation, DERM meets the community's and the courts' expectations that the State conducts itself in a manner which exemplifies the principles of justice, and that State power be used in the public interest.

### 6.2 Declarations

Where there is uncertainty regarding if an activity is unlawful in relation to the provisions of an Act administered by DERM, the Act may provide an avenue to seek a declaration from the court. A declaration is a formal statement of legal rights enabling or disallowing an activity. Seeking a court declaration enables an activity to proceed with a clear statement of the legal situation.

An example of where a court declaration may be sought is for consideration of whether a proposed commercial activity venture would be 'interfering' with the habitat of an endangered wildlife resource in a national park. Under similar provisions in the *Sustainable Planning Act 2009* people may seek a declaration about whether an activity is lawful under a planning scheme or is in breach of a condition of the development approval.

### 6.3 Enforcement and restraint orders

Where there is an existing ongoing or potential unlawful activity under legislation administered by DERM, the legislation may provide that a court may issue either a restraint order or an enforcement order. Enforcement orders are applied in the case of a development offence. Restraint orders may be issued for a threatened or anticipated offence against relevant legislative provisions.

Generally the legislation provides the court with very broad powers when issuing orders. For example, the court may, in some cases, direct the company or person to:

- a) stop an activity that either constitutes, or will constitute, the offence
- b) do anything to comply with the law
- c) cease activities that are in contravention of the law
- d) do anything required to stop committing an offence
- e) rehabilitate or restore an area.

When making a restraint or enforcement order, the court will specify the time required for compliance with the order. It is usually an offence for a person to contravene a court order. In order to stop frivolous or vexatious applications for restraint or enforcement orders, the court has the discretion to make an order in relation to costs.

## 7. Principle prosecution

### 7.1 Background

This guideline aims to identify the key steps in DERM's approach to initiating and progressing prosecutions by outlining:

- the basis on which DERM makes a decision to prosecute
- factors taken into account in deciding which charges to lay
- factors considered in determining the appropriate type of proceedings
- submissions on sentence.

### 7.2 The decision to prosecute

#### 7.2.1 Evidence

The basic pre-requisite of any prosecution is that the available evidence, on first impression, appears to establish a *prima facie* case. At all times there is discretion not to prosecute, but the discretion to prosecute only arises once there is a *prima facie* case. This is a well established principle of law and has been enunciated in the Prosecutions Guidelines of the Queensland Office of the Director of Public Prosecutions.

The criteria that are to be applied in deciding whether to prosecute fall into two categories. First, is the evidence sufficient to justify proceedings? Second, does the public interest require a prosecution? The prosecutor must be satisfied as to the first question before moving on to the second.

Similarly, the Prosecution Policy and Guidelines of the Director of Public Prosecutions, New South Wales states:

A *prima facie* case is a necessary but not sufficient condition for launching a prosecution. Given the existence of a *prima facie* case it must be understood that a prosecution should not proceed if there is no reasonable prospect of a conviction being secured . . . This decision requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by the alleged offender and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction.

#### 7.2.2 Discretion

Sufficient evidence is not the only criterion for prosecution since:

- not every breach of the criminal law is automatically prosecuted
- the laying of charges is discretionary
- the dominant factor in exercising that discretion is the public interest.

The Prosecution Policy of the Commonwealth Director of Public Prosecutions notes:

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim (in this case the environment), the suspected offender and the community at large to ensure that the right decision is made . . . The criteria for the exercise of this discretion cannot be reduced to something akin to a mathematical formula; indeed it would be undesirable to attempt to do so.

The breadth of the factors to be considered in exercising this discretion indicates a candid recognition of the need to tailor general principles to individual cases.

One of Parliament's main aims in making a breach of the law a criminal offence is to deter someone else from similar behaviour. By extending criminal liability to many people, for example, landowners and directors and managers of corporations, the law generates increased awareness and responsibility for environmental performance and natural resource management within corporate structures and throughout the community. Prosecution is part of DERM's strategy for achieving its objectives. If prosecution is unlikely to lead to deterrence, other measures may be considered.

