

Compliance and Enforcement Policy

OFFICE OF THE CONSERVATION REGULATOR



JUNE 2019



Environment,
Land, Water
and Planning



Aboriginal acknowledgement

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices. We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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1 Introduction

1.1 The Office of the Conservation Regulator

The Office of the Conservation Regulator (OCR) was established by the Department of Environment, Land, Water and Planning (DELWP) early in 2019 following an Independent Review of Timber Harvesting Regulation in Victoria's public native forests (The Review).

The Review recommendations went beyond DELWP's role in timber harvesting regulation to encompass all regulation undertaken by DELWP. The panel made 14 recommendations, which have been accepted in full. These include:

- Increasing transparency by publishing a regulatory framework, a compliance and enforcement policy and statements of regulatory intent for key areas of regulation
- Improving relationships and engagement with our stakeholders, the community and those we regulate
- Enhancing regulatory capability – including people, processes, technology and infrastructure for the delivery of regulatory services; and
- Reviewing laws to recommend legislative changes needed to ensure modern regulatory powers.

The Review and DELWP's response to the Review were published on 15 March 2019. The documents are available at: www.forestsandreserves.vic.gov.au/forest-management/environmental-regulation-of-timber-harvesting.

The Chief Conservation Regulator leads the OCR and is accountable for regulatory decision-making.

In the first phase of OCR establishment the Chief Conservation Regulator will be accountable for timber harvesting, biodiversity, fire prevention and land-use regulation.

The OCR will also play a role to support all of DELWP to lift regulatory performance, working with others in the Department to ensure the consistent application of the DELWP Regulatory Framework and support the development of systems and capabilities to be an effective and transparent regulator for the Victorian community.

1.2 Our regulatory context

The DELWP Regulatory Framework outlines how DELWP will deliver its regulatory role for direct regulatory responsibilities and explains the way we want to regulate and the principles which guide our approach to regulation.

DELWP's direct regulatory responsibilities are those regulatory powers and functions vested in DELWP's Secretary or another staff member whether by delegation from a Minister or vested by an Act or Parliament or Regulation.

We apply these laws to deliver the DELWP vision of "liveable, inclusive, sustainable communities and thriving natural environments".

Our regulatory mission is "to be an effective, trusted, best practice regulator"

The Chief Conservation Regulator's role is to contribute to DELWP's vision through the delivery of our regulatory outcomes:

- Protected natural and heritage values
- Equitable and safe access to public land and use of natural resources
- Sustainable communities – social, economic and environmental.

To achieve these regulatory outcomes across our regulatory responsibilities we apply a consistent regulatory approach:

- A focus on collaborating and engaging
- Regulating in a way that is risk-based and intelligence led
- Carefully planned and effective regulatory action through applying our five-step approach:



This Compliance and Enforcement Policy is a key document that supports our implementation of the DELWP Regulatory Framework.

1.3 About this Compliance and Enforcement Policy

This policy describes how we will apply the law and exercise our judgement and discretion in our compliance and enforcement activity. This policy describes how we:

- encourage voluntary compliance with the law
- make use of our range of compliance and enforcement tools
- take account of culpability and harm in our enforcement approach.

This policy should be read in conjunction with the OCR's:

- Annual State and Regional Compliance Plans which set out our compliance priorities for the year. These plans will be released in July each year
- Statements of Regulatory Intent which describes how the OCR will apply the law for key regulatory topics.

This diagram sets out the relationship between this policy and other policies and guidance.



These documents are available at:
www2.delwp.vic.gov.au/regulator



2 Our regulatory principles

The OCR's compliance and enforcement activities are guided by the regulatory principles set out in DELWP's Regulatory Framework.

We undertake our compliance and enforcement work in line with these principles:

- Outcomes-focused
- Risk-based
- Intelligence-led and evidence based
- Proportionate and graduated
- Collaborative
- Transparent
- Safe.

2.1 Outcomes-focused

"Our regulatory approach is driven by clear outcomes which are articulated and measured to ensure that we are making a difference".

