



Department of
Transport

Education and Enforcement Policy

February 2022



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Role of the Department of Transport

As part of the 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 (WA).

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, 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 (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

Trans-Continental Railway Act 1911

Transport (Road Passenger Services) Act 2018

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. Education and enforcement are two extremes of a continuum of tools used to achieve compliance with legislation.

Scope of this Policy

This Policy is applicable to all legislation DoT administers. It is relevant to all sectors of the WA community including:

- industry and commercial enterprises;
- members of the public; and
- agency staff.

It is important to note this Policy is not a legal document and should not be relied on as such. It is one of several publications providing guidance to the public and DoT staff. This Policy does not limit the discretion of DoT to take any action it considers necessary or appropriate under the legislation it administers.

Purpose of this Policy

DoT aims to be an effective and influential regulator that exercises its statutory authority fairly and credibly. This Policy articulates DoT's approach, method, and priorities in ensuring compliance with our Acts and carrying out our compliance and enforcement powers.

The Policy also identifies many of DoT's enforcement powers, how they differ depending on how severe the non-compliance is, and an explanation of how and when they will be used.

DoT commits itself to this Policy and the principles it establishes. The Policy will provide guidance to staff implementing education and enforcement activities and greater certainty to entities subject to regulation and regulatory activity.

Education

Education is an essential element in regulating activities and gaining voluntary compliance with legislation. In utilising education initiatives to motivate behaviour change, DoT recognises that:

Customers are at risk of ignorant non-compliance if they have no knowledge of compliance requirements, and that dedicating resources to educating customers reduces the risk of ignorant non-compliance.

DoT has a responsibility to make information about a person's legal responsibilities readily available.

Education can be more cost effective than enforcement in delivering compliance, through engaging customers and providing resources to support informed decision-making.

Education is most effective at achieving voluntary compliance when the content and delivery is targeted to the customers.

Using education for behaviour change

In determining how to apply educational material and initiatives to motivate behaviour change and achieve regulatory outcomes, DoT will apply the EAST framework¹:

Easy: Educational material and initiatives will be simple, clear and easy for customers to understand.

Attractive: Educational material will be specific to each customer segment to attract attention and ensure relevancy.

Social: Educational initiatives will demonstrate the desired behaviour and provide opportunities for customers to engage.

Timely: Education will be delivered at a time when customers are more likely to be receptive and willing to change their behaviour.

The role of promotion and communications

Where appropriate, DoT will act to promote:

- changes in legislation, regulations and policy;
- convictions that demonstrate the need to comply with relevant legislation and why the legislation is in place (e.g. legislation serves to protect public safety); and
- enforcement activities that demonstrate DoT's ability to effectively regulate and limit high risk illegal activity.



¹ EAST for Health & Safety (2014) Source: www.bi.team/wp-content/uploads/2019/10/2019-09-30-BIT_EAST-for-Safety_Full-Report.pdf

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 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 action will be transparent so 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 on 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 State 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 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 action 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
- History of non-compliance

Enforcement measures

Depending on the legislation, there are a number of enforcement options available for use as detailed below.

- Warnings: Caution notices, 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 with 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 authorisation/ licence/ lease/ ticket/ permit or approval.
- An authorisation, 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 relevant delegate 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. In some cases referral of matters to external law enforcement agencies may also occur.

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 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). 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

The CEO of DoT has a right to be 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 relation 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 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
- Seriousness of the offence and whether it is of significant public concern
- Foreseeability of the offence
- Intent of the offender
- History of offending
- Prevalence of the offence
- 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
- 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 is 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 1982* (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.

Promotion

DoT may use convictions as part of education and promotion activities to illustrate the need to comply with requirements of legislation it administers, or act as a deterrent for engaging in similar illegal conduct. No identifying information will be used, and prior approval will be sought from the DoT Communications team.

Working with other regulators

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





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