



Department of
Primary Industries and
Regional Development

Protect
Grow
Innovate

Regulatory Compliance Approach

March 2024



Introduction

The Department of Primary Industries and Regional Development (DPIRD) has important statutory functions as a regulator. The contribution of science, policy and regulatory compliance teams within DPIRD supports the development and implementation of quality legislation, policy and regulatory compliance services.

The way DPIRD approaches its regulatory responsibilities should give confidence to the Western Australian community that there is sustainable use of our natural resources and soils, integrity in our biosecurity systems, and strong measures to protect Western Australia's brand and reputation as a reliable producer of premium, clean and ethical food and products.

The Regulatory Compliance Approach document outlines the empowered culture of strong, fair, and accountable compliance regulation DPIRD commits to as a regulator.

DPIRD has strong partnerships with the primary industries sector, and key industry and community stakeholders. These partnerships are important in collaborating to achieve continuous improvement of DPIRD's regulatory function.

It is recognised that DPIRD has deep and diverse responsibilities across agriculture and fisheries – protecting the sustainability of natural resources, managing biosecurity threats while supporting increased productivity and facilitating more value creation and exports. Although the broad responsibilities create an environment where regulatory capture becomes a risk the Department's diverse roles are seen to be mutually reinforcing.

DPIRD is committed to delivering a comprehensive awareness and education program to improve awareness of the legislation, and to increase people's ability to willingly comply with the regulatory requirements.

DPIRD delivers a range of monitoring, surveillance, inspection, and investigation services. This regulatory compliance program plays an important role in general deterrence to non-compliance with the legislation and provides confidence to the community that offences will be detected and appropriate sanctions imposed on those who commit the offences.

The Western Australian community can assist DPIRD, and is encouraged to report or check on matters that you observe by calling:

- FishWatch (illegal fishing, aquatic pests and diseases, and fish kills) – 1800 815 507 or crimestopperswa.com.au
- Exotic Plant Pest Hotline – 1800 084 881
- Pest and Disease Information Service (PaDIS) – (08) 9368 3080
- Emergency Animal Diseases – 1800 675 888
- RSPCA (Livestock welfare and cruelty) – 1300 278 358
- AgWatch (Illegal agricultural matters) – crimestopperswa.com.au

Cover image: DPIRD staff assisting in the Qfly response in Bayswater.

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Purpose

This Regulatory Compliance Approach document has been prepared to improve awareness and understanding of the way the Department of Primary Industries and Regional Development (DPIRD) delivers its regulatory compliance responsibilities, and to provide clarity to the State's primary industries and the Western Australian community on what they can expect from DPIRD as a regulator.

What is regulation?

Regulation is a mechanism for achieving the government's social, economic and environmental objectives in response to industry and community needs and priorities. Regulation applies a set of instruments, tools and approaches to influence or compel individuals, businesses and industry sectors to behave in a way that enables these objectives to be achieved.

DPIRD's regulatory function

About DPIRD

DPIRD has a role in creating enduring prosperity for all Western Australians by ensuring Western Australia's primary industries and regions are key contributors to the Government's agenda for economic growth and diversification, job creation, strong communities and better places.

DPIRD has three identified goals:

- **Protect** through stewardship of our people, land and aquatic resources.
- **Grow** our primary industries and regions through balancing social, economic and environmental drivers.
- **Innovate** through a culture of inquiry and adaptation.

DPIRD's regulatory environment

DPIRD's regulatory domain spans agriculture and food; aquatic resources and ecosystems, including fishing and aquaculture; and the State's water, land and soil resources.