DELWP Regulatory Framework

DELWP's Regulatory Framework sets out three regulatory outcomes that the Department aims to deliver in undertaking compliance and enforcement activities:

- Protected natural and heritage values
- Equitable and safe access to public land and use of natural resources
- Sustainable communities – social, economic and environmental.

We exercise our judgement and discretion to deliver these regulatory outcomes.

The OCR will also outline specific outcomes and objectives through:

- annual state and regional compliance plans
- statements of regulatory intent
- our compliance activities; and
- enforcement actions we take.



2.2 Risk-based

“Our effort is focused on addressing the most significant risks in order to maximise the outcomes achieved”.

DELWP Regulatory Framework

We determine our responses to non-compliance by considering:

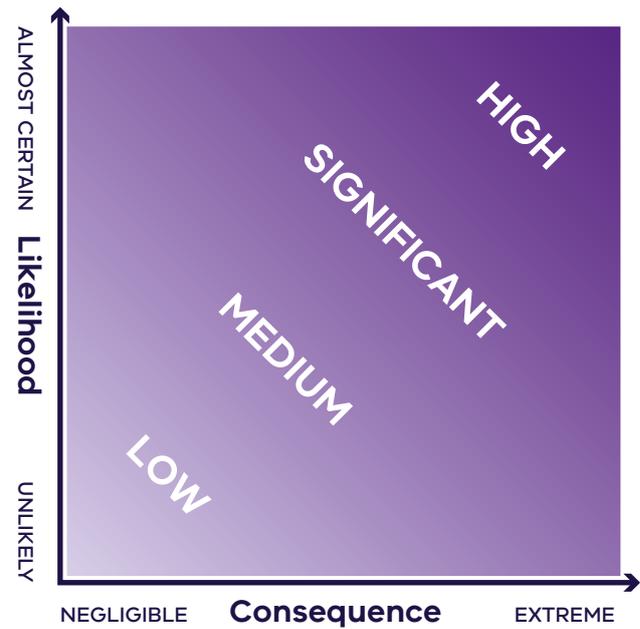
- the level of risk non-compliance poses to our regulatory outcomes
- our ability to reduce risk to our regulatory outcomes; and
- the most effective use of our regulatory resources.

This approach recognises that it is not practical or appropriate to take compliance and enforcement action in response to every alleged or suspected breach. Our effort and actions will be focussed where there is the greatest risk to our regulatory outcomes and where we can efficiently and effectively reduce that risk.

Figure 1 shows how we assess risk based on the likelihood of the risk or harm occurring and the consequence of the event.

This approach accepts that risks or non-compliance should be treated according to their significance and therefore, should not all be treated in the same way. This achieves the best environmental outcomes with the resources available to us.

Figure 1 Risk assessment framework



2.3 Intelligence-led and evidence-based

“We gather knowledge and evidence, including information provided by the community, and we use it to determine which risks to focus on and how to design and implement our regulatory interventions”.

DELWP Regulatory Framework

Information and intelligence drives our compliance planning, prioritisation and regulatory responses. Information that forms the basis of intelligence comes from a variety of sources including:

- The community
- Our own compliance monitoring activities and investigations
- Environmental monitoring and research
- Our co-regulators; and
- Environmental scanning of events and trends.

The community can provide information about issues of concern and non-compliance to us by contacting our Customer Service Centre by phone on 136 186, TTY 1800 122 969

You can also report timber harvesting issues to us at www.forestsandreserves.vic.gov.au/forest-management/forest-reports

Decisions we make are evidence-based, informed by intelligence, science and other data we hold or can access.

Intelligence, science and other data is also necessary in enabling us to apply our principle of proportionate – that is, understanding the relative risk, the scale of likely harm and the culpability of those who do not comply with the law.

2.4 Proportionate and graduated

“We consider factors such as whether breaches of the law were intentional, reckless or repeated, and the impact of the breach in our decision making. This means that our approach will shift depending on the circumstances, from providing information and advice about how to comply with the law through to imposing fines, cancelling licences and permits or prosecuting for serious offending”.

DELWP Regulatory Framework

Our goal is to maximise compliance with the law, reducing harm and providing benefits to the community and our environment.

