Regulatory Officer Competency Certification
Training Framework

STUDENT RESOURCE LEARNER GUIDE

Great state. Great opportunity.

Queensland
Government

Introduction

Welcome to the Student Resource Learner Guide for the **Regulatory Officer Competency Certificaton (ROCC)** training framework for the Department of Natural Resources and Mines (DNRM). This Learner Guide has been produced to prepare departmental officers to operate as Authorised Officer's regulating compliance in the use of natural resources in Queensland.

About the Learner Guide

Summary

The Learner Guide provides the resource material for the six modules which make up the ROCC training package. There may be further readings available for each module identified at the end of the module.

Module 1 Public Service Principles discusses the fundamental principles behind ethics and values in the modern workplace. We explore expectations relating to ethical conduct in a public service environment and responsibilities such as encouraging ethical conduct in other colleagues or supervised staff. It includes contributing to an ethical public sector workplace and participating in ethical decision making. The module refers to the Code of Conduct for the Queensland Public Service (QPS), ethical values and their specific association to the roles and responsibilities of public officials working in the compliance arena.

Module 1 will be delivered 100% online.

On successfully completing Module 1 and the DNRM *QPS Code of Conduct and Ethical Decision Making* online training course through the LearnWorX online training system, participants can apply for a statement of attainment. Participants must provide an endorsed copy of the results from the *QPS Code of Conduct and Ethical Decision Making* online training course to DNRM's service provider, Investigation Compliance and Enforcement Training Systems (ICETS). Once the endorsed copy of the results are received by ICETS and confirmation of the completion of this module is completed a Statement of Attainment for the national unit of competency PSPETHC401A *Uphold and support the values of public service* will be issued to the participant.

To get more information contact support@icets.com.au

Module 2 Encouraging Compliance looks at the structure and functioning of government and the roles and responsibilities of the DNRM in its regulatory environments.

Module 2 will be delivered 100% online.

Module 3 Principles of Monitoring, Inspection and Regulation details the strategic objective behind monitoring and inspection activities, the regulatory responsibilities of the DNRM, compliance planning and prioritisation. The rules of evidence and their effect on regulatory activities will be highlighted and the purpose of compliance reporting.

Module 3 will be delivered 100% online.

Module 4 Exercise Regulatory Powers details the structure of legislation, powers of Authorised Officers and elements of an offence. We will also discuss information gathering methodologies and reporting of non-compliance.

Module 4 will be delivered 100% online.

Module 5 Natural Resource Management explores the knowledge required to manage natural resources in the ways in which natural resources are being used and how they aligned to the government's four pillar economy strategy. We will detail the management methods used in the operational application of regulatory instruments for land, vegetation and water management.

Module 5 is provided in three separate parts specific to **land**, **vegetation** and **water** management. This allows students to focus on the area that is relevant to them.

Module 5 (Land) will be delivered 100% online.

Module 5 (Vegetation) will be delivered as part of the two day face-to-face session.

Module 5 (Water) will be delivered as part of the two day face-to-face session.

Module 6 Undertake Inspections and Monitoring focuses on the inspection and monitoring activities looking in more detail at how to conduct the inspection and monitoring, allocating resources and reporting on progress of inspection activities. Conflict management and operational safety are also discussed.

Module 6 will be delivered as part of the two day face-to-face session.

Online training platform

The DNRM have engaged ICETS to provide the online training platform for this course. ICETS use the MOODLE Learner Management System (LMS) which can be found at http://training.icets.com.au/

This LMS is the primary system to submit responses to all assessments.

Prior to the course you will have received an email detailing your user I.D. and password convention to access the systems.

If you did not receive a log-in email or you are unable to access either system please contact your course facilitator or support@icets.com.au

Elements and performance criteria

Each module has specific elements and performance criteria that you must be able to do within the workplace to be assessed as competent for that module.

Module 1 Public Service Principles: Performance criteria / learning outcomes

PAGE 2

1. Access, interpret and apply the fundamental values and ethics principles and professional standards of the workplace.

2. Appropriate consultation is undertaken and advice provided regarding the values and ethics principles of the organisation.

3. Understand and explain the differences between public service values/ethics principles and personal beliefs/values.

4. Apply appropriate decision making processes to actual or perceived ethical problems.

5. Refer ethical problems where appropriate.

6. Refer an ethical dilemma where appropriate.

7. Outline reporting mechanisms for unethical conduct.

Module 2 Encouraging Compliance: Performance criteria / learning outcomes

1. Understanding government structures and functions.

2. Assessing regulatory risks and implementing risk controls within the regulatory environment.

3. Defining an integrated approach to regulation.

4. Outlining the key principles of a Compliance Continuum (CEC).

5. Compliance assessment methodologies.

6. Consideration of societal issues and the impact of regulation on everyday life.

7. Key considerations between personal values and departmental compliance approach.

8. Factors which may contribute to non-compliance are considered and/or explored.

9. Identifying and addressing a client's specific service needs.

10. Recognising and managing potential difficulties to client service requests.

11. Responding appropriately (time and accuracy) to client enquiries, observing legislative and procedural requirements.

12. Communicating with clients in an appropriate manner under the specific circumstances.

Module 3 Principles of Monitoring, Inspection and Regulation: Performance criteria / learning outcomes

1. The underpinning purpose/s of conducting monitoring and inspection activities.

2. Principle responsibilities of DNRM in natural resource management (regulatory instruments – applications, plans, permits, licenses).

3. Detailing the annual compliance plans and an Authorised Officer's role in those plans.

4. Access, interpret and apply policies and procedures to support the Authorised Officer's functions.

5. Applying DNRM prioritisation programs.

6. Regulatory instruments are assessed and managed according to policies, procedure and legislation.

7. Law regarding evidence collection, management and presentation in court.

8. The purpose and structure of DNRM compliance monitoring reporting.

Module 4 Exercise Regulatory Powers: Performance criteria / learning outcomes

1. Accessing and interpreting the Authorised Officer's enabling legislation and supporting legislation.

2. Describing the scope of powers available to Authorised Officer's under enabling legislation and conditions and responsibilities associated with them.

3. Demonstrate compliance with legislation, standards, policies and procedures influencing regulatory powers under enabling legislation.

4. The limits of powers are understood and options to overcome those limits are explored.

5. Identify and manage risks associated with the exercise of regulatory powers.

6. Locate and interpret offence provisions and their associated points of proof.

7. Correctly interpret and apply legislation to a changing operational environment and strategic compliance objectives.

8. Demonstrate appropriate information gathering procedures to comply with legislative and organisational requirements.

9. Reporting non-compliance according to organisational requirements.

Module 5 Natural Resource Management (Land, Vegetation and Water): Performance criteria / learning outcomes

1. Explain resource terminology and its appropriate use with relevant stakeholders.

2. Align the ways stakeholders use the resource mapped against the four pillar economy strategy

3. Outline natural resource management strategies.

4. Describe monitoring methodologies.

Module 6 Undertake Inspections and Monitoring: Performance criteria / learning outcomes

1. Analyse the regulatory environment and determine an appropriate response to non-compliance.

2. Identify and interpret policies, procedures and risks influencing inspection and monitoring activities.

3. Schedule inspection and monitoring activities and determining and preparing resource as required.

4. Execute inspection and monitoring activities according to policy and procedure and across a range of environments and clients.

5. Applying legislation, policies, procedures and assessing risks associated with interviewing.

6. Use organisational tools to report on inspection and monitoring activities.

7. Using conflict resolution models.

8. Undertake appropriate threat, risk and safety assessments before and during inspection activities.

How you will be assessed

1. Mandatory - Underpinning Knowledge Questions (UKQ) – Referred to as "Assessment 1", these are a series of short answer questions based on the knowledge requirements and theory for the module they are associated with. This learner guide will provide the information which will assist in answering the questions. **NOTE**: It is recommended that participants use examples as part of their answer where demonstration of understanding is required.

2. Mandatory - Practical Assessment – The practical assessment associated with all modules will be integrated into the scenario exercises delivered during the two day face-to-face workshop.

MODULE 1: PUBLIC SERVICE PRINCIPLES

1. Fundamental ethics principles and values in the workplace

As a prerequisite to this course you will have attained competency in the DNRM Code of Conduct and Ethical Decision-Making.

On completion of this element you will be able to:

> Access, interpret and apply the fundamental *ethics principles and values and professional standards* of the workplace.

> Understand and explain the differences between public service ethics principles/values and personal beliefs/values.

> Undertake appropriate consultation and provide advice regarding the ethics principles and values of the organisation.

1.1   Ethical behaviour and the public service

Public officials work to serve the 'public good' and they are therefore expected to uphold public service values. They can do this more easily if these values are embedded in clear ethical standards and principles capable of guiding official behaviour. To meet these 'expectations', DNRM public officials must first understand the principles behind ethical behavior and then apply the professional standards so that these principles are met.

The Queensland Public Service has embedded five public service values to guide its ethical culture. The five values are discussed further in Module Two and are:

• Customers first
• Ideas into action
• Unleashed potential
• Be courageous
• Empower people.

Before we start discussing the ethical conduct required of you as a public officials, however, we should make clear what we mean by the words 'values' and 'ethics'. Let's begin with some simple definitions.

Personal Values

Personal values are our fundamental beliefs which guide those things that we hold to be right, good or just.

We value some things for their own sake – for example, comfort. Other things we value as a means to something else – for example, wealth because it can bring us comfort. Sometimes we value things both for their own sake and as means to something else – for example, we may value a sport because we enjoy playing it and because we believe it promotes good health.

Ethics is about actions and decisions consistent with our beliefs. We usually expect people to uphold and defend ethical values in the general conduct of their lives.

To make these ethical values effective we embody them in principles.

Principles

Principles provide a general guide for our conduct and assist us in our judgment.

Some familiar ethical principles are 'Honesty is the best policy' and 'Respect others regardless of their differences'. Such principles have been seen as benchmarks setting the standards by which we judge character, decisions, actions and behaviour. However, it is important to understand that familiar ethical principles may not be recognised and adopted by everyone.

Ethical behaviour

Ethics is participation in, and understanding of, an ethos – the social rules that govern and guide our behaviour. Rules and principles of ethics define right and wrong behaviour or conduct in relation to living, working and coexisting as a community.

We do just not behave according to impulse. We behave according to rules of social behaviour that we have been taught or learn through experience. These rules include examples such as valuing accountability and generosity, and condemning actions that compromise the rights and safety of others – for example, as a society we value justice but do not support the practice of wasting a precious resource such as water or the clearing of native vegetation vital to an ecosystem without strong justification.

Ethics is more than a list of do's and don'ts, it is a system of values and principles that come together to support our society to be as civilised and harmonious as possible.

The other aspect to understanding ethics is the understanding of our own ethics principles. We may not agree with all of the values and social rules that govern our lives. It is important to understand the values and societal rules, especially the workplace, with which we disagree.

Understanding what we are doing, and why we are doing it, is essential to achieving ethical behaviour. It assists us to be able to explain our actions in relation to our values.

Activity 1.1

Values guide how we operate every day. By completing this activity you will develop a better understanding of your own value set.

Think about and write a brief outline on:

- The things that are important to you.

- What truly motivates you?

- What has to be true for you?

The following list is not exhaustive, so you can add to it if you wish. Mark five to seven values that are most important to you.

Acceptance		Freedom		Peace	
Accountability		Friendship		Pleasures	
Authority		Health		Politeness	
Broad-mindedness		Happiness		Privacy	
Capability		Honesty		Public image	
Choosing own goals		Honour		Respect of tradition	
Country/Nation		Humility		Responsibility	
Creativity		Independence		Recognition	
Curiosity		Influence		Self-discipline	
Daring		Inner harmony		Self-indulgence	
Devotion		Intelligence		Self-respect	
Enjoyment		Love		Sense of belonging	
Environment		Loyalty		Social justice	
Equality		Meaning of life		Success	
Excitement		Moderation		Variety	
Family		Nature		Wealth	
Forgiveness		Obedience		Wisdom	
		Integrity			

Professional Standards

The term "Professional Standards" is used to signify a set of standards that are specific to a particular position, occupation or industry. They work hand in hand with more generic documents such as code of conduct but focus more on the specific challenges of the given profession or industry that the standards are created for.