DPIRD has regulatory responsibilities under several Acts including:

- *Fish Resources Management Act 1994*
- *Pearling Act 1990*
- *Biosecurity and Agriculture Management Act 2007*
- *Animal Welfare Act 2002*
- *Soil and Land Conservation Act 1945*

The value of DPIRD's regulation to primary industries and the WA community

DPIRD's regulatory approach intends to provide international and national markets, primary industries, consumers and the Western Australian community confidence in the sustainability and integrity of our aquatic and agricultural products by providing regulatory services that:

- ensure aquatic resources are managed within sustainable limits
- maintain and strengthen the State biosecurity system to protect Western Australia from significant pests and diseases that may damage the productivity, profitability, market access, and reputation of Western Australia's primary industries
- minimise the risk of entry of pests and diseases into Western Australia through strong interstate border biosecurity quarantine measures
- monitor the integrity of traceability and certification protocols and standards that apply to Western Australia's primary production
- ensure appropriate animal welfare standards are achieved within the livestock industries and
- monitor the use of agricultural and pastoral lands to ensure the sustainable condition of the State's soil and land resources.



Image 1: Quarantine detector dog in action at Perth Parcel Centre.

DPIRD's science and policy for better regulation

A foundation of DPIRD's regulatory approach is the resourcing of professional teams in policy, science and compliance. The collaboration and complementary skill set of these three professions contribute to the development of scientifically sound, strategic and sensible development of legislation, policy and regulatory management arrangements within DPIRD.

The policy function provides overall coordination of DPIRD's regulatory response to the legislation and ensures that the appropriate policy and management settings are in place. It collaborates and consults with industry sector bodies and the community in the ongoing continuous improvement of legislation, policy and management controls, and has a critical role in informing stakeholders of the required behaviours and practices to comply with relevant legislation.

Researchers and subject matter experts provide the contemporary scientific advice that underpins and informs policy and management settings. Targeted assessment and monitoring of our regulated industries provide critical scientific information on the performance and effectiveness of the policies and management settings. DPIRD's scientific and technical experts also have a critical role in collaborating with stakeholders and sharing the understanding of the science that underpins many primary industries. This research also makes a strong contribution to regulatory risk assessments and compliance planning processes.



Image 2: DPIRD veterinarian undertaking field surveillance for disease in cattle.

DPIRD's science, policy and compliance professionals collaborate with their national colleagues to ensure that DPIRD is informed of contemporary science knowledge and developments in industry best practice regulation, and effectively participates in national systems, including Codes of Practice and Agreements.

Under certain legislation, DPIRD utilises administrative legislative controls to issue licences, permits, registration services, import conditions, certifications, and brands. The use of these administrative provisions is implemented under comprehensive policy and procedural guidelines. These regulatory mechanisms allow DPIRD to enable and control a range of appropriate community and industry activities in a manner that is sustainable and in accordance with best-practice principles. Access by way of authorisations or entitlement is utilised to regulate resource allocation policy arrangements for aquatic resources.

The use of property and animal identifiers in the livestock sector provides a critical integrity measure for the industry. Compliance services ensure that those persons and businesses that hold administrative instruments are behaving and operating in accordance with these instruments.

Regulatory capture is recognised as occurring when a regulatory agency is influenced or is dominated by the industry or interests it regulates. DPIRD acknowledges that employees in each of the functional areas delivering regulatory outcomes must operate in a framework that minimises the risk of regulatory capture.

DPIRD will foster functional and productive relationships with all stakeholders to ensure that it operates in the public interest and maintains its independence and objectivity.

The regulatory posture will include undertaking genuine consultation with stakeholders, operating in a transparent and professional manner.

In addition, staff will work in an integrity framework that ensures that actual and perceived conflicts of interests are appropriately managed

Critically, DPIRD also mitigates the risk of regulatory capture by structural separation and decision-making autonomy between those officers responsible for developing industry, building relationships, implementing management arrangements and frameworks - and those officers who enforce those arrangements. This ensures that enforcement actions are not unduly influenced by other parties and are taken with a degree of independence.



Image 3: Education and catch monitoring on the opening day of the recreational abalone fishing season.