Our activities to support compliance or respond to non-compliance with the law will be proportionate to the risk of harm caused and will take into account the circumstances and attitudes of those required to comply. That is, the greatest harms and intentional non-compliance will be met with our strongest enforcement responses.

We seek to understand and take into account whether the person is both intending and willing to do the right thing, but needs further support to do so, or whether they are recklessly or deliberately failing to meet their legal obligations.

Each compliance activity or response to non-compliance decisions will build on and be informed by our past actions. This includes considering our previous communications and actions with parties and on specific issues.

Figure 2 shows our approach to determining proportionate and graduated compliance activities or when and how we enforce the law.

Figure 2 Factors which influence our regulatory response



2.5 Collaborative

“We collaborate with, the Victorian community, Traditional Owners, stakeholders and with other regulators, providing opportunities to shape our approach to achieving regulatory outcomes and help us be a successful regulator”.

DELWP Regulatory Framework

The OCR is committed to collaborating with the Victorian community, Traditional Owners, stakeholders and with other regulators. We understand that this is essential to our aspiration to become an effective, trusted, best practice regulator.

We also understand that it will take effort and time to make the changes that are required to fulfil this vision for our work.

The OCR will use a number of avenues to inform, engage, consult and collaborate with community members and stakeholders. This will include through:

- Opportunities to comment on our regulatory priorities, draft guidance and approach
- OCR open house events- an opportunity to meet and talk to our staff
- Meetings on critical issues of concern and alleged non-compliance
- Opportunities for community members to report non-compliance.

The OCR has also established a Stakeholder Reference Group to support direct feedback on our approach from community representatives.

2.6 Transparent

“We are as transparent as possible about our regulatory policies, priorities, actions and outcomes. We believe that being transparent works to hold DELWP accountable to the Victorian community and encourages regulated parties to comply with the law. We ensure that the public release of information about regulatory activities does not undermine our ability to prosecute or impose sanctions”.

DELWP Regulatory Framework

The OCR is committed to being outward looking – engaging better with the community, stakeholders and regulated parties. This includes being open and transparent about our regulatory approach and the limitations and constraints on what action we can take.

The OCR will publicly share more information about its regulatory role, responsibilities and purpose.

We will also make it clear where regulated parties have any right of review of our regulatory decisions and where feedback can be provided about our approach or complaints can be made about our actions.



2.6.1 Responding to requests for information

The *Freedom of Information Act 1982* provides the community with a legislative framework to request information from us. Before you make an FOI request, you can ask us for the information you want. We will respond to requests for information and provide information subject to our operational considerations and our legal obligations with respect to information security and privacy.

If we are able to release the information, this is often faster and easier than making a formal FOI request. You can request information from the OCR via email at ocr@delwp.vic.gov.au.

To make a formal FOI request you can contact the DELWP FOI Unit on 03 9637 8331 or foi.unit@delwp.vic.gov.au.

Each FOI request is considered on a case by case basis and decisions are made to release or refuse to release information as required by law consistent with the FOI Act.

2.7 Safe

“We ensure that our regulatory activities are undertaken in a manner that is safe for our staff and the community”.

DELWP Regulatory Framework

DELWP is committed to protecting the safety and wellbeing of its people and ensuring safety is integral to how we work. We actively support the physical and mental health and wellbeing of our people and promote a healthy workplace by maintaining safe systems of work. We expect our people to take reasonable care for their own health, safety and wellbeing and that of their colleagues, visitors and communities affected by our work.

The work of regulatory investigation and enforcement carried out by our Authorised Officers can sometimes involve risks. Authorised Officers are often required to work in a variety of environments including investigating and enforcing the law in:

- remote locations
- difficult terrain
- situations involving interactions with wildlife or
- dealing with aggressive and threatening members of the community who may inflict harm on our officers.

This work can require Authorised Officers to work outside ordinary hours of business.

DELWP and the OCR takes the safety of our people and the community very seriously. We will provide our people with the training, equipment, policies and processes to ensure that our compliance and enforcement activities are undertaken in a safe manner.

We will proactively address and pursue instances where our Authorised Officers have been verbally threatened or abused or physically assaulted.

