

# Compliance Procedures PUX/952/095 Version 2

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## Version history

Version	Date	Comment
1	27/10/2004	Endorsed
2	19/11/2008	Updated and reviewed
2.1	11/02/2009	Amended status of Notification from "NRW only" to "Public access"
2.2	02/02/2011	Updated to DERM

# Procedure

## General Background:

The primary role of the Department of Environment and Resource Management (DERM) is to support the State's economic and social development through the sustainable use and management of its resources, including land, water, and vegetation.

DERM is responsible for administering a wide variety of legislation. Some of that legislation creates regulatory frameworks which underpin natural resource planning, facilitates equitable access to resources, promotes efficient use of natural resources and provides for long term protection and management of Queensland's natural resources.

Regulatory frameworks often provide enforcement mechanisms to ensure that the integrity of the overall legislative scheme is not undermined by non-compliance.

DERM seeks to promote voluntary compliance with legislation but maintains the capability to take appropriate action where non-compliance occurs.

Enforcement of the legislation administered by DERM is a legislative obligation. The department is committed to the lawful, ethical and professional discharge of its statutory obligations. This is reflected in the department's key priorities of allocating resources.

The Compliance Coordination Unit (CCU) and the Regional Compliance Teams (RCT) seek to ensure all activities concerned with DERM's regulatory compliance obligations are carried out in a lawful, ethical and professional manner at all times. In achieving this they provide the link between operational compliance staff and departmental business units who are responsible for formulating policy and legislative responses.

Both the CCU and RCTs provide an operational capability for the department in responding to incidents of non-compliance.

Land Management and Use (LMU) as well as the regional staff undertaking State Land Asset Management (SLAM) work are responsible for managing Queensland's land assets in accordance with the *Land Act 1994*. These staff are principally involved with the operational activities associated with the management of these assets. A function of these activities incorporates responsibilities associated with the management of non-compliance with the *Land Act 1994*. Such non-compliance (under the *Land Act 1994*) can be separated into the following two different categories:

- Administrative non-compliance.
- trespass non-compliance.

Where non-compliance is purely associated with administrative processes then regional SLAM staff will be responsible for the management of the department's response to that activity - eg. non-compliance with lease conditions. However, where non-compliance is in relation to a trespass related act then the CCU and RCTs will be responsible for its management, in the first instance.

## Issue 1: Recording Notifications of alleged offences

### Introduction

Enforcement of the law is a statutory obligation. It is not open to either a government department or an individual public servant to choose to not enforce the law. The department has an obligation to investigate allegations of non-compliance with legislation it administers.

The recording of notifications of alleged non-compliance incidents is a key area for the department and failure to record notifications undermines the department's ability to enforce legislation and thereby maintain the legislation's integrity.

DERM has adopted a risk management approach to its regulatory compliance obligations. In accordance with the department's Risk Management Standard, the risks associated with regulatory compliance activity have been identified and strategies to ameliorate the risks developed and implemented. In the case of suspected offence notifications, the Compliance Information Register and Management System (CIRaM) has been developed to facilitate the recording, tracking and management of all notifications.

## Directives:

- If an alleged offence under the *Land Act 1994* comes to the attention of a departmental officer then that officer must ensure that a record of the alleged offence is recorded in CIRaM as a *notification*.
- The department's electronic Land and Vegetation Administration System (eLVAS) is not to be used to process the investigation of alleged offences under the *Land Act 1994*. It is to be used solely to manage tenure issues.
- To ensure that there is a coordinated departmental response to the notification the file numbers for CIRaM and eLVAS will need to be cross referenced. For example if there is an application for tenure over land that is being unlawfully occupied there is a need to cross-reference the actions.

## Issue 2: Prioritisation of Land related notifications

### Introduction

All regulatory agencies have to contend with the challenge of limited resources and sometimes large numbers of alleged breaches to which to respond. DERM has developed a comprehensive prioritisation system to enable the allocation of resources.

The prioritisation system developed by the CCU and LMU will underpin resource allocation decisions made by regional SLAM staff and the RCT.

The prioritisation system at Appendix 1 is not fixed. Changes can be made through negotiation with CCU in response to changing priorities, circumstances and other events.

### Directive:

- Notifications of alleged offences will be prioritised by the relevant Regional Manager.
- Prioritisation will be in accordance with the quantitative weighting system detailed in Appendix 1.

## Issue 3: Dealing with alleged offences

### Introduction

There are a number of offences under the *Land Act 1994*. In the pursuit of professional, ethical and lawful compliance related activities the department's response to alleged non-compliance must be equitable, fair and transparent.

To outline the importance of this standard practice it is appropriate to consider s404 No Trespassing. This offence is the principal offence that the department deals with in regard to the *Land Act 1994*.

It is important to recognise that the unlawful occupation of State land is an offence and must be dealt with

accordingly. It is not appropriate to conclude an investigation with an administrative action that seeks to retrospectively legitimise an unlawful act. At the same time, it is clear that in many cases, had the offender applied to the department for authority to conduct the activity they may well have been granted permission to proceed with the activity.