DPIRD's regulatory compliance objectives

DPIRD is committed to ensuring that primary industries and the Western Australian community understand, respect and adhere to the legislation DPIRD administers. DPIRD strives for an outcome where participants in primary industries and the Western Australian community believe in and understand their legislative responsibilities, are aware of the practices and behaviours required, and display high levels of willing compliance. Further, stakeholders trust that DPIRD will monitor behaviours, and where there are non-compliant behaviours, appropriate and proportionate action is taken according to risk.

DPIRD's compliance objectives can be summarised as:

- promoting the objectives of the legislation
- improving awareness of the legislation and the type of behaviour necessary to meet the legislative requirements
- enhancing stakeholders' ability and commitment to willingly comply with the legislation
- encouraging high standards of personal and professional behaviour in complying with legislation
- ensuring awareness of the potential consequences of behaving in a non-compliant manner, including decisions to undertake illegal activities.

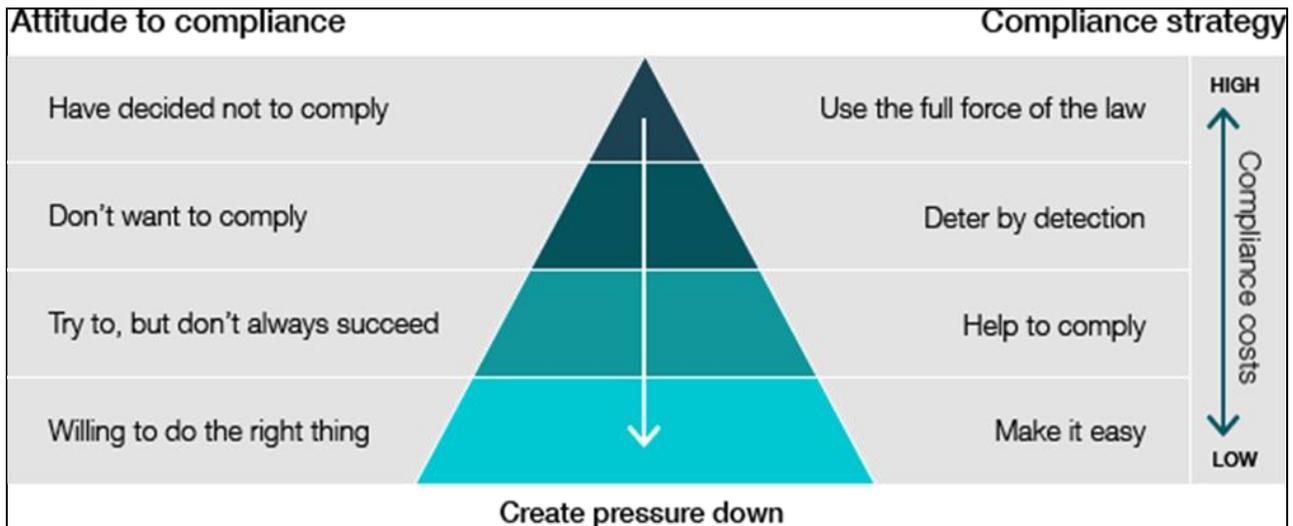
DPIRD's regulatory compliance approach

There is no single regulatory approach that facilitates compliance and positively influences industry and community behaviours.

Regulatory compliance responses must be tailored to the nature and characteristics of the legislation and the practices and behaviour of the stakeholders subject to the legislation. The regulatory compliance strategies adopted and the resources allocated are based on the availability of data and intelligence, the extent, nature, causes and consequences of the non-compliant behaviour.

DPIRD utilises contemporary risk assessment and outcome-focussed planning processes to identify emerging trends in community and industry behaviours and practices, new issues requiring attention, and to address emerging threats or non-compliant activity. These planning processes inform the type of response strategies utilised, and the efficient and effective deployment of regulatory compliance resources.

The figure below reflects DPIRD's general approaches for delivering a range of education and enforcement services. They include encouraging and assisting those who are willing to do the right thing in order to comply, deterring those who do not want to comply, and using the full force of the law on those who have made a conscious decision not to comply. Monitoring, surveillance, inspection and enforcement methodologies are costly and so it is more efficient to minimise their use by designing strategies that create downwards pressure and so make the category at the base of the pyramid as large as possible.