3 Our approach to compliance and enforcement

In the OCR, we work with co-regulators, regulated entities and the community to improve compliance with the laws we are responsible for applying.

We use a range of approaches to encourage and require compliance with those laws.

We work to prevent harm to the environment and risks to our regulatory outcomes from being realised wherever possible.

Some of our work necessarily involves responding to environmental harm or non-compliance with the laws we regulate after it has occurred. However, we firmly believe that prevention is a priority and we maximise the outcomes achieved by investing in preventing potential harms from being realised.

In planning our regulatory activities, consistent with the DELWP Regulatory Framework, the OCR aims to put a considered mix of our resources into:

- preventative work such as raising awareness of regulatory requirements and how to comply to support compliance with the law
- monitoring and assessing compliance with regulatory requirements, approvals and directions
- responding to harmful events as they arise.

We assess alleged or suspected contraventions of the law (those reported by the community and those we identify through our work) and determine the appropriate course of action to take based on our regulatory principles.

We carefully prioritise our responses to each to ensure the most effective use of our resources to deliver most effectively towards our regulatory outcomes.

3.1 Supporting compliance with the law

We know that most people want to comply with the law and we seek to support and enable voluntary compliance. The OCR undertakes a range of activities to support compliance with the law, including:

Setting standards and clarifying how we will apply the law

Publish standards and guidelines on what the law requires and how we will interpret and apply the law

Informing and educating

Provide clear and accessible information to support an understanding of the law and how to comply with it.

Tailored compliance support

Provide practical, constructive and specific advice to encourage compliance with the law and interpret standards.

We train our staff to support them to be experts in compliance. We aim to build and maintain a competent, experienced and technically skilled workforce, who can provide practical advice to support you to comply with the laws we regulate.

We will also design our guidance, systems, processes and practices so that it is as easy as possible and practical for regulated parties to comply with the law.

3.2 Monitoring compliance

The OCR monitors compliance with the laws it applies. We do this to identify and address non-compliance and to maintain a credible threat of detecting non-compliance. We are constantly improving our capacity to detect and respond to non-compliance.

Compliance monitoring uses intelligence such as community information and a wide range of other intelligence, environmental monitoring and data from across government, co-regulators and other sources.

We conduct targeted patrols, inspections and audits to monitor compliance with the law and with licences, permits and authorities we have granted.

3.3 Assessing non-compliance

The OCR will assess alleged or suspected contraventions of the law including those reported by the community, co-regulators and those we identify through our work. In making an assessment, we may make further preliminary enquiries including (but not limited to) reviewing other intelligence, desktop assessments, field inspections and making enquiries with others, including co-regulators.

In line with our risk-based approach, we will consider the scale of the non-compliance and the risk or harm to the environment and our regulatory outcomes and carefully prioritise our responses to ensure the most effective use of our resources.

This approach recognises that it is not practical or appropriate to take compliance and enforcement action in response to every alleged or suspected breach.

To maximise the outcomes we achieve through regulating, our effort should be focussed where there is the greatest risk of harm or impact on our regulatory outcomes and where they can have the greatest positive impact for the community, the environment and on our regulatory outcomes. We will assess all reported non compliance but will not always investigate them.

In all cases, we will maintain records of our assessments, investigations, the enforcement action (if any) so that the information we collect can be used to inform our future decisions.



3.4 Investigate

Where the OCR has reason to believe a breach of the law may have occurred, we may investigate.

This may include (and is not limited to) site inspections (including inspections conducted under a monitoring warrant, or search warrant), conducting interviews, seeking expert assessments and requesting information (including under statutory notices).

Passive and active surveillance data may also be considered as part of any investigation.

The time taken to conduct an investigation will vary depending on the complexity of the issue including the evidence required.

3.5 Enforcement action

At the conclusion of an investigation or operation, if a breach of legislation has been determined, the OCR will assess whether enforcement action is appropriate and, if it is, take the most appropriate form of action based on our principle of a graduated and proportionate response.

Information about how the OCR makes these decisions is found under section 4 - Our response to non-compliance.

3.6 Communicating outcomes

It is important to inform the public about what action the OCR is taking, why the action has been taken and the outcomes we achieve through our regulatory work.