Professional standards can be created using legislation. In Queensland the *Professional Standards Act 2004* governs the creation and implementation of professional standards schemes which bind organisations who commit to the scheme to abide by the standards set.

1.2   Ethics in the workplace

While personal views guide personal behaviour, these values are not enough to guide behaviour in all situations. The following section will explore how ethics relate to decision making in the workplace. Government guides the behavior of public officials through the implementation of the Queensland *Public Sector Ethics Act 1994*.

The Government and ethics

Public service, as its name implies, is based on the ethical concept of serving people – all of those who make up 'the public'. Values and standards are laid down to safeguard the interests of the public and to ensure that public expectations of accountability are met.

As a Government employee, you have an ethical and legal obligation to carry out your duties in a manner that complies with ethics standards, policy and protocols. You are expected to act legally, impartially, effectively, transparently and responsibly.

In today's public service environment you are also expected to act and judge independently to a certain extent, though always in conformity with published values and principles. In other words, the organisation is now 'values based' rather than 'rule following'.

Public Sector Ethics Act 1994 (Qld)

In Queensland, the *Public Sector Ethics Act 1994* is the preeminent legislation governing public sector ethics. The *Public Sector Ethics Act 1994* applies to all units of public administration and public officials in Queensland and is based on four fundamental ethics principles for good public administration:

1. integrity and impartiality

2. promoting the public good

3. commitment to the system of government and

4. accountability and transparency.

In support of the *Public Sector Ethics Act 1994* are a number of other pieces of legislation designed to guide public officials in their dealings with the public in a manner that is fair and equitable. This legislation includes anti-discrimination, privacy, public interest disclosures and right to information.

An organisation will produce policies and procedures to support compliance with the legislation. Such policies include a code of conduct which may also be known as a code of ethics; these documents detail an organisation's primary values and the ethical rules it expects employees to follow. The *Public Sector Ethics Act 1994* provides detailed specifications around the development, implementation and maintenance of a code of conduct in the Queensland public sector. In 2011, a code of conduct was published to cover all of the public sector.

1.3 Ethics and personal standards

Each individual has their own personal standards that they live by. For the most part many of these standards may be in line with the government professional standards. However if there is conflict between your own personal standards and those of the public service, you are expected to uphold the values of the public service in carrying out your work.

Ethical behaviour in your work serves to ensure public confidence in the Department you represent and, ultimately, the democratic process of government. However, we also have our own personal ethics, values, standards and principles that we live by. These are developed as we develop and can be changed through various means as we mature and grow old.

You may think that your own standards are right and therefore ought to be shared by everyone. You probably judge other people in light of them. Yet you know you cannot impose the standards you have chosen on others. Whether they accept your standards or not is a matter for their personal, individual decision.

But now consider the standards you must observe as a public official.

Commitment to the system of government is not a matter for your personal choice. It is an expectation of you as a member of the service. Regardless of your own personal beliefs about the system of government, as a public official you are obligated to behave in a manner which shows commitment to that system.

If there is a conflict between your own personal standards and those of the public service, you are expected to uphold the values of the public service in carrying out your work.

Your work practices are expected to comply with public sector ethics standards, policy and guidelines.

This does not mean that the public service is totally uninterested in your personal standards. All employers like to ensure that their employees are of good character and have sound personal standards. Such employees are more likely to respect and uphold the values of the organisation. The public service regards good personal standards as contributing positively to public sector ethics.

One way you display the ethical values of your organisation is in the correspondence or reports that you prepare. The way information is communicated is guided by the principles of impartiality, accuracy, transparency, accountability and being factual in your dealings with clients or suppliers.

The Department encourages and supports the reporting of maladministration in government agencies; referred to as public interest disclosures (PID), to enable corrective action to be taken where proven, minimise the opportunity for misconduct and ensure an ethical environment and public confidence in how services are delivered. Some government employees may regard PIDs as the ultimate demonstration of disloyalty or are concerned that it may mean putting one's job or entire career on the line. However, the Department is committed to ensuring that all PIDs received are properly assessed, investigated and managed, including appropriate action taken in relation to any wrongdoing disclosed in a PID. Appropriate support, confidentiality and protection from reprisals is provided to disclosers.

Uncovering dishonest conduct often depends on the willingness of honest employees to come forward with complaints and evidence. In fact, employees are obligated to report wrong doing and could be subject to discipline if they are found to be covering up or not reporting when they become aware of wrong doing.

1.4   Accessing and using ethics legislation and guidelines

While the Queensland Government guidelines for personal and professional behaviour sound fine in print, it may be that a code of conduct does not provide the detail necessary to be totally clear on what is expected in your day-to-day work.

A code acts as a set of guidelines, offering a framework within which appropriate behaviour is sought and encouraged by management. Organisational values and peer pressure also support the operation of codes of conduct, and this is where your modelling of values creates an environment of mutual support for the achievement of ethical conduct.

As a first step to applying ethical legislation and guidelines, public officials need to understand where they can access this information either for themselves or to assist a colleague to understand the organisation's ethical values and expectations. Until 1 January 2011 each unit of public administration in Queensland had an individual code of conduct unique to that organisation. From 1 January 2011 the Queensland Government introduced a unified code of conduct which is to be used by all units of public administration.

An electronic copy of the **Code of Conduct: *For the Queensland Public Service*** can be found on the Queensland Government Department of Premier and Cabinet website http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/code-of-conduct.aspx.

DNRM have information about the code of conduct, ethics and complaints on the departmental intranet at http://intranet.dnrm.govnet.qld.gov.au/hr. Here you can access resources to assist with understanding and applying ethics principles through documents such as the "Ethical Decision Making Model" (see Image 1 below).

As an officer of DNRM you have a responsibility to ensure you are familiar with the relevant legislation that applies to your workplace. These include, but are not limited to the following:

- *Anti-Discrimination Act 1991* (Qld)
- *Crime and Corruption Act 2001* (Qld)
- *Information Privacy Act 2009* (Qld)
- *Right to Information Act 2009* (Qld)
- *Privacy Act 1988* (Cth)
- *Public Interest Disclosure Act 2010* (Qld)
- *Public Sector Ethics Act 1994* (Qld)
- *Public Service Act 2008* (Qld)
- Public Service Regulation 2008 (Qld)
- *Work Health and Safety Act 2011* (Qld)

Image 1: DNRM intranet screen shot indication of the location of the Code of conduct, ethics and complaint information

Closely associated with ethics are the principles of equity, diversity and equal employment opportunities. Equity is about being fair and impartial in the workplace and not treating people differently for any reason. Diversity in the workplace is closely linked to equity and recognises the value of individual differences and the importance of inclusiveness in the workplace.

Equal Employment Opportunity (EEO) is concerned with making the workplace free from unlawful discrimination and harassment. It centers on four target groups with the aim to ensure members of the target groups are able to work within an equitable and inclusive environment and compete for employment and promotion as effectively as those not in the target groups. The target groups are:

1. Australian South Sea Islanders
2. Aboriginal and Torres Strait Islander people;
3. People from a non-English speaking background;
4. People with a disability; and
5. Women.

Legislation for Queensland can be accessed on the government legislation website at https://www.legislation.qld.gov.au/Acts_SLs/Acts_SL.htm

As discussed previously the *Public Sector Ethics Act 1994* defines the application of ethics management within the public service. The Act specifies four ethics principles which apply to all public officials, they are:

1. Integrity and impartiality
2. Promoting the public good
3. Commitment to the system of government
4. Accountability and transparency.

These four ethics principles form the framework of fundamental ethical behavior which is reflected in the **Code of Conduct for the Queensland Public Service**. The code of conduct strengthens each principle by values which describe the behavior that will demonstrate the application of that principle.

Therefore, if a public official is unsure about the ethics principles or the expectations of the government in terms of their conduct then the code of conduct should be the first resource consulted to get a sense of the expected behaviour.

The consequences of unethical conduct

The spirit of today's public service is to encourage people at all levels to be responsible decision makers. This is what it means to have a values-based culture rather than a rules-based culture. Managers are responsible for supporting and encouraging their employees toward responsible performance and employees have an expectation of behaving responsibly. Unethical behavior or misconduct is addressed through departmental disciplinary processes and using the principles of natural justice. The Department has a range of outcomes should allegations of misconduct or unethical conduct be founded, from a letter of reprimand to dismissal.

If you break a law, you may also be subject to a whole range of penalties prescribed by other legislation. In serious cases these may include criminal sanctions.

You ought to be clearly aware of the consequences of any action or conduct that is unethical or illegal.

2. Managing ethical decisions and unethical conduct

Ethical standards are easy enough to understand in principle, but they can be very hard to apply in practice.

Acting ethically is not just a matter of acting legally or obeying rules and regulations. It is also about trying sincerely to do the right thing in a legal and ethical way.

The difficulty with dilemmas is that it is not always clear in every case what the right thing is, or which option you should choose. Different alternatives may not be clearly right or wrong. In your own work you may occasionally be faced with difficult decisions that demand moral reasoning on your part.

Ethical dilemmas arise when different values come into conflict. If you are to make a decision, you must somehow weigh the relative importance of the values involved. You must also try to ensure that your choice is consistent with other decisions that you have made.

Problems differ from dilemmas in that the solution to problems are more easily identified whereas dilemmas do not present a clear solution and are often unable to be resolved - rather they are managed over a longer period of time.

2.1 Ethical Decision-Making

Sources of guidance

Sometimes public officials will face an ethical dilemma. Ethical dilemmas are situations which if resolved in a certain way may conflict or be seen to conflict with either organisational or personal values or where the appropriate course of action is unclear.

Ethical dilemmas or new or changed workplace conditions may present a situation where the code of conduct does not provide sufficient guidance to resolve the problem. If this is the case public officials should always aim to consult an appropriate resource seeking information to expand on the principles in the code of conduct and ultimately making decisions which will withstand scrutiny.

DNRM officers can seek guidance from:

- A trusted supervisor or manager
- The DNRM Employee Relations area
- The Crime and Corruption Commission
- The DNRM Ethical Decision-Making Model which can be found on the intranet.

Resolving ethical dilemmas

Ethical dilemmas test not only your own ethical understanding but also your personal integrity and, sometimes, your courage.

You should note some basic principles for resolving ethical dilemmas.

- There is no magic answer for any ethical problem – usually there are a number of possible solutions and you must weigh up the consequences of each.
- A choice to delay or avoid the problem can often lead to complications of a wider and more serious nature.
- A solution that seeks to shift the responsibility away can sometimes have an unintended and adverse effect on other people.
- It is essential and, in some instances, mandatory that you keep adequate and accurate records of your decisions and the reasons for them. These records may be subject to right to information legislation or be subpoenaed by a court of law.

You may think that serious ethical decisions are the responsibility of more senior people than you. Ethical decisions are the responsibility of all employees. If you are uncertain, take difficult problems to your supervisor. However, ethical challenges may arise in the course of your work that only you can resolve.

You may have to use your own discretion to some extent. It is important to remember that you should not appear to substitute your own judgment for that of the legal and political authorities. You must make sure that all of your actions and decisions are in line with published values and principles.

Many judgments involving ethical considerations will require straightforward decisions about whether a course of action is right or wrong. Difficulties can arise when there is more than one perspective on an issue and no direct guidance available from existing rules and codes, or where the problem involves unethical behaviour.

The following questions will offer assistance in guiding decision making when faced with ethical problems.

- Have you defined the problem accurately?
- How would you define the problem if you stood on the other side of the fence?
- How did this situation occur in the first place?
- What is your intention in making this decision?
- How does this intention compare with the probable results?
- Who could your decision or action injure?
- Can you discuss the problem with the affected parties before you make the decision?
- Are you confident that your position will be as valid over a long period of time as it seems now?
- If required, can you justify your decision to outside scrutiny or in a court of law?

Think about how these guiding questions may assist in your work.

Let's review an example of where ethical implications may apply to the type and level of services provided to the public.

It may be that the service is prescribed by legislation. In these cases it is necessary to follow the procedures and legislation applying to that service. On the other hand, there may be cases where you need to decide how services will be provided when there are no service level guidelines or legislation. In these situations you could consider a few quick reference points drawn from the above lists before making a decision.

The first is whether the decision or action would be legal. Could your decision harm or prejudice someone?