Adapted from Ayres and Braithwaite, the Australian Taxation Office Compliance Model

DPIRD's regulatory compliance principles

Regulatory principles support and influence the way DPIRD performs its functions, exercises its powers, and engages with primary industries and the Western Australian community.

DPIRD recognises that regulatory compliance services are a professional craft and is committed to implementing professional best-practice regulation through its regulatory governance policies, procedures and standards.

DPIRD is committed to building trust, and fostering mutual respect, with primary industries and the Western Australian community.

Fair and accountable: DPIRD will apply the principles of procedural fairness. DPIRD decision-making will be made within effective governance processes to maintain impartiality, objectivity, independence and integrity, and with consideration for the wider public interest. DPIRD will undertake compliance and enforcement action within appropriate timeframes to maintain the principle of fairness to those involved.

Proportionate and risk based: DPIRD will take regulatory action proportionate with the level of risk, and with consideration of cumulative impacts and consequences of repetitive non-compliant behaviours. DPIRD will focus on the greatest risks to the environment, natural resources, and primary industry assets.

Evidence based: DPIRD will base decisions on the best available information to inform regulatory decision-making. Enforcement action will be based on the gathering of relevant factual evidence to ensure the decision is properly informed and impartial.

Outcome focussed: DPIRD will identify the industry and community outcomes of regulatory actions and utilise this to guide its resource allocation and application of licensing, education, monitoring, surveillance, inspection, and investigation services.

Consistent: DPIRD's regulatory actions will be consistently applied in accordance with approved policies and procedures. Regulatory decisions will be consistent and repeatable where circumstances are the same.

Collaborative: DPIRD will develop partnerships with industry participants to enhance their contribution to achieving regulatory objectives that serve the public interest.

DPIRD will work collaboratively with other regulators to share information when lawful and appropriate and support whole-of-government outcomes.

Responsive and effective: DPIRD will respond in an effective and time-appropriate manner. DPIRD will regularly review its regulatory approach, and where alternative regulatory models can achieve equivalent desired outcomes, DPIRD will choose the most cost-effective option.

Confidential: DPIRD's regulatory actions will be undertaken with respect to the appropriate level of legal privacy. DPIRD will balance confidentiality requirements with the need to inform the public when it is in the public interest to do so.

DPIRD's regulatory compliance instruments

DPIRD employs varied but consistent regulatory compliance instruments to ensure effective and appropriate collaboration and engagement, education, monitoring, surveillance, inspection and enforcement services are delivered. DPIRD utilises these instruments as appropriate to assist those who wish to comply, and also where necessary to facilitate a behaviour change; remedy a harm caused; and to initiate a sanction for inappropriate or non-compliant behaviours.

For non-compliant behaviours, DPIRD identifies the most appropriate instrument in each situation, with more severe enforcement action applied in situations that present greater levels of risk or harm. The regulatory compliance instruments that may be employed in response to non-compliant behaviours include:

- education
- corrective action requests
- direction or control notices
- written warnings
- infringements
- seizure of equipment or assets or products
- administrative sanctions, including licence restrictions, suspension or cancellation and
- prosecution.

These response options allow a balanced approach to non-compliance which deters improper conduct and promotes changes in attitudes and behaviours, rather than simply applying a punishment.

Collaboration and engagement

DPIRD recognises that being a successful regulator depends on strong relationships and that collaboration with others leads to better outcomes. DPIRD seeks to maximise willing compliance through cooperative engagement with the community and primary industry participants to influence behaviours.

DPIRD has a focus on building strong relationships with primary industry sector bodies and stakeholder groups, and other State and Commonwealth regulators. DPIRD is committed to harnessing the capability of all sectors to work together to tackle issues and design solutions to achieve the outcomes of its legislative responsibilities.

Wherever possible DPIRD works in partnership with primary industry sector bodies to gain support for, and achieve, compliance by sector members. Importantly, we work together in developing education initiatives to inform the sector, and in some cases, this is led by the sector body.