Being transparent about our regulatory activities:

- promotes confidence and trust as the community can see that laws are being actively enforced consistently as we act against those who we believe, on reasonable grounds, are breaking the law
- deters those who may otherwise seek to break the law by demonstrating that there are significant repercussions when you come to the attention of an active regulator who is working to enforce the law; and
- promotes compliance with the law by informing the community about standards required by the law, and the consequences of failing to meet those standards.

We will close the information loop with people who have made allegations and with regulated entities where appropriate on the outcomes of investigations and any enforcement action taken.



4 Our response to non-compliance

When we take enforcement action, we consider factors such as the risk of harm or harm from the illegal activity, the driver of the illegal activity and the history of non-compliance.

Where voluntary compliance is not achieved, we may take action that will have one or more of our enforcement objectives:

- Stop the non-compliant activity
- Remedy or prevent the harm
- Punish non-compliance
- Deter future non-compliance (both specific and general)
- Stop the unlawful conduct
- Raise awareness of the law.

Our enforcement decisions will also consider appropriate action to build community and industry trust and ensure a level playing field.

Remedy

When considering our approach to remediation we will take into account the harm that has occurred or the likelihood of harm occurring and the consequence of the harm. This will determine whether our approach to the regulated party is to:

- Support them to comply
- Direct them to comply
- Force them to comply.

Depending on the relevant laws, the OCR has a range of tools available to remedy non-compliance including:

- Verbal advice
- Advisory or Education letters
- Voluntary rectification or cooperative compliance plans
- Directions.

In some circumstances, it may not be possible to restore the environment or other values to their previous state, so the remedy may require the regulated party to 'make good' by minimising the extent of the damage or risk and taking reasonable steps to remediate impacts.



Sanctions

When considering our approach to punish or deter future non-compliance of the regulated party and as a general deterrence for others we consider the attitude and behaviour of the regulated party and the consequence of the risk or harm.

Sanctions might include:

- Formal Verbal Caution or Warning Letters
- Findings letter
- Show Cause Notice
- Infringements
- Insertion of conditions in approvals, permissions or authorisations
- Referral to another regulatory, agency or professional body
- Suspension, revocation or cancellation of permissions or authorisations
- Injunctions
- Enforceable Undertaking
- Civil Proceedings
- Prosecution.

4.2 Our decision making

We exercise our discretion when applying enforcement tools. In doing this, we seek to maximise regulatory outcomes and apply the law in a way which is procedurally fair and maximises the public interest.

The decisions of our staff will be guided by several factors including:

- The seriousness of the offence
- The seriousness of the harm or potential harm to our regulatory outcomes, and particularly where this conduct is ongoing
- Whether the conduct was inadvertent and the result of ignorance, a lack of competence or an accident or whether it was wilful, reckless or negligent
- How foreseeable the harm was, how practicable it was to control and what controls were available
- Whether the conduct is widespread or involves a new or emerging issue or has a significant impact on the regulatory framework
- Whether enforcement action is likely to have a worthwhile educative or deterrent effect
- What compliance and enforcement options are appropriate to address the alleged conduct
- The focus of current priorities and plans.

4.3 Considering the public interest

The OCR exercises its regulatory powers in the public interest. When enforcing compliance with the law, we aim to serve the public at large by delivering on our regulatory outcomes. There must be a public benefit for every enforcement action we take.

We act for the public good - we do not act for an individual person or group of people that may have specific interest or may have made a report of harm or non-compliance.



5 Expectations

5.1 What you can expect from us

When we support compliance with and enforce the law, our staff will:

- Help you understand your obligations under the law we regulate
- Treat people equally, without prejudice or favour
- Act with honesty, and impartiality
- Act in a way that is procedurally fair
- Act in the public interest
- Collect, store and use a wide range of information to inform our decision-making.

We will collaborate and engage with the community, traditional owners and our co-regulators where appropriate.

We will welcome your feedback which can be provided to ocr@delwp.vic.gov.au.

5.2 What we expect from you

When we engage with you we will do so respectfully and in good faith and ask that you do the same.