The second is whether the decision is fair and balanced to all concerned. This reference point encourages the consideration of equity. For example, it may be necessary to strike a balance between competing demands for time available to consult or provide service to particular clients or service users. Extra attention or service to one individual over another may not be fair or equitable in the context of available resources. Exercising discretion in such cases is important to be able to foster confidence in the integrity and helpfulness of the work area you represent.

An underpinning principle which applies across any decision made on behalf of government is the application of natural justice/procedural fairness. Where a decision can adversely affect someone there is an obligation on all persons involved in the decision-making process to apply some fundamental rules. These rules are, an unbiased process is used to make the decision and the affected person is given an opportunity to respond to any evidence used to make the decision and the decision itself.

Ethical decision-making models

DNRM have a recommended ethical decision-making model which can be found on the intranet and is reproduced in Image 2 below. The model is based on six steps which are:

1. Establish the facts of the matter being decided on;
2. Define the ethical dilemma;
3. Assess the ethical obligations and any other factors which are impacting on the matter;
4. List the options available and their subsequent consequences and decide on the most appropriate option which must be ethically defensible and in the public interest;
5. Take action to implement the decision; and
6. Reflect and review the process, the outcome and any systemic issues which must be addressed.

A second ethical decision-making model has been produced by the *Public Service Commission*; this model is called the 1-2-3-GO model which follows a very similar process to the model recommended by the DNRM. The 1-2-3-GO model is provided in Image 3 below.

DECISION MAKING MODEL

How can you make an ethical, responsible and lawful decision?

A good decision starts with a good decision making process.

Here is a process with steps that you can follow.

Facts

- Describe the situation. Establish the facts.
  - What happened/is happening?
  - Who is involved?
  - When did it happen/is it happening?
  - Where did it happen/is it happening?

Dilemma

- Define the ethical dilemma.
  - Why is this an ethical dilemma?
  - Why is this my problem?
  - What is my part in resolving it?

Assess

- Assess the ethical obligations and consider other factors that relate to the dilemma.
  - Check the following and assess relevant information:
    - Code of Conduct
    - Public Sector Ethics Act
    - Public Service Act
    - Other relevant legislation
    - PSC Directives and departmental protocols and procedures
    - Precedents
    - Own/others position, personal and professional ethics
    - Other opinions/expertise
    - Industrial and legal rights of individuals
    - The public interest and public perception

Options

- List options and consequences. Assess them. Decide on the appropriate option.
  - Option A
    - Consequences:
      - For individuals: eg person making the decision, individual who will own the consequence.
      - For the organisation
  - Option B
    - Consequences:
      - For individuals
      - For the organisation
  - Option C - etc
- (If it is not clear that this course of action is best overall, go back **to Step 1.)**

Act

- Make the decision and implement the decision.
  - Carry out the decision and ensure appropriate natural justice, transparency, accountability and confidentiality.
  - Confer with individuals directly involved.
  - Confer with affected groups.
  - Document the decision.

Reflect

- Reflect on your decision. What have you learnt?
  - On the process
  - On the relationships
  - On the result
  - On improving systems
  - On why this was an ethical problem and how to prevent it.

The Ethical Decision Making Model

Image 2: Ethical Decision-Making Model

PAGE 18

Ethical Decision Making
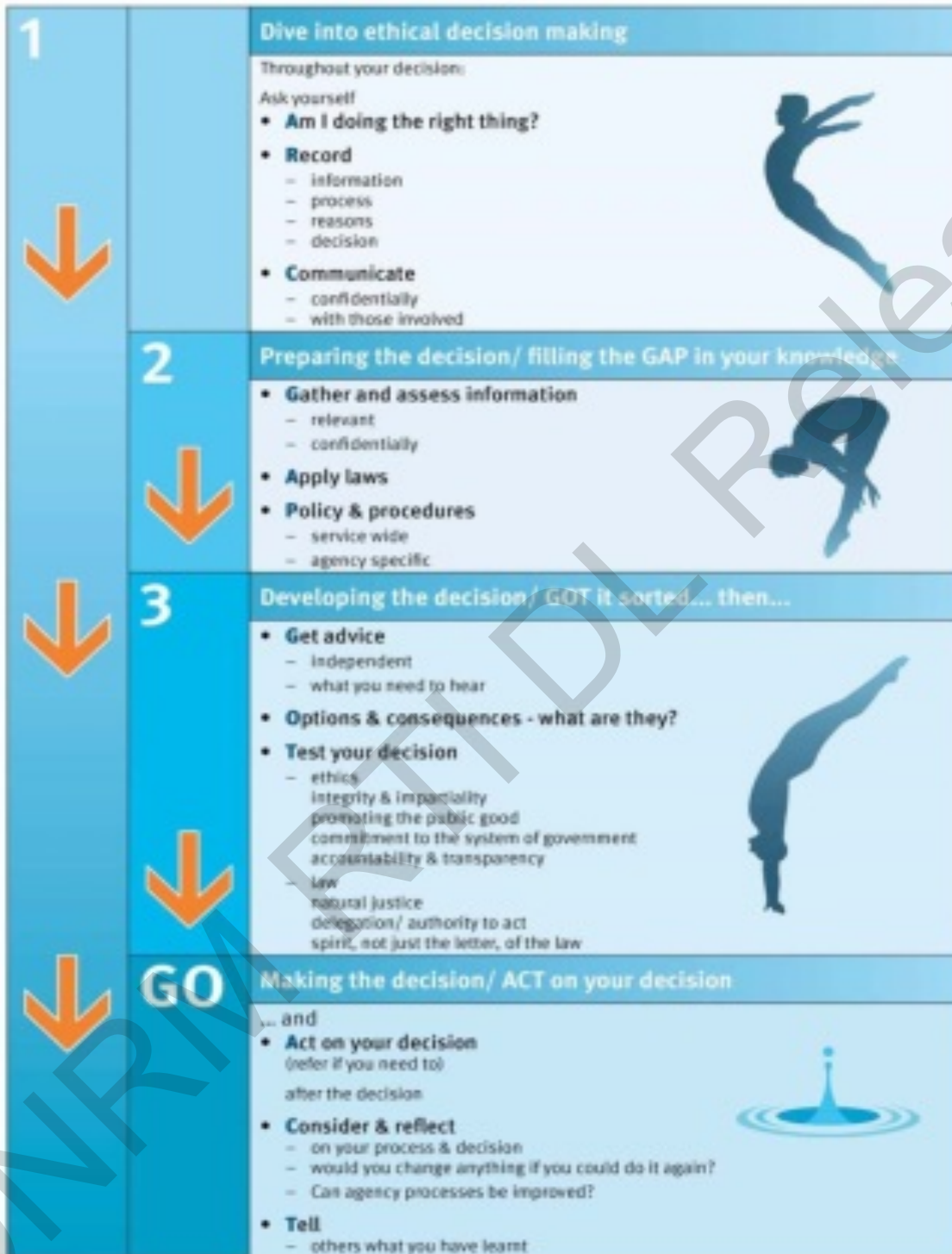
Image 3: The 1-2-3-GO ethical decision-making model as found at
http://www.ethics.qld.gov.au/making-ethical-decisions/training-resources.aspx

2.2 Reporting unethical conduct

Public officials have a legislative obligation to disclose and report unethical behavior within the workplace. Legislation and policy exists to protect the person disclosing from reprisals.

Uncovering dishonest conduct often depends on the willingness of honest employees to come forward with complaints and evidence. These people were generally described as 'whistleblowers'. Blowing the whistle has more recently been replaced by the term **public interest disclosure** (PID) and relates to a disclosure in the public interest of information about substantial and specific wrongdoing or danger in the public sector.

You may feel it is difficult to report on colleagues even if you believe them to be seriously in the wrong. If the person being reported on is in a position of authority, you may also feel it is dangerous to your job or career.

However the Code of Conduct for the Queensland Public Service places responsibility on all public officials to uphold the code by identifying and reporting conduct which might not be consistent with the code, this includes unethical conduct.

Public Interest Disclosure Act 2010 (Qld)

The main objects of this Act are to promote the public interest by facilitating public interest disclosures of wrongdoing, properly assessing, investigating and dealing with public interest disclosures and considering the interests and protecting all persons subject of the public interest disclosure.

Your organisation will have a nominated official whose responsibility is to receive, assess and manage public interest disclosures. Your organisation should also have prepared guidelines for:

* Receipt of disclosures;
* Determination of whether a disclosure is a 'public interest disclosure';
* Proper and timely referral of public interest disclosures to the ombudsman;
* Proper investigation of disclosures within the organization; and
* Protection from reprisals.

Where a disclosure has been determined to be a public interest disclosure it may be either investigated by the Ombudsman or referred to the organisation for internal investigation.

Reporting unethical behaviour

There is no easy answer to the resolution of an ethical problem, however one thing is certain; delays in acting on problems may contribute to consequences of a wider nature. Taking action promptly is therefore important. It is also important to understand the consequences of options for action that you can take can assist in resolving the problem. For example, action you take to protect yourself may have unintended consequences, which is why the *Public Interest Disclosure Act 2010* was developed.

In instances other than those covered by the *Public Interest Disclosure Act 2010* you should refer to section 1.2.3 Reporting breaches of the code found in the Applying the Code of Conduct in DEEDI document. The Department has provided a number of options for reporting unethical conduct or any breach of the code of conduct, policies or procedures. You can go to your

supervisor/manager, senior management, director or the human resource management department. There is also a telephone hotline (07) 3224 5876 and email address ethics@dnrm.qld.gov.au for ethics and code of conduct enquiries. It would also be advantageous to consult the Department's Complaint Management Policy when reporting unethical conduct.

As issues arise you are presented with the opportunity to learn from the process. You should also ensure that you and your staff are able to follow correct procedures in handling matters, and explore the issues associated with ethical decision making.

Confidentiality considerations

Ethical cultures are built on cultures of trust. The behaviour you model will contribute to the development of this culture, and so too will attention to procedural fairness and confidentiality or privacy considerations.

Delicate matters need to be treated confidentially and governments around the world recognise the need for regulation of confidential information and have introduced legislation and subsequent policies and procedures designed to manage this.

It is not necessarily your job to determine if someone's conduct was unethical or breached the code therefore it is important that you keep information you have reported confidential unless required to disclose it through direction or in accordance with the law. Disclosing confidential information about suspected unethical conduct can jeopardise any investigation but also can result in your reputation being damaged.

Further Reading

Internet

Code of Conduct for the Queensland Public Service

http://www.ethics.qld.gov.au/publications/Code_of_Conduct_060313.pdf

Queensland's Public Service Values

http://www.psc.qld.gov.au/about-us/about-the-public-service.aspx

Ethics in the Queensland Public Sector

http://www.ethics.qld.gov.au/

Public Sector Ethics Act 1994

https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PublicSecEthA94.pdf

Professional Standards Act 2004

https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/ProfStandA04.pdf

Public Service Act 2008

https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/PublicServA08.pdf

MODULE 2: ENCOURAGING COMPLIANCE

1. Government structure and regulatory functions

The government in Australia is structured according to internationally used systems with checks and balances in place to regulate its operations. As a regulatory official it is important to understand how government structures work its basic functions across all aspects of government roles including regulation.

On completion of this element you will be able to:

> Understand government structures & functions.

> Define an integrated approach to regulation.

> Outline the key principles of a Compliance Enforcement Continuum (CEC).

> Assess regulatory risks and implementing risk controls within the regulatory environment.

> Compliance assessment methodologies.

> Consider and explore factors including societal issues which may contribute to non-compliance and the impact of regulation on everyday life.

1.1   The role of government

Australia's government and political system is based on the Westminster system, named after the British Parliament that sits at the Palace of Westminster, London. This system is used in countries such as Britain, Canada, Australia and New Zealand.

The three jurisdictions of Australian government under the Westminster system are demonstrated in Image 4 below.