The situation described above does not create a dilemma for the department. In such situations DERM should commence an investigation into the alleged offence as it would for any other type of alleged breach. During the investigation it would be acceptable to explain to the person that authority is required for the occupation and that they may apply for authority to undertake the activity.

If the person applies for an authority, the matter would then be assessed in the ordinary manner. This is a purely administrative issue.

Such administrative action does not however conclude the non-compliance issue. Granting an authority e.g. a permit to occupy or licence under the *Land Act 1994* is not an appropriate outcome for an investigation into an alleged offence. In such circumstances DERM may issue a Warning Notice.

Equally other enforcement options may be pursued. For example, a Trespass Notice may be issued where the department does not or would not approve the occupation. On some occasions a prosecution may be pursued, for example where a Trespass Notice has not been complied with.

## Directives:

- Departmental RCT and SLAM staff are to jointly manage trespass related non-compliance where required.
- In conducting investigations RCT Investigators or SLAM staff may require support, advice or information from the other unit. RCT and SLAM staff are to provide such support, advice or information in consultation with their respective Regional managers.

## Issue 4: Trespass and Warning Notices

### Introduction

Trespass Notices are a key enforcement tool for responding to the unlawful occupation of State land. Both the CCU and RCTs contain staff with very high-level experience in both investigation and litigation and it is expected that Compliance and regional SLAM staff will consult each other when issuing a Trespass Notice.

Warning Notices are another effective tool in dealing with minor offences where the offender has not been given any formal warning previously. In such circumstances it is appropriate to issue a Warning Notice to the offender.

## Directives:

- RCT and regional SLAM staff are to consult with each other prior to issuing a Trespass Notice or Warning Notice.
- All Trespass Notices and conditions as well as Warning Notices are to be entered into CIRaM.
- Trespass Notices and Warning Notices are to be issued in accordance with the Departmental Guidelines for Enforcement Options as outlined in the Investigations Manual.
- Failure to comply with a Trespass Notice (eg: Squatter fails to vacate the land) is an offence. This needs to be entered into CIRaM and the RCT will manage the situation until the land is vacated.

## Issue 5: Training

### Introduction

Training is a key element of the department's overall risk management approach to its regulatory compliance responsibilities. The enforcement of law creates its own risks, many of which are managed by having well trained staff undertake enforcement activities.

Past experience has demonstrated that the interactions that occur between clients or members of the public and departmental officers are often crucial to the final outcome of later enforcement action.

The CCU delivers certified level training to relevant regional staff across the State. The training will cover basic evidence gathering in the field, recording of notes, use of legislative powers and appropriate handling of conversations with suspected offenders specifically and clients generally.

Directives:

- All relevant regional SLAM staff are to undertake basic regulatory skills training in compliance issues.
- All relevant regional SLAM staff are to undertake basic training in the CIRaM system.
- SLAM staff who may conduct alleged offence investigations are to undertake regulatory skills training in compliance.
- CCU and RCT staff are to undertake SLAM eLVAS training.

## Issue 6: Officer Safety

### Introduction

The safety of all departmental officers is the paramount concern for DERM. Investigation of compliance related matters can create workplace health and safety issues. Similarly operations in remote areas require special attention to possible health and safety risks.

### Directives:

All reasonable measures should be taken to ensure officer safety. This includes adequate training and joint inspections with compliance staff where possible.

The Department's Field Operations Policy is to be complied with at all times whilst operating in remote areas.

Departmental staff are to operate with two or more officers when conducting site inspections or interviews in relation to investigations into alleged offences.

## Responsibilities

Regional Compliance Managers for the conduct of compliance activities.

Authorised persons conducting SLAM compliance activities.

## Definitions

**Notification:** A notification of an alleged offence against legislation administered by the Department.

*Examples:*

- A person phones a regional office and reports unlawfully occupied land
- A Departmental officer observes an unlawfully occupied area.

eLVAS - Electronic Land and Vegetation Administration System

CIRaM - Compliance Information Register and Management System

CCU - Compliance Co-ordination Unit

RCT - Regional Compliance Teams

# Legislation

*Land Act 1994*

# Appendix

## Appendix 1: CIRaM Prioritisation

The prioritisation scores utilised by CIRaM are as follows:

Trespass:	
Occupy / Live on land	400 points
Fence / enclose land	150 points
Build structure etc	200 points
Clear or cultivated land	200 points
Stock	150 points
Fail to Comply with Trespass notice:	400 points
Additional Factors	
Size of Area: (Set on Regional Basis)	
Large	100 points
Medium	60 points
Small	10 points
Public Interest: (Media coverage, political interest, local community groups, multiple notifications)	
High	100 points
Medium	50 points
Low	20 points
Nil	0 points
Visibility:	
Tourist Area	75 points
Adjacent public area (i.e. Park)	75 points
Adjacent Major Road (i.e. Highway, main Arterial)	75 points
Adjacent Minor Road	40 points
Hotspot / cluster:	100 points
Recidivist Offender:	200 points
Gain Economic Advantage	100 points
Age of Offence:	
New (<12 months)	100 points
Recent (1-3 years)	50 points
Medium (3-10 years)	30 points
Long Term (>10years)	10 points
Potential Public Liability Risk:	

High	500 points
Medium	300 points
Low	100 points