Whilst we will undertake a number of activities to support you to understand and comply with the laws we regulate; the responsibility for complying with those laws, rests with the regulated party.



6 Media and communication of our Compliance activities

The OCR uses a wide range of communication activities to promote understanding of the law and to inform the community of our activities.

This includes engaging with the community through a wide range of public channels, including the DELWP website and the OCR website, social media, newspapers, television and radio, as well as public presentations, and publishing reports and guidance material.

Media engagement is a particularly important element of our wider regulatory strategy.

It enables us to communicate with and provide information to the community who may otherwise be unaware of our work and the laws we regulate.

Public comment plays an important role in achieving compliance, and media communication is one of the most effective ways of educating the community of their rights and obligations.

Broad communication about the OCR's activities provides transparency about our actions for which we are accountable to the community and to the government.

6.1 Limits on informing the public of our activities

There are a range of factors which limit our ability to comment on our compliance and enforcement activities. These include:

- Fairness to those being investigated for alleged non-compliance of our laws
- In the case of proceedings, respecting the court or tribunal's processes to ensure a fair hearing of the issues in contention
- Legislative restrictions (certain material cannot be disclosed)
- The need to safeguard confidential or sensitive information (such as commercial-in-confidence)
- The potential to jeopardise current or future investigations and court proceedings through the untimely release of information
- How release of information may impinge upon the privacy or safety of others involved (such as complainants, witnesses and suspects).

6.2 General position on the use of media for our enforcement activities

When taking enforcement action which includes actions to identify, investigate, prosecute and resolve potential non-compliance with the law, the OCR may:

- Publicise the commencement of court or tribunal proceedings
- Link to those proceedings on a variety of media channels including via social media
- Limit our public comments during the course of proceedings to matters of fact; and
- Report and comment on the outcome of proceedings, or other formal resolution of investigations, in a factually accurate and balanced manner which is consistent with the objectives of ensuring public understanding of the outcome and promoting compliance.

7 Feedback and review

It is intended that this policy will be reviewed every two years or as needed. The OCR welcomes your feedback at any time. You can submit feedback by email to ocr@delwp.vic.gov.au.

7.1 Complaints

DELWP is committed to an effective complaint handling process which contributes to responsive service delivery and leads to better outcomes for our clients.

If you have a complaint about the OCR we encourage you to first raise the matter with us directly at ocr@delwp.vic.gov.au

If after contacting us, you are still unsatisfied you can make a general complaint to DELWP.

General complaints can be made to DELWP by

- contacting our Customer Service Centre on 136 186, TTY 1800 122 969
- completing the online form at www.delwp.vic.gov.au/our-department/contact-us
- in writing to: DELWP Complaints, Legal Services Division, PO Box 500, East Melbourne 8002

Specific complaints about Office of the Conservation Regulator Authorised Officers can be made by:

Lodging a complaint by completing the complaint form found at <https://www2.delwp.vic.gov.au/our-department/contact-us> and returning it to: DELWP Complaints, Legal Services Division, PO Box 500, East Melbourne 8002 or via email to: foi.unit@delwp.vic.gov.au

There are mechanisms and contacts provided below which provide oversight of the Office of the Conservation Regulator's compliance and enforcement activities.

The courts

The criminal and civil remedies accessible to the OCR under the law we regulate are available only from the courts and the Victorian Civil and Administrative Tribunal. Many of the investigative tools available to the OCR, for example search warrants, are accessible by application to the courts.

Victorian Ombudsman

The Victorian Ombudsman has the power to investigate complaints about State and local government authorities.

You can contact the Ombudsman at:

Level 2, 570 Bourke Street
Melbourne Vic 3000
DX210174

Phone

03 9613 6222 1800 806 314 (regional only)

Other agencies

Certain compliance and enforcement activities and decisions are subject to review and comment by a range of other bodies such as the Privacy Commissioner or Fines Victoria.



Accessibility

If you would like to receive this publication in an alternative format, please telephone the DELWP Customer Service Centre on **136 186**, or email customer.service@delwp.vic.gov.au, or via the National Relay Service on **133 677**, www.relayservice.com.au. This document is also available on the internet at www.delwp.vic.gov.au

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