In the Oxford dictionary the term government refers to the group of people with the authority to govern a country or state. To govern is to conduct the policy, actions and affairs of a state or people with authority. As a representative democracy the people of Queensland are represented in government by elected officials who stand for election in a specific electoral district. Elected officials are known as Members of Parliament (MP's) and form the 'House of Representatives'.
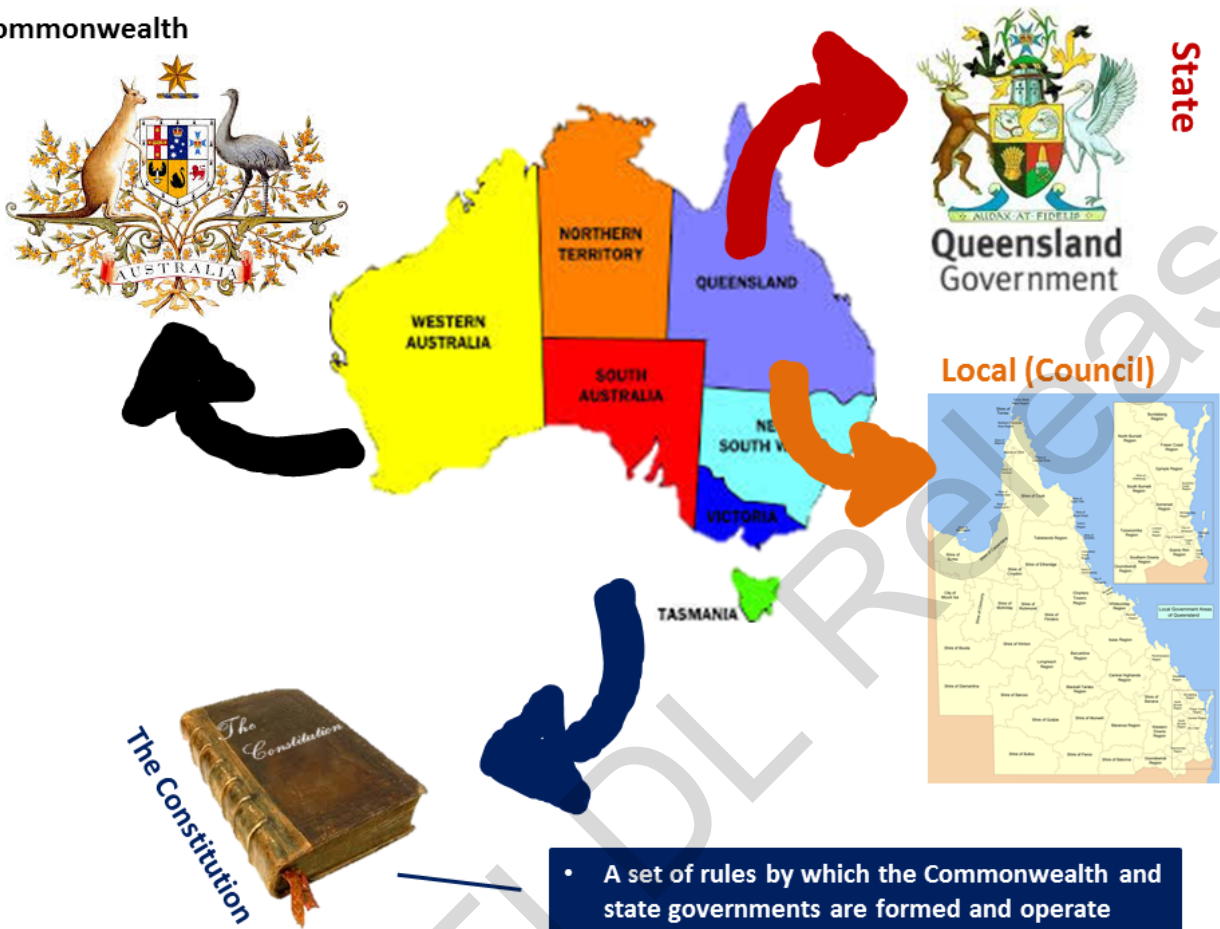
Image 4: Three jurisdictions of Australian government – Commonwealth and State governments are formed and operate under a constitution.

In a formal sense government within the Westminster model consists of three elements:

The Parliament – The law making body which is composed of elected representatives. The respective parliament's powers are limited by both territorial boundaries and the terms of the instrument which creates them - for example in the case of the Commonwealth Government, the Commonwealth Constitution.

Parliament also provides from its membership the members of the Executive Government. Following an election the political party or coalition of parties with the support of a majority of members in the House of Representatives becomes the governing party and the leader of that political party is sworn in as the Prime Minister in the Commonwealth parliament, Premier in state parliament and Chief Minister in the territory parliament.

The Prime Minister, Premiers and Chief Ministers appoint MP's in each of their specific jurisdictions to a specified number of *'Ministerial Portfolios'* which essentially entail the responsibility for managing the major government department/s which fall under the portfolio. For example, the Queensland Premier appoints an MP to the natural resources and mines portfolio and that MP is known as the *Minister for Natural Resources and Mines*. Some portfolios may also have an Assistant Minister appointed to the portfolio.

In Queensland the Premier and Ministers make up the *Cabinet* which is the government's central decision making body on matters such as policy, budget, state priorities, significant appointments and proposed or amending legislation.

The Parliament also authorises the Executive Government to spend public money by agreeing to government proposals for expenditure and taxation, scrutinises the administrative actions of the government and serves as a forum for the debate of public policy.

Most parliaments in Australia consist of two chambers, often termed the upper and lower house. Queensland is an example of a jurisdiction that has a *unicameral parliament*, which means that the parliament has only one chamber which is referred to as the legislative assembly.

The Judiciary – The legal arm of the government. An independent judiciary interprets law and resolves disputes within society.

The judiciary includes judges, magistrates and members of various tribunals.

The Executive – The administrative arm of government, and is made up of public servants working in the various government departments and agencies.

The executive is empowered by the laws of Australia to put those laws into operation and uphold those laws. A Minister is a member of the parliament (legislature) who has been chosen to also work as part of the executive, usually with responsibility for matters on a specific topic i.e. their portfolio.

The three elements of government; parliament, judiciary and executive are summarised in Image 5 below.

Local Government (Councils)

Local Governments (Councils) are not formed or operate under a constitution rather they are created and operate according to state legislation. In Queensland, local government is created by virtue of the *Local Government Act 1993*. Nevertheless, local government's structure is broadly the same with a parliamentary body made up of elected officials called Councillors with the executive arm made up of the Chief Executive Officer and the staff of the Council.

As we can see it is a function of government to create the two fundamental parts of regulatory design being the institutions and instruments. The institutions being the governmental bodies responsible for regulating the instrument which can come in the form of:

- legislation (primary)
- regulations (secondary) and/or
- notices or guidelines (tertiary).

This fundamental function of government is evident across many agencies who have a regulatory role which includes the DNRM.

- Law making body
- Provides members of Executive who manage a *'Ministerial Portfolio'* such as DNRM
- Authorises government spending

- Legal arm of government
- Independent judiciary to interpret law and resolve disputes
- Judges, Magistrates and Tribunals

Judiciary

Parliament

Executive

- Administrative arm of government
- Made up of government departments and agencies
- Puts the laws made by parliament into action

Image 5: The three elements of government

1.2 Separation of Powers doctrine

The *Separation of Powers* doctrine can be traced to the 18th Century writings of Montesquieu and Locke, and is a model for the governance of democratic states. The doctrine emerged from a turbulent time in European politics when monarchies in a number of countries were under pressure to give power to more representative political bodies. Montesquieu described the division of political power between an executive, a legislature, and a judiciary. He based this model on the British constitutional system, in which he perceived a separation of powers between the monarch, parliament, and the courts of law.

The Separation of Powers doctrine contains two basic principles – firstly, that one branch of government should not unreasonably interfere with the operations of another, and secondly, that an individual should not be a member of more than one branch of government simultaneously.

The purest application of the model is probably seen in the United States of America, where members of the Executive cannot simultaneously be members of Congress.

Australian governments take a different approach and appoint parliamentary ministers to the government executive. This contradicts the Separation of Powers doctrine in that an individual can be a member of more than one branch of government simultaneously.

Discretion and the Executive

Under the Westminster Model the parliamentary branch is supreme. Parliament can override both other branches by passing legislation. The only restriction on this power is that the High Court of Australia may rule that a Commonwealth law (or State law) is invalid if it is beyond the scope of the powers set out in the constitution.

In a state context, the state constitution is usually broadly drafted, authorising the parliament to pass laws for the 'peace, welfare and good government' of the state or some similarly broad scope. Thus the power of a state Supreme Court to invalidate a state law is more restricted.

Broadly, there are two fundamental concepts that stem from the supremacy of parliament in a Westminster system. The first is known as the 'rule of law'. In essence, it means that government needs legal authority for any action it undertakes and should not act in an arbitrary manner. The second concept is that of 'responsible government' which means essentially that the executive is responsible to parliament.

Under this principle, Ministers of State, who form the Executive, are themselves responsible to the parliament for both their actions and the actions of their officials (all government employees) in the government department/s they manage in their ministerial portfolio.

It is important not to confuse the obligations of the Executive to administer the law with the discretion the executive has in determining how best to uphold the law it regulates. The Executive is not compelled to prosecute every breach of legislation that it detects. Whilst there are of course legal issues to consider, the overriding consideration is that of the public interest.

The discretionary power is reinforced in the Queensland Director of Public Prosecutions Guidelines which state, *"The prosecution process should be initiated or continued wherever it appears to be in the public interest……..if it is not in the interests of the public that a prosecution should be initiated or continued then it should not be pursued."*

As a result of being responsible for the actions of their government department/s the Minister, with the assistance of the departmental executive (e.g. Director General) develop policies and procedures. Policies are essentially the principles by which the government, government department, organisation or even a person wishes to operate. Policies set the boundaries, protocols and actions expected of anyone who comes under the policy scope.

For example, the DNRM has a *Compliance Policy* which details the *"high-level principles that underpin DNRM's approach to compliance management".* DNRM's compliance policy sets out the Department's expectations and guides Authorised Officers in compliance enforcement through a variety of means not just prosecution. This policy can be viewed as a supporting document to the overarching guidelines released by the Director of Public Prosecutions. This policy is an insight into the expectations of the Minister and the departmental executive of its Authorised Officers and their approach to regulation.

1.3   Societal issues

In a democratic system, the public looks to its elected representatives to provide solutions to issues which affect them in some way. The issues that governments are called upon to respond to are of course limitless. Societal issues are moral problems which affect a society and societies

can be many and varied according any number of criteria from culture to geography. Examples of societal issues relevant to DNRM include:

- The effective and fair allocation of natural resources around the state;
- Planning future resource needs for both water and land;
- Protecting resources;
- Infrastructure planning; and
- Progress/development versus conservation and affected societies.

In a democratic system of government, elected officials are tasked by their community with developing responses that address community concerns. In addition to the direct influence of their constituents, the position that elected officials take can be influenced by groups such as the media, industry organisations, employee representatives and a range of other events such as climate, natural disasters and worldwide economic trends.

There are a range of options available to governments when responding to issues that have been identified by the community as requiring action, these are:

- Do nothing (through government prioritization or risk assessment no action is deemed necessary by the government in response to the issue).
- Educate (Proactive and reactive education programs).
- Provide incentives to comply with legislation (Restricting operation in an industry to licensed providers thus encouraging service providers to become licensed).
- Use a price mechanism (Apply a tax e.g. road congestion tax, smoking/alcohol taxes, levies, tariffs etc.).
- Enter the market by providing a service (Government owned corporations e.g. Public Transport Services).
- Regulate through legislation to apply penalties for failure to comply (*Water Act 2000* or *Land Act 1994*).
- A combination of the previous options.

Professor Allan Fels AO, the former head of the Australian Competition and Consumer Commission, has proposed a regulatory model involving three core elements (see Image 6 below):

1. **Public value** - What the public sees as valuable government regulatory initiatives.

2. **Operating capability** – How capable, in terms of resources the regulator is to regulate.

