



Department of  
Transport

# Department of Transport Enforcement and Prosecution Policy

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# Role of Department of Transport

In the State Government's Transport portfolio the Department of Transport (DoT) is key to integrating and enhancing coordination of the State's transport operations, regulatory functions and policy development processes. DoT's purpose is to provide and enable safe, accessible and efficient movement for the economic and social prosperity of Western Australia.

As part of its role, DoT is responsible to the Minister for Transport for administering various Acts of Parliament and associated regulations relating to the delivery of various transport modes including private and commercial vehicle, taxis and other passenger

vehicles, recreational and commercial vessels and coastal facilities and jetties.

Each Act DoT administers provides a range of education and enforcement measures to assist in achieving the Act's objectives.

## Legislation administered by DoT

*Air Navigation Act 1937*

*Civil Aviation (Carriers' Liability) Act 1961*

*Damage by Aircraft Act 1964*

*Harbours and Jetties Act 1928*

*Jetties Act 1926*

*Lights (Navigation Protection) Act 1938*

*Marine and Harbours Act 1981*

*Marine Navigational Aids Act 1973*

*Maritime Fees and Charges (Taxing) Act 1999*

*Motor Vehicle Drivers Instructors Act 1963*

*Owner-Drivers (Contracts and Disputes) Act 2007*

*Perth Parking Management Act 1999*

*Perth Parking Management (Consequential Provisions) Act 1999*

*Perth Parking Management (Taxing) Act 1999*

*Pilots' Limitation of Liability Act 1962*

*Pollution of Waters By Oil and Noxious*

*Substances Act 1987*

*Port Authorities Act 1999*

*Road Traffic (Administration) Act 2008*

*Road Traffic Amendment (Dangerous Driving) Act 2004*

*Road Traffic (Authorisation to Drive) Act 2008*

*Road Traffic (Vehicles) Act 2012*

*Road Traffic (Vehicles) (Taxing) Act 2008*

*Sea Carriage of Goods Act 1909*

*Shipping and Pilotage Act 1967*

*Taxi Act 1994*

*Taxi Drivers Licensing Act 2014*

*Trans-Continental Railway Act 1911*

*Transport Co-ordination Act 1966*

*Western Australian Marine Act 1982*

*Western Australian Photo Card Act 2014*

As part of a broad strategy to promote compliance with legislative requirements, DoT works proactively with industry and the community to increase the awareness of legislative requirements and to develop an understanding of how to comply. Initiatives include education programs, workshops, promotional material and stakeholder engagement. Enforcement and prosecution are two components to achieve compliance with legislation.

# Enforcement

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

The legislation administered by DoT enables authorised officers to determine what measures are appropriate to encourage compliance and when enforcement is required. This policy statement is the basis for enforcement.

## Principles of enforcement

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

- **Objective:** Enforcement actions will achieve a clear outcome.
- **Proportionality and responsiveness:** Enforcement action will be responsive, timely and in proportion to risk and potential or actual 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.
- **A risk-based approach:** Effort will be focused towards those activities that have the potential to cause the greatest harm.
- **Due process and procedural fairness:** Enforcement action will be carried out within the powers and processes of the legislation, applying principles of procedural fairness.
- **Accountability:** To ensure full accountability, enforcement decisions and the conduct of authorised officers will be explained and open to public scrutiny.
- **Cost-effectiveness:** Enforcement action will be implemented 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; other relevant statutory requirements; and consistent with any applicable national frameworks.



## Enforcement criteria

If, on investigation, and depending on the exact legislative provision 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 if available.

The need for further enforcement actions will be considered using the following criteria and applying one or more of the following principles:

- Impact on safety;
- seriousness of breach and actual or potential consequences;
- 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;
- failure to notify, and
- history of non compliance.

## Enforcement measures

Depending on the legislation, DoT's enforcement options may include:

- **Warnings:** Written warnings or verbal warnings 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.
- **Infringement notices:** Certain offences contravening regulations may result in an infringement notice and a fine.
- **Amendment to licence/ lease / ticket/ permit/ approval conditions:** May arise from a breach of the legislation or licence, lease, ticket, permit or approval. Conditions on the licence, lease, ticket, permit or approval 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. They can include an order to cease operation until further notice.
- **Suspension or revocation of licence/ lease/ ticket/ permit or approval:**  
A licence, lease, ticket, permit or approval may be suspended or revoked following:
  - contravention of any imposed licence, lease, ticket, permit or approval conditions, or
  - where there exists an unacceptable risk to people, the environment, or both, or
  - where the DoT Director General has reason to suspect or a reason to believe that the person is no longer of good character.
- **Prosecution:** May be initiated following breaches of the legislation.

# Prosecution

Prosecution is an important part of enforcement. It aims to punish wrongdoing, act as a specific and general deterrent and protect the community.

DoT may use prosecution in conjunction with other enforcement measures.

DoT recognises that prosecution is a serious matter, and decisions will have regard to the *Director of Public Prosecutions Act 1991* Statement of Prosecution Policy and Guidelines (see [www.dpp.wa.gov.au](http://www.dpp.wa.gov.au)). In particular, DoT's decisions on whether to prosecute will consider:

- a) Whether there is a prima facie case; and
- b) Whether prosecution is in the public interest (including whether there is a reasonable prospect of success).

## Court and tribunal hearings

DoT is also heard in court and tribunal hearings that are not prosecutions, for example, Magistrate Court applications for extraordinary licences, and hearings in the State Administrative Tribunal involving appeals against licensing decisions. The general principles set out in this policy also apply to these matters, particularly in relations to risk, proportionality, and the public interest.

## Decision to prosecute

Prosecution may occur if DoT 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 or property

- The seriousness of the offence and whether it is of significant public concern
- Foreseeability of the offence
- Intent of the offender
- History of offending
- The prevalence of the offence
- The need for a deterrent effect
- Degree of cooperation in the compliance process by the offender
- Attitude of any victim(s) of the offence where relevant
- Any precedent that may be set if the matter is or is not prosecuted
- The need for consistency in the application of an enforcement policy.



### Companies and individuals

Depending on the legislation 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, DoT 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.

## Disclosure of Information on Compliance and Enforcement

Information may be shared with co-regulators for the purpose of law enforcement. It will be subject to relevant information security and privacy provisions and requests for information relating to compliance and enforcement matters made under *Freedom of Information Act* (FOI Act) and will be handled in accordance with the processes set out in the FOI Act.

Any decision to release or refuse to release information will be considered on a case by case basis in accordance with the provisions of the FOI Act.

### Publicity

DoT may 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

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







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