Sector bodies have a key role in ensuring members understand industry Codes of Practice and regulatory requirements and are willingly compliant. For example, this is a particularly important strategy in animal welfare, where livestock is transported and processed through multiple industry participants.

The health and sustainability of Western Australia's land and soil resources is a shared responsibility and requires strong stewardship by landowners and managers. DPIRD works collaboratively with the farming and pastoral sector to improve our scientific understanding of best-practice land management, and to monitor the condition of the State's soils and land.



Image 4: Working with pastoralists to enhance rangeland landscapes.

The State's biosecurity system requires strong collaboration across many parties to minimise the risk of incursion of pests and diseases, to identify disease or pest incursions efficiently and effectively, to determine and implement management controls that mitigate risk of establishment and spread, and to bring disease or pest outbreaks under control.

Education

A strong regulatory education program, including comprehensive in-field contact with individuals and businesses, is critical in building a high level of capacity within the community to play an informed and active role in complying with regulatory requirements.

Education aims to provide information, resources and tools to assist individuals and businesses to be aware of their rights and responsibilities. This helps them meet their obligations and avoid inadvertent non-compliance.

Education activities may include:

- providing information to allow better understanding of the regulatory controls
- providing resources and tools to assist community members and businesses in meeting their responsibilities
- promoting and reinforcing good regulatory practices
- promoting the benefits of complying with legislation and
- highlighting the potential consequences of not complying with legislation.

DPIRD provides science, technical and regulatory information utilising a diverse range of contemporary and stakeholder appropriate mechanisms. These tools may include mobile phone applications, targeted communication and education activities, industry briefings, information sheets, newsletters and brochures, media releases and online communication tools.



Image 5: Raising producer and transporter awareness on new regulations for cattle and sheep at the Katanning show.

DPIRD's science, policy and compliance staff collectively play an important role in informing and educating individuals and businesses of their obligations and the consequences of non-compliance. DPIRD also engages several specialised community education officers and extension officers who have a key role in educating stakeholders.

Compliance monitoring, surveillance, and inspections

Monitoring, surveillance and inspections are an essential part of DPIRD's regulatory compliance approach. Information gained during these activities assists in:

- detecting an incident of a disease, pest incursion, or other risk
- identifying where action may be required to avoid or mitigate harm
- detecting instances of inappropriate livestock welfare standards
- detecting inappropriate practices or the illegal take of fish and aquatic resources
- detecting poor soil and land health and management practices
- detecting instances of non-compliance in a timely manner
- determining the level of and trends in compliance

- identifying when and what type of education response or enforcement action may be required and
- assessing and reviewing the effectiveness of targeted operations, education and information programs.

DPIRD's compliance managers allocate monitoring, surveillance and inspection resources according to priorities identified through risk-based and outcome-focused strategies and business plans, and ensure the regulatory activities undertaken are appropriate to the level of risk to the State's natural resources and impact on the primary industries.