3. **The authorising environment** – The political environment that provides the means through legislation and other support for the regulator to regulate.
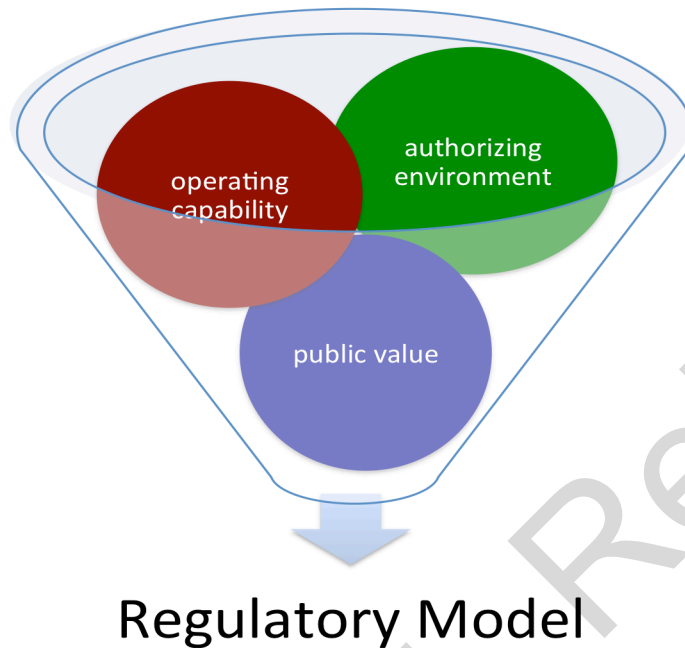
Regulatory Model

Image 6: Professor Allan Fels AO – Regulatory Model

Professor Fels argued that enhancing **public value** should be the underpinning reason for any regulatory intervention. Public value is not determined solely by the outcome, it is also influenced by the process through which the outcome is pursued. Thus, while the enforcement of environmental laws may enhance public value, the use of unlawful means to secure convictions would reduce public value.

Professor Fels also pointed out that regulators must have the capability to actually carry out their regulatory responsibilities with reasonable efficiency and effectiveness. The absence of reasonable operating capability reduces the public value of the regulations significantly.

An interesting feature of Professor Fels' model is its explicit identification of the authorising environment - by which Professor Fels refers to the political environment in a broad sense (i.e. including the media, lobbyists, industry groups as well as politicians and senior government officials).

Professor Fels makes the point that even with sufficient operating capability; the ability of the regulator to deliver public value is constrained by the level of support it receives from within the authorising environment. Managing the political interface can be the critical challenge for managers of regulatory functions.

1.4   Approach to regulation

The primary concept of regulation is the achievement of compliance within the industry that the instrument regulates. In times gone past it was a common belief that the most effective way to achieve compliance was through the 'big stick' method. In other words, take action which would

achieve the highest impact on the offending person or organisation. This often meant enforcement through the issuing of a penalty infringement notice or initiating criminal proceedings (prosecution).

Whilst this approach made the regulators role easier it failed to take into account key elements and circumstances which might otherwise allow for other compliance enforcement options to be considered. This approach also resulted in the judiciary criticising the executive for wasting the judiciary's time by outing matters before them that resulted in enforcement measures such as orders being issued which could have otherwise been managed by the executive.

The 'big stick' approach to regulation became less and less popular as regulatory requirements expanded and the scope and number of regulated industries increased. The initiation of criminal proceedings is a costly and time consuming exercise for any government department not to mention the associated complaints of 'heavy handed government tactics' from previously law abiding citizens and organisations. The expansion of regulation and the subsequent net of those captured in a regulated industry sounded a change in the approach to regulation.

To address these issues, government explored an integrated approach to regulation. This involved the use of a range of enforcement options to achieve compliance. The central concept of this approach is called a **Compliance Continuum** which defines the compliance options available to an Authorised Officer to achieve compliance.

Generally the continuum begins with the compliance action which has the **least impact** on the non-compliant entity, usually education. As the options progress so too does the impact on the non-compliant entity with the highest impact enforcement option usually being prosecution. The integrated approach to regulation also takes into account other factors when determining an appropriate enforcement response to non-compliance. Some government departments, including DNRM will detail these factors in policy and procedure.

This is the central concept of the DNRM *Compliance Policy* which states, *"the primary means of achieving compliance is through community support for laws."*

The compliance policy also states:

> *"It is important to encourage compliance through educating, encouraging and equipping Queenslanders to use and manage natural resources in a sustainable way. It is equally important for the department to deal promptly and effectively with misconduct."*

This statement reinforces DNRM's commitment to an integrated approach by offering a range of options to *encourage compliance* whilst maintaining its regulatory role through enforcement. Integral to the success of an integrated approach to regulation is the commitment of DNRM officers and the fair and balanced application of the compliance policy and supporting policies.

The DNRM **Compliance Management Framework** details the policies, systems and guidelines available to DNRM officers. Image 7 below outlines the DNRM *Compliance Management Framework* with the *Compliance Policy* as the umbrella policy under which all other documents fall to form the framework.
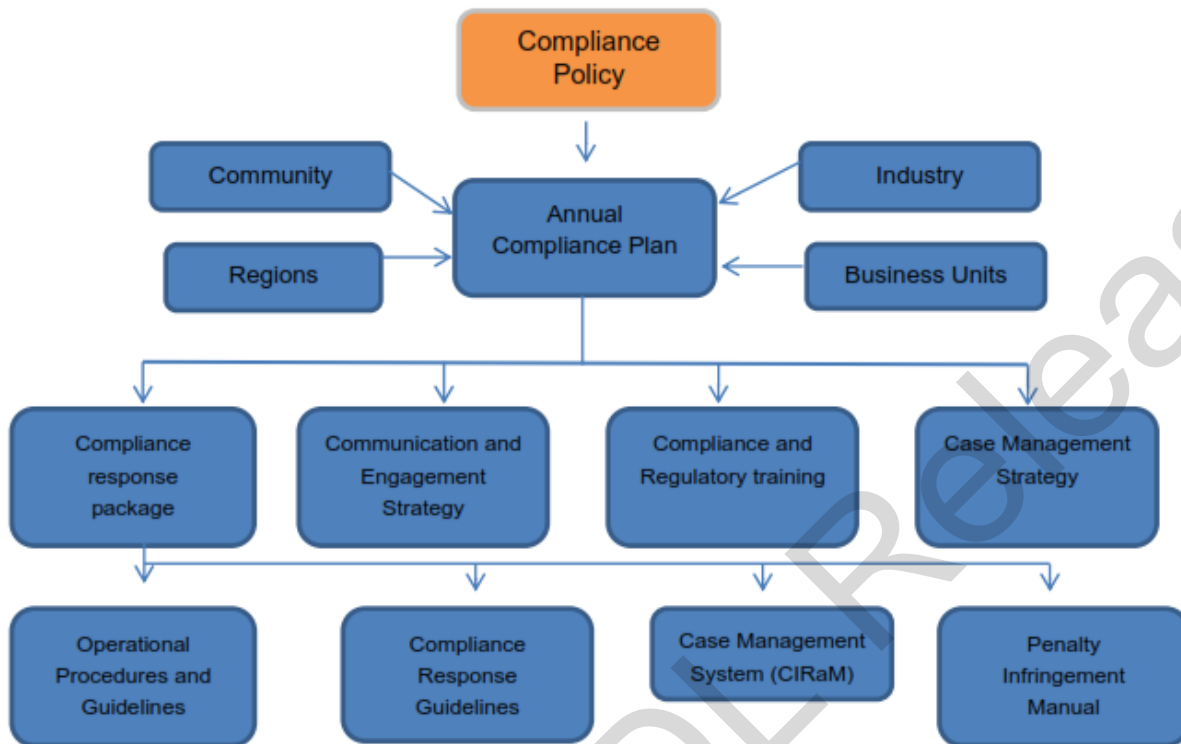
Image 7: **DNRM Compliance Management Framework**

Supporting the *Compliance Policy* are the ***Compliance Response Guidelines*** which aim to provide guidelines for DNRM officers to respond to non-compliance in a consistent, satisfactory and proportionate manner. Image 8 below shows the six tools for achieving optimal compliance and together they represent the DNRM *Compliance Continuum*. The diagram represents the tools available to DNRM officers starting with education, information, and community and industry engagement at the bottom of the continuum but representing the most desirable tool to be used to support the achievement of compliance.

As can be seen each tool becomes less desirable as an option as it represents a higher impact on clients. It should be noted that the continuum does not represent a mandatory process from bottom to top but rather a range of tools that can be used provided there is justification for the tool selected to achieve compliance.
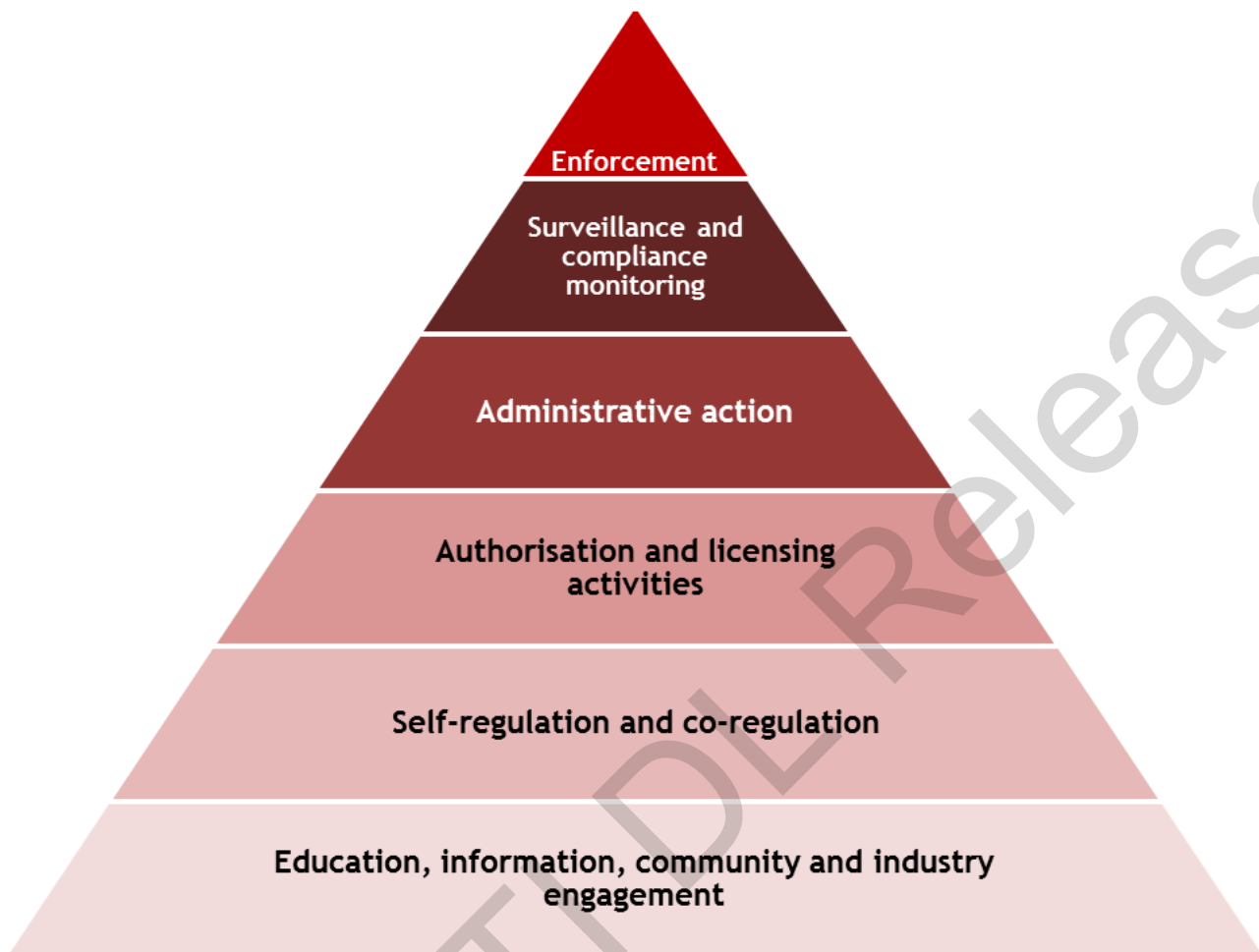
Image 8:   DNRM's Compliance Continuum

Risk-based compliance approach

The *Compliance Policy* outlines that the DNRM will routinely monitor compliance with laws through the analysis of its systems, operations and programs. One such system is the use of a risk-based compliance approach.

A risk-based compliance process begins with identifying and assessing non-compliance risks which are then managed by applying appropriate compliance measures to control the risks. This approach focuses resources into areas where they are needed most and will have the highest impact.