Each case is to be assessed to determine whether prosecution is the appropriate strategic response. The factors to be considered when deciding to institute proceedings are listed above in 'public interest considerations' (at section 2.1).

Once a decision has been made to prosecute, DERM must present facts fairly and impartially to the court. DERM should have no interest in procuring a conviction, other than to ensure that the right person is convicted, that the truth is known and that justice is done (*R v Hay and Lindsay* (1968) QdR 459 at 476 and the Queensland Barristers' Rules).

## 7.3 Decisions relating to what charges to lay

### 7.3.1 General principle

The charges laid must reflect the nature and extent of the conduct disclosed by the evidence with the aim of providing a basis for the court to impose an appropriate penalty. In line with this general principle, the following policy is adopted:

The administering authority has a duty to refine its case to avoid laying either duplicate or multiple charges. There will be occasions where the same conduct is prohibited under separate statutes and involves an offence under each. Where another prosecuting authority is involved, DERM is to liaise with the other organisation to ensure the most appropriate charge(s) are laid. Conversely, other prosecuting bodies, which know of DERM's actual or potential involvement in a case, should initiate contact before proceedings begin.

## 7.4 Mode of trial – summary or indictable proceedings

Most offences under legislation administered by DERM are 'summary' offences that are heard by a Magistrate, who is the arbiter of fact and law. However, some offences are indictable, meaning that they may be heard in the District Court. Often the decision as to whether an indictable matter is to be heard summarily (before a Magistrate) is an election that can be made by the prosecution. In DERM's case, the decision as to whether or not to proceed on indictment ultimately rests with the Office of the Director of Public Prosecutions (ODPP). The ODPP have published guidelines on when it considers proceeding on indictment appropriate in the circumstances of environmental and natural resource offences. The Director of DPP guidelines can be found on its website at <[www.justice.qld.gov.au](http://www.justice.qld.gov.au)>.

## 7.5 Sentencing considerations

The *Penalties and Sentences Act 1992* outlines the factors that can be considered by a court at sentence. When seeking a sentence for environmental and natural resource offences, the following is a non-exclusive list of factors which may be considered by DERM in preparing sentence submissions:

- the seriousness of the environmental impact or impact on natural resources (the 'victim' of the offence)
- the potential for the impact to be rectified or mitigated
- the steps taken by the defendant to rectify or mitigate the impact
- the level of cooperation by the defendant with DERM
- any prior convictions of the defendants relevant to environmental or natural resource management
- the level of penalty sufficient to deter others from similar conduct
- the prevalence of the offence
- the maximum penalty for the offence
- any relevant sentencing precedents.

## 8. Breaches of licence conditions

Breaches of licence, lease, permit, authority or the conditions of some other form of permission, can in some cases, lead to the following:

- the issuing of a warning notice or letter
- the issuing of an infringement notice
- prosecution of the offender
- the licence being cancelled.

Cancelling or suspending a licence is potentially the strongest penalty DERM can invoke as it may result in licensee's operations to close. In most cases, DERM will only take this step when:

- the breach of licence conditions has had serious consequences to human health, environment or natural resources
- continual minor breaches have occurred despite warnings being given by DERM
- provision is made for the automatic cancellation of the licence (e.g. accumulation of demerit points).

Specific legislative provisions provide the process DERM must follow before suspending or cancelling a licence. Once the process has been followed and a decision to suspend or cancel has been made, a licensee has the option to seek to have the decision reviewed by a court.

## 9. Conclusion

This guideline is not intended to have legal status. The matters outlined in this guideline are not legally binding on DERM and do not confine, restrain or limit the discretion of DERM to take any action. However, they provide general guidance on how enforcement decision-making is approached by DERM. More specific guidance can be obtained by reference to guidelines addressing specific pieces of legislation.

Should you wish to make comments or suggestions on this guideline, send them to:

Litigation Unit  
Department of Environment and Resource Management  
GPO Box 2454  
Brisbane QLD 4001

If you want to provide information about an incident relating to Queensland environment or natural resource legislation, the DERM hotline is available 24 hours a day on 13 74 68 (13QGOV).