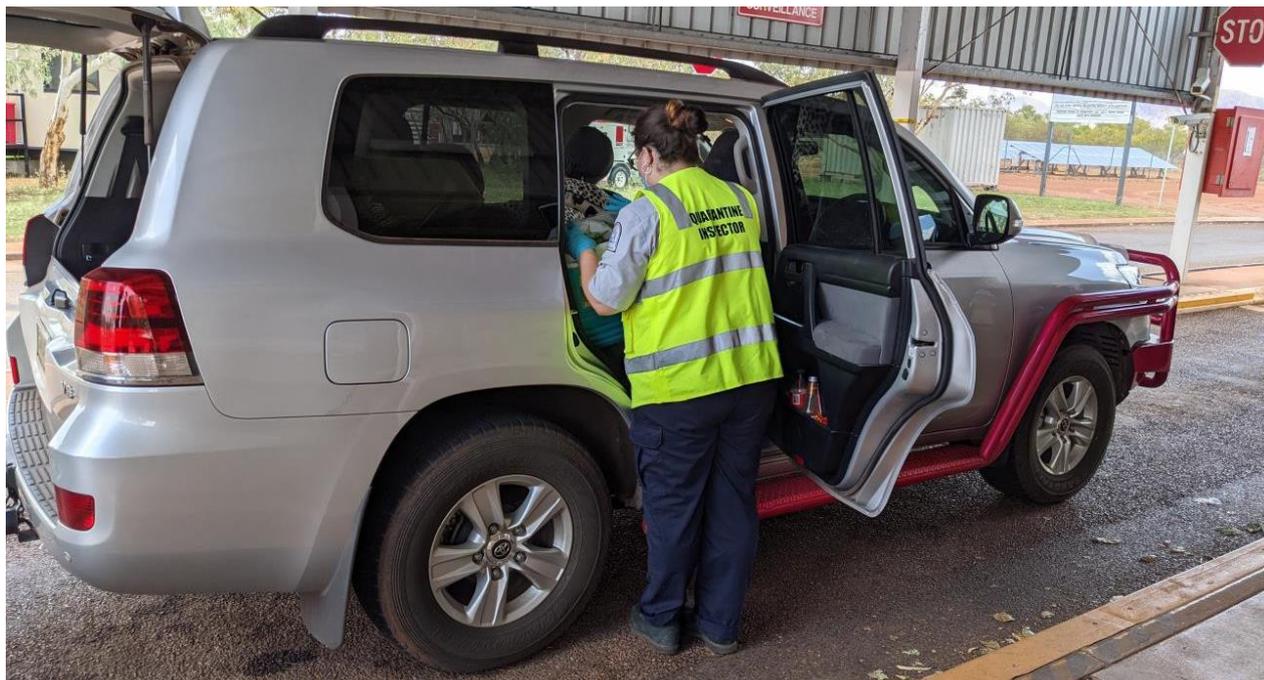


Image 6: Quarantine Inspector checking a vehicle at the WA State border checkpoint.

DPIRD inspectors and authorised officers undertake a range of proactive planned monitoring, surveillance and inspection activities, and these may include:

- inspections and audits routinely carried out at key locations (such as border checkpoints, saleyards, and boat ramps) determined by risk assessments
- follow up, or more frequent, audits and inspections of identified poor performers, or high-risk activities, industries, or businesses and
- programs targeting a particular regulated community or industry sector.

Intelligence and investigations

Depending on the circumstances and the objectives of the regulatory compliance response, DPIRD has the capability to undertake both overt and covert surveillance and investigations.

DPIRD proactively responds to complaints or other intelligence. DPIRD maintains systems and procedures for logging complaints or information from the community and regulated entities. Information is prioritised according to risk-based principles and complaints are investigated accordingly.

DPIRD uses contemporary intelligence systems to collect and analyse data to proactively develop a profile of compliance trends and issues, and to identify significant non-compliant behaviour.



Image 7: Biosecurity Compliance Officer undertaking an inspection.



Image 8: Intelligence-led surveillance of recreational fishing activity in a remote location

DPIRD target locations, activities, individuals and businesses where credible intelligence suggests there may be a higher risk of resource or biosecurity impact, consistent offending behaviour, or significant consequence of the offence.

Investigations are planned and conducted in accordance with approved procedures. In the gathering of evidence of the offence, DPIRD deploys contemporary regulatory surveillance techniques and technologies.

Enforcement

Where instances of non-compliance are identified, DPIRD may employ sanctions, infringements and prosecution as required. The regulatory instruments are utilised to appropriately sanction an offender, to deter future non-compliance, and to provide a general education and deterrence measure. As a rule, the more serious an offence, the more serious the sanction to be applied.

Prosecution is an important part of enforcement and of DPIRD's overall regulatory approach. It helps address the public interest and protect the integrity, sustainability and health of the State's natural resources and primary industries. Prosecution is commenced where it is the appropriate response to a particular circumstance.