The advantages of a risk-based compliance approach are:

- Compliance outcomes are improved as agencies can focus compliance measures aimed at managing the highest non-compliance risks;
- Resources are used more effectively and efficiently to achieve the best compliance outcomes;

- The cost to regulated entities is reduced because the burdens of demonstrating compliance are only imposed where the risk rating justifies it; and
- The risk-based compliance model is supported by regulated entities because they understand the generic risk management process.

DNRM have long used a risk–based approach to compliance monitoring and enforcement. More recently the *National Water Compliance Framework* (NWCF) standardised the risk-based approach to water management nationally. In accordance with the NWCF DNRM undertook a risk categorisation process of all water catchments in Queensland.

Tapping into the local knowledge and expertise of regional DNRM officers each water catchment was categorised as a level 1 (low risk) to a level 3/3A (highest risk). DNRM determined that the category 3/3A rated catchments were "at risk" and subsequently the targets for compliance monitoring. A strategic objective was set to conduct inspection/monitoring activities of at least 10% of water entitlement/licence holders in those at risk catchments.

A review of the risk categorisation occurs annually to strategically manage the changing natural resources in Queensland. DNRM officers play a vital role in the achievement of the strategic objective and annual review of the risk categorisation process.

1.5   Regulatory risks and risk controls

Like all public sector agencies, regulators are exposed to a range of risks. Some of those risks are common to all regulators whilst others relate to the specific circumstances of the regulatory agency.

Common risks

The following are some common risk areas associated with the regulatory environment:

Ethics

The *Crime and Corruption Act 2001* (Qld) defines corrupt conduct in section 15. Basically it includes conduct that adversely affects the performance of functions or the exercise of powers of a unit of public administration (e.g. DNRM) or a person holding an appointment (e.g. a government employee), that results in elements of dishonesty or a lack of impartiality or a breach of trust or misuse of information or material and someone gains a benefit as a result of the corrupt conduct.

The consequences of corrupt conduct by a DNRM officer in a regulatory role would be far reaching. A primary consequence of such conduct would be a loss of public confidence in the DNRM and the regulatory frameworks managed by the Department. Investigation of alleged corrupt conduct by a regulatory agency or public service officer will be managed by the Crime and Corruption Commission (CCC) formerly known as the Crime and Misconduct Commission; this is the statutory body primarily responsible for reducing the incidence of corruption in the Queensland public sector.

Legal

Legal risk may involve litigation brought about by an individual/s alleging personal harm or loss occasioned as a result of a negligent investigation or a failure by the regulator or an officer to discharge a statutory duty.

Legal action may result in an adverse legal precedent resulting from a failed prosecution which may require new or amended legislation to be enacted to overcome the precedent.

Political

Political risk may involve negative public sentiment usually resulting in media interest and exposure to criticism which, if substantiated often leads to embarrassment for the government, the Minister, senior executives and/or the organisation itself.

Financial

Financial risks include costs associated with litigation which is usually higher if the claim is successful or the loss of revenue through inefficient systems.

Efficiency/Effectiveness

Risks associated with inefficiency or ineffectiveness may be difficult to observe. The inefficient use of resources which creates an opportunity cost in terms of what could otherwise be achieved.

Physical

Physical risks include to staff of physical injury through accidents/assaults or the loss and damage to equipment.

Specific risks

Regulatory agencies may also be exposed to risks that are specific to their own circumstances. For example, a specific risk associated with natural resource regulation could be the changing population in Queensland and the demand for land for development and water.

Population increase results in pressure on the natural resources where the regulator may have static or even reducing resource availability. This requires innovation and streamlined administrative practices to scale regulatory activity to the changing volume of stakeholders.

Another specific risk in natural resource management particularly in Queensland is the climate. As you will know Queensland is a state of extremes especially when it comes to water therefore the risks associated with managing a natural resource during various states of demand and capacity is unique to DNRM officers.

Risk controls

Risk controls are "gateways" that are created from the findings of a risk assessment where there is the recognition of a risk requiring control. The gateways are a particular countermeasure which acts as a method to reduce risk in the at risk areas by directing those exposed to the risk to pass through the gateway in order to continue.

For example, the DNRM *Water Compliance Inspections Procedural Guide and Inspection Toolkit* are risk controls because they direct DNRM officers on how to conduct inspections and specify forms and checklists for DNRM officers to use when conducting inspections. These controls provide guidance and uniformity in the inspection process with a view to standardising such things as record keeping.

The assessment of risk and implementation of subsequent controls is generally performed at the strategic level of the organisation. However DNRM officers have a role to play in the risk management process through the identification and reporting of new or altered risks. In their operational role DNRM officers are in a strong position to contribute to the risk assessment and the implementation of adequate risk controls for their operational environment.

1.6 Compliance assessment methods

Compliance assessment is the process used to determine directly or indirectly that a process, product or service meets the requisite standard which is commonly set through legislation and regulations but can also be part of a code of practice. In the case of the DNRM, compliance is assessed against standards set by the legislation and regulations enforced by the Department.

With the diverse nature of compliance enforcement the methodologies used are equally diverse. Compliance assessment methodologies are generally specified in legislation through the specific powers regulators are authorised to use but may be agreed between the regulator and industry where a code of practice is in place.

As discussed above compliance assessment methodologies can be refined and focused through the introduction of policies and procedures. Some common compliance assessment methodologies include:

- Testing
- Surveillance
- Licensing/permits
- Inspection
- Monitoring
- Auditing.

We will explore the compliance assessment methodologies used by DNRM in later modules.

2. DNRM officer's strategic role

Previously, the Government's structure as well is its roles and functions in regulatory environment was explored. This element will look at the role DNRM officers play in achieving the strategic objectives of the Department.

On completion of this element you will be able to:

➢ Describe key considerations between personal values and departmental compliance approach.

➢ Identify and address a client's specific service needs.

➢ Recognise and manage potential difficulties to client service requests.

➢ Respond appropriately (time and accuracy) to client enquiries, observing legislative and procedural requirements.

➢ Communicate with clients in an appropriate manner under the specific circumstances.

2.1   Client service approach

Delivering regulation in a client-focused way is challenging. It can be hard to measure given regulatory agencies have an expectation to meet key performance indicators which are focused more on achieving compliance than client satisfaction. The traditional 'making the customer happy' approach to client service doesn't always work, as there are various stakeholders in a regulatory scenario.

However, there are general principles that should be followed to ensure a client service approach is achieved. DNRM officers must:

- Act impartially, treat all parties with respect, and act lawfully and ethically.
- Execute their duties in a transparent and fair manner (e.g. provide education where necessary, and provide the client and/or stakeholders with feedback and updates regularly).
- Ensure the efficient use of resources.
- Be accountable for their actions.
- Keep the broader community/public interest in mind.
- Regulate in spirit and intent of the organisation's strategic objectives.
- Have a thorough understanding of the compliance enforcement options available through the *Compliance Enforcement Continuum* and the organisation's policies on appropriate use of those options.

This is reinforced in the seven high-level principles outlined in the DNRM *Compliance Policy* being:

1. DNRM will facilitate compliance by providing information to stakeholders about their regulated responsibilities.
2. DNRM will pursue cooperation with natural resource stakeholders and take a partnership approach to management and compliance wherever possible.
3. DNRM will seek to reduce the compliance burden on the regulated community by:
   - Simplifying and streamlining regulation in consultation with stakeholders; and
   - Ongoing evaluation of our compliance program to ensure it is delivering the required outcomes.
4. DNRM will use a range of tools to achieve compliance with natural resource legislation. These include education, stakeholder involvement, corrective action and licensing. Emphasis will be on working with and assisting those that seek to comply with legislation; and detecting and correcting opportunistic and deliberate non-compliance.
5. DNRM will use a 'responsive regulation' approach where compliance responses take into account the behaviour and motivations of stakeholders.
6. DNRM compliance activities will be lawful, fair, transparent, cost-effective and consistently applied. Responses will be commensurate with offence severity.
7. DNRM will maintain the effectiveness and integrity of compliance delivery by providing officers with appropriate training and tools, and by basing decisions on evidence.

A key component of delivering regulatory services in a client service approach is maintaining an *outcome focus*. In such circumstances, the role of the regulatory officer may be that of negotiator

or mediator in terms of finding a solution that delivers an outcome satisfactory to all the stakeholders involved.

Some key qualities of good client service are:

- Uncovering client needs and expectations early and thoroughly to ensure that the service/s provided are sufficient and satisfactory to the client. It will also help to identify potential difficulties that might arise in the process of providing the service.
- Committing time to the client allows for all issues to be identified and accessed allowing an informed decision to be made.
- Effective client service where the product, information or service you provide meets or goes beyond the needs or expectations of a client.
- Efficient client service where service provision is provided in a timely manner with accurate information which reduces delays and duplication of information as well as abiding by legislative and procedural requirements.
- Consistency in delivery of client services and continual evaluation of service delivery will ensure quality of service is maintained and improvements are made continually.
- Development and adoption of a *Client Service Charter* will provide a clear and defined framework against which the quality and effectiveness of client services can be delivered and monitored.
- Compliance with legislative requirements is a necessary part of working with clients.
- Client service policies and procedures must be easily accessible to all employees.
- Knowing when to seek the assistance / guidance of others to manage client service needs.
- Accurately recording complaints and evaluating the outcome of complaints managed are a good source of information on which changes or improvements can be based for future client services.
- Client complaints should be monitored over time and services reviewed as appropriate.

Everything we have discussed to this point and across all of the modules in this training package are underpinned by the Queensland public service values (see Image 9).

Customers first
- Know your customer
- Deliver what matters
- Make decisions with empathy

Ideas into action
- Challenge the norm and suggest solutions
- Encourage and embrace new ideas
- Work across boundaries

Unleash potential
- Expect greatness
- Lead and set clear expectations
- Seek, provide and act on feedback

Be courageous
- Own your actions, successes and mistakes
- Take calculated risks
- Act with transparency

Empower people
- Lead, empower and trust
- Play to everyone's strengths
- Develop yourself and those around you

Image 9:   The Queensland Public Service Values

2.2   Service delivery

It is all well and good to have a client service focus but it is the service delivery methods which will connect DRNM officers to their clients. DRNM officers, like all public service officers, have a responsibility to operate according to the code of conduct and the Queensland Public Service Values (see Image 9).

There are a range of tools we can use to ensure that we are delivering effective and efficient service and thus promote the achievement of the Department's strategic objectives. One such tool is the *VAK model* for determining preferred ways to learn. VAK stands for Visual – Auditory – Kinesthetic which are the three representative styles that people learn, take in or interpret information. When providing client service if a DNRM officer can identify the clients preferred learning style they can focus their information delivery to maximise the opportunity for the client to take in and understand the information.

Research has shown that most people possess a dominant or preferred learning style but they will also rely upon the other two styles in combination with the preferred style or for particular information gathering tasks. For example a client may have a visual preferred learning style in the majority of situations but when undertaking a specific activity they have a preference for a kinesthetic style. There is also the possibility that a person will have an evenly balanced blend of all three styles.

The three VAK styles are:

- **Visual learning style** - seeing or observing things. Verbal cues which may indicate a preference for the visual learning style is the client using words like "see, show me and watch" when they speak with you. Using diagrams or displays and providing clients with brochures to look at will be the most effective way to deliver service.

- **Auditory learning style** – involves the transfer of information through listening. Verbal cues which may indicate a preference for the auditory learning style is the client using words like "here, listen or tell me" when they speak with you. Handing a client with an auditory learning style a brochure and expecting them to read it will often result in them coming back and asking for a verbal explanation. If a preference for an auditory learning style is suspected then showing the client a brochure by providing a verbal explanation will be the most effective method.

- **Kinesthetic learning style** – is about the physical experience. Verbal cues which may indicate a preference for the kinesthetic learning style is the client using words like "feel, demonstrate or can I give that a go" when they speak with the. The best way to inform a kinesthetic learner is to incorporate a physical experience into the information being provided. For example when explaining a brochure, allow the clients to hold the document what you explain

the contents.

It is important to understand that the concepts of these learning styles is only a guide and implying tactics which are detailed above are only effective if the assessment of the preferred learning style is correct. Put simply if you try to employee learning style technique and it fails then try something different until you find the most effective way to deliver service to the client.

You can undertake a test to determine your own preferred learning style the web address below or by searching "VAK learning styles questionnaire".

http://www.businessballs.com/freepdfmaterials/vak_learning_styles_questionnaire.pdf

Further Reading

Internet

Separation of Powers in the Westminster System

http://www.parliament.qld.gov.au/aspg/papers/930913.pdf

How government works

https://www.qld.gov.au/about/how-government-works/

Office of the Director of Public Prosecutions: Director's Guidelines

http://www.justice.qld.gov.au/__data/assets/pdf_file/0015/16701/Directors-guidelines.pdf

Risk Based Compliance

http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0019/30862/01a_Risk-Based_Compliance.pdf

Professor Allan Fels AO – Regulatory Model

http://www.apeccp.org.tw/doc/APEC-OECD/2003-12/002.pdf

MODULE 3: PRINCIPLES OF MONITORING, INSPECTION AND REGULATION

1. DNRM's principle responsibilities

The focus of this module is the various methods used to monitor compliance and where compliance monitoring fits into the strategic direction of the Department. In Part 1, we will look at how DNRM plans its compliance approach.

On completion of this element you will be able to:

> Interpret the principle responsibilities of DNRM in natural resource management.

> Detail the annual compliance plans and DNRM officer's role in those plans.

> Access, interpret and apply policies and procedures to support the DNRM officer's functions.

> Apply DNRM prioritisation programs.

> Apply the purpose and structure of DNRM compliance monitoring reporting.

1.1 Natural resource management and compliance planning

Annual compliance planning

DNRM's primary function is economic development through the productive and responsible use of Queensland's natural resources. This is detailed in the *Strategic Plan 2013-2017* which states the Department's purpose is:

> *"To ensure Queenslanders benefit from the productive, sustainable use of the state's natural resources – our land, water and minerals"*

To support the strategic plan the Department has prepared a *Compliance Policy* (discussed in Module Two) which identifies the principles that will underpin DNRM's compliance approach and the tools and processes to be used in its implementation. The *Compliance Policy* is intended to ensure:

- DNRM clients understand Queensland's natural resources Management obligations.
- The Department works with government, business, industry and the community to improve performance.
- Voluntary compliance with natural resource obligations under the act administered by the Department is encouraged.
- A consistent and proportionate response is taken to non-compliance to achieve natural resource outcomes and to deter further non-compliance.

The *Compliance Policy* heads up the *Compliance Management Framework* which was created as the Department's formal representation of their commitment to achieving compliance with the land

© State of Queensland, Department of Natural Resources and Mines, 2014.

and water resource legislation. The compliance policy requires that the DNRM prepare an *Annual Compliance Plan* to guide natural resource compliance activities for the specified 12 month period and is central to the *Compliance Management Framework*.

As can be seen in Image 10, the *Annual Compliance Plan* is central to the engagement of stakeholders captured within the compliance scope of the natural resource legislation. Activities identified in the plan will, in many cases, be carried out in partnership or in close consultation with representatives of one or more of the groups represented in the compliance management framework.
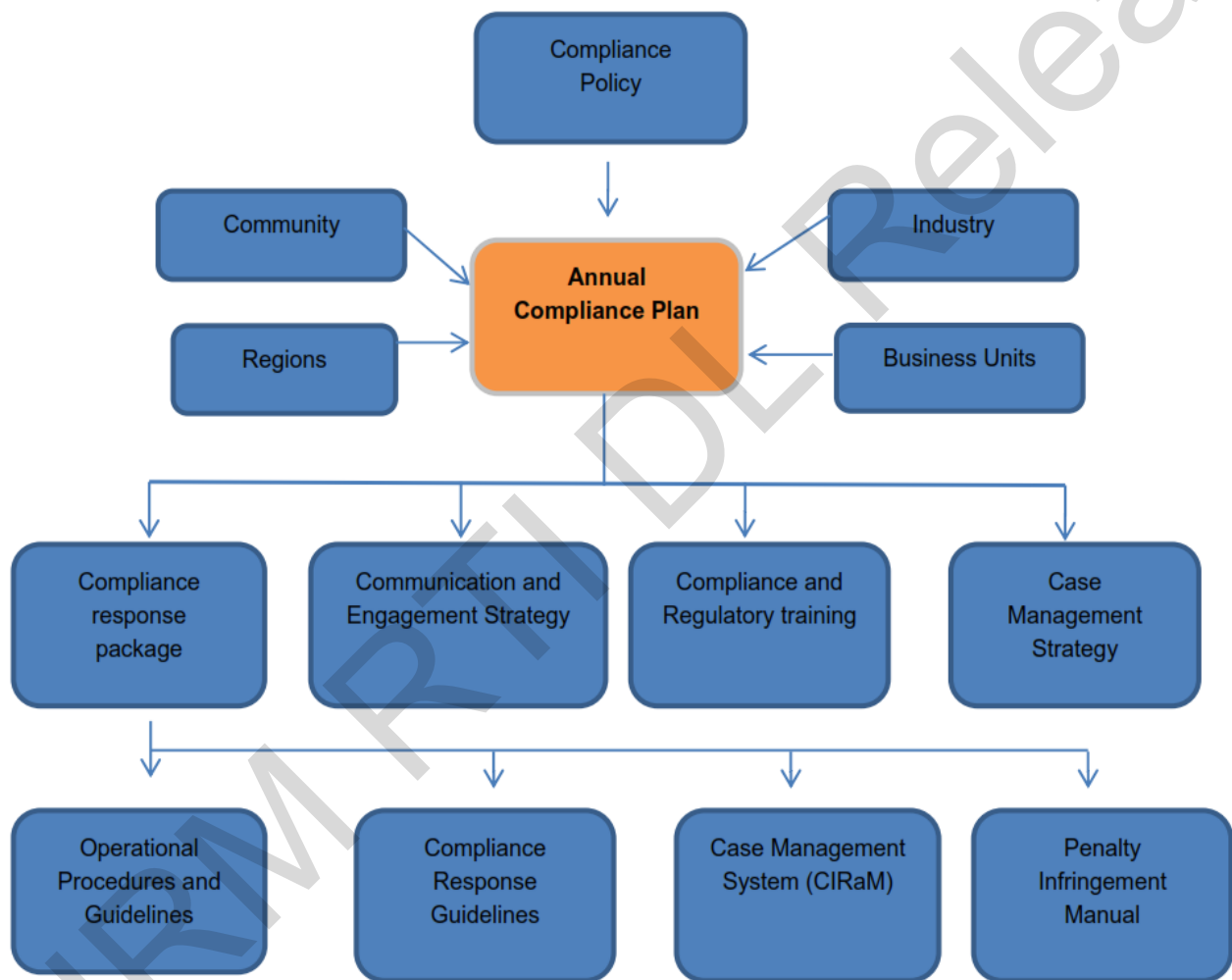
Image 10: Compliance Management Framework – Annual Compliance Plan

The *Annual Compliance Plan* sets out state-wide targets and regional specific targets. State-wide targets are often developed from a policy or operation support area and then implemented consistently across all the regions. For example, a statewide compliance strategy may focus on Land Condition Assessment (LCA) Inspections with a specified target of 70 inspections of leases to be conducted across the state. A regional specific target may focus on areas within the region where non-compliance has been identified as being high or are there is a higher risk should non-compliance exist.

The compliance policy framework which includes the annual compliance plan provides guidance to DNRM officers in the direction the Department intends to take for both the long and short term. These plans also detail the expectations of DNRM officers in the compliance approach they take as well as the compliance areas considered important by both the Department and the region.

All of these documents are readily available on the departmental intranet by accessing:

http://intranet.dnrm.govnet.qld.gov.au/our-department/governance/planning-performance-and-strategy/compliance

In Image 11, the DNRM *Compliance Framework* demonstrates the connection between the DNRM *Strategic Plan* and the DNRM *Compliance Policy* to the *Annual Compliance Plan* and its relationship to the *Compliance Response Guidelines* which provide guidance on consistent, reasonable and proportionate regulation of Queensland's natural resources. As you will see monitoring which includes inspection and auditing, can be found as part of the performance monitoring element of the framework. It is also important to note that education and awareness along with partnerships through proactive compliance precede performance monitoring in the regulatory stages.
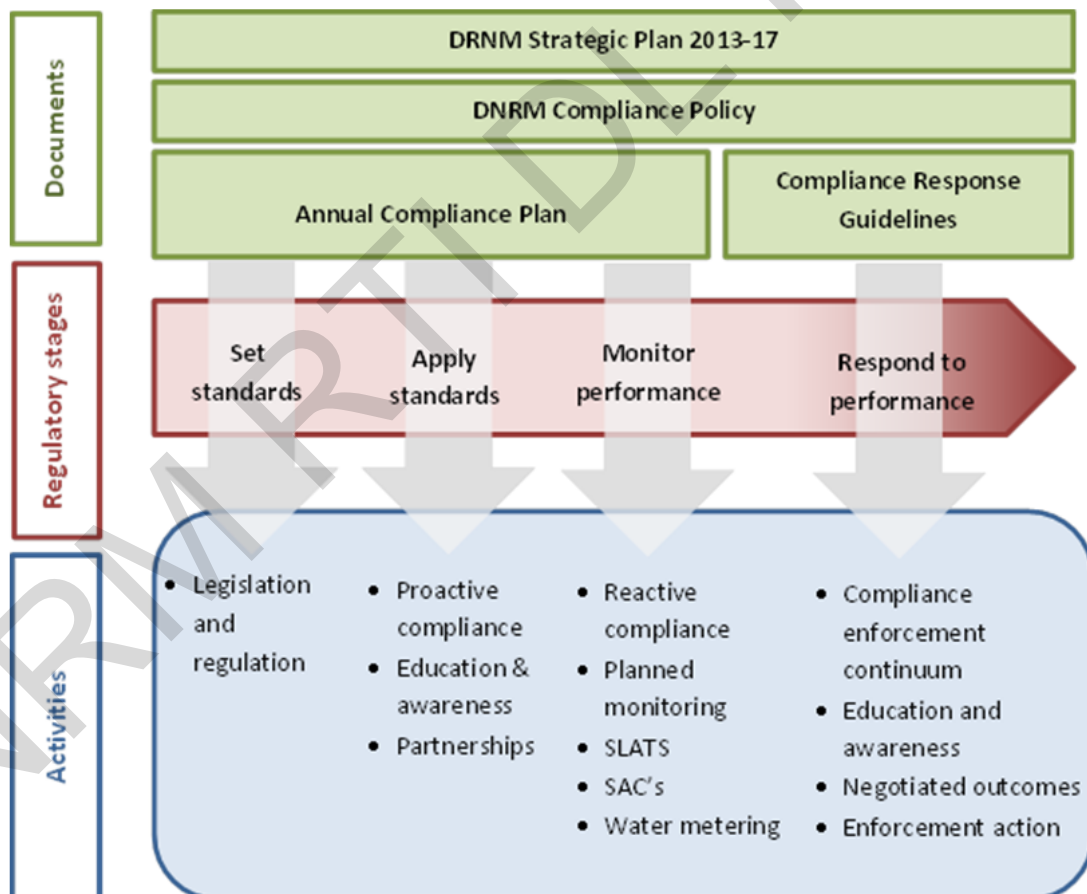
Image 11: **The DNRM Compliance Framework**

Should DNRM officers not fully understand the strategic direction of the Department or their roles and responsibilities in accordance with these documents the officer should seek the assistance of their supervisor or manager. As with any other aspect of public service operation, if an officer encounters a conflict between their personal views and the expectations set out in any of these documents the officer must always resolve the issue in favour of the Department and the government.

CIRaM (Compliance Information Reporting and Management System)

The Department's compliance incident, alleged offence and auditing database is called CIRaM (Compliance Information Reporting and Management System). All instances of non-compliance with natural resource legislation must be recorded into this database

The database contains several levels of access which allows for the reporting, allocating, investigation and finalisaton of all instances of non-compliance with natural resource legislation administered by the Department.

Measuring performance

The *Annual Compliance Plan* will use a combination of output and outcome based targets the measure performance. Output targets are those which have a *quantitative* value attached to them. A quantitative target can be identified because it will have a number associated with the target for example an output target may be to conduct "X" number of community engagement activities across the *Annual Compliance Plan*.

Outcome based targets are based on *qualitative* values which can be explained as the condition or state of a natural resource that the Department regulates. Outcome based targets require a baseline of the condition and state of a natural resource against which the outcome value is measured. An example of an outcome based target could be the measurement of the water quality in a catchment across the duration of the annual compliance plan.