DPIRD recognises that prosecution is a serious matter and decisions must have regard to the *Director of Public Prosecutions Act 1991* and the Statement of Prosecution Policy and Guidelines 2018 of the WA Department of Public Prosecutions. In deciding to prosecute, DPIRD will have determined that:

- there is a prima facie case
- prosecution is in the public interest and
- there is a reasonable prospect of securing a conviction through the courts.



Image 9: Boat forfeited in a serious recreational fishing prosecution repurposed for community education.

The following factors are considered when assessing if a prosecution is to proceed:

- the potential of the offending behaviour to impact on the State's natural resources, biosecurity status, infrastructure and assets
- the seriousness of the offence and whether it is of significant public concern
- the potential or actual risk of public or environmental harm caused by the offence
- voluntary remedial action implemented to address non-compliance, mitigate the harm and any mechanisms put in place to prevent a recurrence
- the intent of the offender, any history of offending and the degree of their cooperation with the inspection and enforcement process
- the prevalence of the offending behaviour and the need for a deterrent effect to lower the prevalence
- any precedent that may be set if the matter is, or is not prosecuted and
- any mitigating or aggravating circumstances.

DPIRD's regulatory compliance governance

DPIRD is committed to having skilled and professional compliance staff, fit-for-purpose systems, contemporary procedures and processes, and modern technology and equipment to implement our regulatory compliance services efficiently and effectively.

DPIRD is committed to investing in training and development of authorised regulatory officers, and to maintaining our nationally recognised reputation as a professional regulatory agency.

To provide public confidence in the integrity of regulatory compliance services, DPIRD has implemented best-practice governance through organisational separation between the delivery of field compliance activities, and the governance and monitoring of the implementation of field compliance.

DPIRD recognises the important role played by compliance officers across Western Australia including some remote locations with small populations where relationships could lead to perceptions of conflicts of interest. The risk will be mitigated through careful conflict of interest assessments and the use of other audit tools and mechanisms to limit the potential for tenure related issues.

An internal regulatory compliance governance team leads the work in ensuring that regulatory compliance services are undertaken in accordance with best-practice compliance governance and policy frameworks, and that regulatory compliance staff are appropriately trained, authorised, and mentored for the services they deliver.

In DPIRD, a core principle of compliance governance is to ensure that the exercise of powers and sanctions is applied in accordance with legislation and the underlying policy intent, and regulatory compliance governance principles. There is a suite of policy and procedural guidelines that frame the way compliance services operate including Standard Operating Procedures and Officer Instructions.

The application of directions, warnings, and infringement penalties need to be fair and consistent. To ensure this occurs, there is a suite of directions to officers and inspectors.

Cases considered for prosecution are dealt with in accordance with clear policy guidelines, including a requirement to undergo a thorough integrity and public interest assessment process.

A comprehensive activity data system is maintained for compliance services. This enables compliance services to report on deliverables, outcomes and performance. Further, the system enables an evaluation of productivity and supports resource allocation prioritisation and planning.

The internal regulatory governance team also has an important audit function in the delivery of compliance services. Each year, the team independently reviews and audits the performance of authorised regulatory officers and the sanction action decisions they make; investigates public complaints about the behaviour of officers in their conducting of duties; and routinely reviews the nature, appropriateness, and quality of prosecution actions. The team also independently reviews or coordinates appeals and objections on sanction decisions.

Further information

Through the Australian and New Zealand School of Government (ANZOG), DPIRD is a member of the National Regulators Community of Practice (NRCoP). For further information and resources on nationally accepted regulatory compliance practices that reflect the regulatory approach implemented by DPIRD, visit the NRCoP website (www.anzsog.edu.au/regulators).

DPIRD is committed to improving the approach and delivery of its regulatory compliance services. DPIRD welcomes your input on your experience of our regulatory compliance approach and implementation of the commitments outlined in this document. Please submit feedback on your experience to enquiries@dpird.wa.gov.au

Important Disclaimer

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