Compliance inspection activities play a key role in measuring performance of many stakeholders involved in the management of the natural resource being regulated.

Prioritisation methodology

There are several sources of information used by the Department to determine the prioritisation of compliance efforts around the state and its various regions. Data is gathered through inspection and monitoring programs of activities that are impacting on the state's natural resources. Programs such as remote sensing assessments, auditing activities and assessment of information provided by external sources are used. The information gained through the analysis of data collected by these programs is used to direct and support the prioritisation of compliance efforts.

The *Annual Compliance Plan* is a key document used to prioritise compliance activities and audits as well is setting targets for performance management. Through consultation with the key stakeholders as required in the compliance management framework the priorities across the scope of stakeholders can be assessed resulting in a more focused approach to compliance.

The risk based compliance process undertaken by the Department is another means by which compliance enforcement priorities can be determined. Unlike the consultative approach in the *Annual Compliance Plan* this process relies upon stakeholders within the Department and their input as to where compliance efforts are required.

Reporting

The *Annual Compliance Plan* requires systematic reporting on the outputs associated with the annual targets as well as highlighting unforeseen issues that may impact on the achievement of targets. All business units are required to submit quarterly reports detailing the outputs as well as unforeseen issues but also the effect the DNRM's efforts have had on three key areas being:

- **Physical and Environmental changes** such as improvements in the integrity of watercourses or reduction in wildfires on state land where these are targeted outcomes.
- **Attitude changes** such as an increase in compliance or improved client service delivery.
- **Knowledge improvement** such as an improvement in the quality of development applications resulting from DNRM officers working closely with the industry.

To adequately capture the data required as part of these reports additional systems, other than the DNRM's Compliance Incident Reporting and Management System (CIRaM) may be employed requiring specific information to be recorded by DNRM officers in order to accurately report the target outputs.

Reporting is necessary for three key reasons:

1. To comply with government statistical reporting requirements being the *Financial Accountability Act 2009*, the Financial and Performance Management Standard 2009 and requirements set out in the *Annual report requirements for Queensland Government agencies*;

2. To measure the Department's performance in achieving its targeted outputs and outcomes as well as confirming its strategic direction; and

3. To support future planning both at the strategic level where a change in strategic direction may be warranted as a result of statistical data and the development of shorter term plans such as the annual compliance plan.

2. Monitoring, auditing and inspection to support compliance

On completion of this element you will be able to:

➢ Have knowledge of the underpinning purpose/s of conducting monitoring and inspection activities.

➢ Understand how regulatory instruments are assessed and managed according to policies, procedure and legislation.

➢ Interpret law regarding evidence collection, management and presentation in court.

2.1   Monitoring, inspecting and auditing fundamentals

An important function of any regulatory agency is monitoring compliance and conducting inspections and audits. What exactly are these functions? Monitoring, inspecting and auditing are common terms which are often used interchangeably but in reality they all have the same basic purpose.

Essentially these activities are authorised means by which one entity (the regulator) oversees the activities, required by law, to be done by another entity (the regulated entity).

The key difference between inspection and audit as opposed to monitoring is time. Monitoring activities are conducted continuously over a period of time usually by means of a system such as electronic monitoring of water levels in a catchment to determine water being taken from the catchment. Inspection and audit activities are focused on a single point in time and often looking back retrospectively such as inspection of a land clearing operation to establish if it was conducted legally. It should be noted that the term audit is often associated with an inspection with a financial focus.

In order for monitoring, inspection or audit activities (herein referred to as "inspection activities") to be undertaken the person conducting them must be authorised. The authority process for DNRM officers will be discussed in Module 4 of this course. Similarly monitoring and inspection activities must be authorised by legislation or in some cases by consent of the regulated entity.

Inspection activities require planning and preparation. All DNRM officers involved in inspection activities have responsibilities for the safe and effective execution of those activities which requires a thorough knowledge of legislation, policies and procedures, risks and safety hazards as well as environmental considerations.

Underpinning this knowledge is the ability to plan for the effective and efficient execution of inspection activities.

There are four common components to inspection activities. These are:

1. Planning the activity

2. Carrying out the activity

3. Acting on identified non-compliance

4. Reporting on actions.

Image 12 outlines a fundamental process for undertaking inspection activities. Before we can conduct an inspection we must first understand what we are going to be looking at and what we expect to find. This information is usually found in legislation and regulations and can be seen as the standards the government has set. When conducting the inspection the DNRM officer will identify what they have found at the location and determine if it is different from what we expected to find.

Inspection and monitoring

1. Criteria
Establishing what should be – usually established through legislation

5.   Recommendations
Identifying what actions are needed to correct the condition, address the cause and minimize the effect.

2. Condition
Identifying what is – conduct the monitoring / inspection activity

3. Cause
Establishing how or why the unsatisfactory condition has come about

4. Effect
Determining the difference and significance between *criteria and condition*
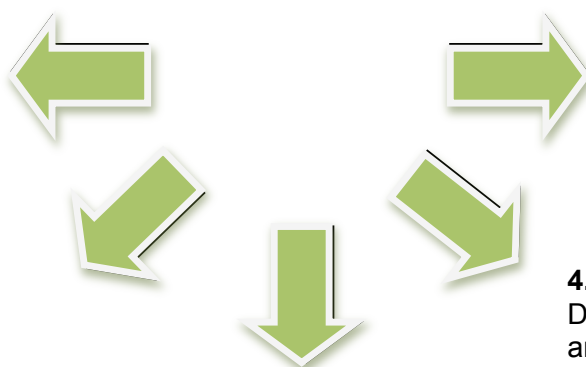
Image 12: **Inspection process**

The cause of any non-compliance is explored along with the effect of non-compliance. For example, the entity being inspected knowingly failed to comply with a condition of their permit. They admit they did not comply and stated they will not comply with the condition in the future. This indicates a deliberate cause of non-compliance and will have a dramatic effect on the recommendation made by the DNRM officer which is the final step in the process.

To assist DNRM officers with determining stakeholder behaviour and motivation when making recommendations as a result of non-compliance the Department has prepared a stakeholder behaviour guide which can be found at Image 13 below.

In our example above the stakeholder and their non-compliance can be classified as *"Opportunistic non-compliance"* or *"Criminal / fraudulent behaviour"* and a recommended compliance response is also provided.

STAKEHOLDER BEHAVIOURS AND MOTIVATION

Voluntary Compliance	Inadvertent non-compliance	Opportunistic non-compliance	Criminal behaviour and fraud
• Informed self-assessment • Compliance aware and oriented	• Not yet compliant • Attempting compliance • Developing internal control systems • New stakeholder	• resistance to compliance • lack of compliance • limited / poor systems to maintain compliance	• deliberate non-compliance • criminal intent • illegal activity

← **LOW**   **RISK**   **HIGH** →

COMPLIANCE RESPONSE

Help and support	Counsel and provide feedback	Correct behaviour	Full force of the law
DNRM will support stakeholders who voluntarily comply, making it easy for them to do the right thing, by providing accessible information and education support.	DNRM recognises that sometimes people make mistakes and will seek to help them avoid future errors. Through targeted information DNRM will explain the issues identified, giving reasonable opportunity to respond.	DNRM recognises there will always be a small number of people who seek to gain a benefit or advantage. Where non-compliance is detected, DNRM will consider the circumstances and take appropriate action.	DNRM has an obligation to identify deliberate non-compliance and deal with this behaviour using the law. Where necessary and if sufficient evidence exists the department will refer matters for criminal prosecution.

Image 13: Stakeholder behaviour guide

2.2 What to monitor, inspect or audit

As previously discussed inspection activities must be sanctioned by legislation in order for the activity to be conducted lawfully and that the first step in the process of planning such activities is to establish the criteria. How is criteria established?

In order for criteria to be established the legislation must set a *standard* for the regulated entity to achieve in order to comply. A common way in which legislation establishes a certain standard will be through the use of a *"regulatory instrument"*. Regulatory instruments come in many different variations but a common example of a regulatory instrument is a licence or permit requirement.

For example, most Queenslanders carry with them on a daily basis a regulatory instrument that authorises them to drive a motor vehicle on the road. Of course we are talking about a driver's licence but other than allowing the holder of the licence to drive a motor vehicle what other standards does this regulatory instrument set?

Drivers licences also set standards such as the type of licence the licence carrier has as well is the class of vehicle able to be driven, even the requirement for the licence carrier to wear corrective lenses whilst driving. All of these standards are indicated on the licence and if you are intercepted by a police officer they will determine by looking at the licence if you are in fact breaching the standards set by the licence.

The basic principles of regulatory instruments used by the DNRM are no different. A landowner will apply for a permit to clear vegetation from a section of their land. The department will assess that application and issue the permit subject to certain criteria (conditions) and if those criteria are not met the landowner has breached the permit. The legislation will provide for the option to enforce the breach through prosecution, however as we have seen previously the Department also has the ability to work with stakeholders to achieve compliance through a variety of means before prosecution is commenced.

Inspection activities are therefore the mechanisms by which the Department regulates the natural resources to establish if the legislation governing the resource is being complied with. It also provides for an assessment of the level of non-compliance and the circumstances surrounding non-compliance. This information then allows the Department to make an informed decision on the appropriate action to take to achieve compliance.

This establishes the connection between the compliance enforcement continuum discussed in Module 2, the Department's strategic direction and the purpose of inspection activities. It also demonstrates the connection between reporting on compliance activities as well as their outcomes and the role this plays in compliance planning both in the long and short term.

In order to achieve a uniformed approach to inspection activities across the Department policies and procedures have been developed to guide DNRM officers in the appropriate execution of these activities. For example, the *Water Compliance Inspections – Procedural Guide* has been prepared to assist water services officers when preparing for an undertaking water compliance inspections and it is to be used in conjunction with a *Water Compliance Inspection Toolkit and Checklist*.

The procedural guide breaks up the inspection process into three distinct areas being pre-inspection activities, on-site inspection activities and post-site activities. The procedural guide details two areas which are important for DNRM officers to know and understand. The first is their powers of entry which are discussed in Module 4. The second is the appropriate collection, recording and use of information gathered at the inspection site.

2.3   Monitoring, inspection and auditing and the laws of evidence

As we have established inspection activities are conducted under the authority of a piece of legislation. These activities are ultimately associated with detecting non-compliance which usually constitutes a wrongdoing at law. The information gathering process whilst conducting any of these activities should be undertaken with the forethought that a breach of non-compliance could result in a criminal prosecution.

Information gathered will become evidence in a court case when it can be shown that the information goes towards proving an element of an offence against legislation. This will be discussed further in Module 4.

It should be understood that DNRM officers undertaking inspection activities will not be responsible for investigating and ultimately prosecuting a regulated entity for non-compliance. Image 14 shows the DNRM *Case Management Workflow* which is separated into three distinct phases being the:

- Compliance Phase
- Investigation Phase
- Prosecution Phase.

The *Case Management Workflow* is described in detail in Image 14.

DNRM officers will be primarily concerned with the compliance phase where through proactive means (monitoring, inspecting or auditing) or through reactive means (responding to a complaint) the Authorised Officer will take the lead role in gaining compliance. With the support of the Regional Division Branch Manager appropriate action will be taken which could include referral for formal investigation by the Compliance and Systems Branch.

Regardless of the longer term outcome DNRM officers must be mindful that any inspection activities undertaken can ultimately result in a formal investigation and prosecution. Therefore it is vital that every time an inspection activity is conducted the information gathered and the process used to gather it will withstand the scrutiny of the courts.

To achieve this DNRM officers should gather and manage information according to the following rules:

1. Information is gathered *lawfully*.
2. The information gathered is *relevant* to any suspected non-compliance.
3. The information is *securely stored*.

The lawful means by which a DNRM officer can gather information will be specified in the relevant legislation. The legislation will provide DNRM officers who are authorised with the relevant powers to gather the information required to determine if non-compliance exists and seize items that may become evidence in a future prosecution. However, if information or items are relevant to a subsequent prosecution but it was not gathered lawfully it can be challenged in court and if such a challenge is successful it could jeopardize the success of a prosecution. We will explore powers and responsibilities of Authorised Officers in Module 4.

Consideration must also be had to the *rule of relevance.* The rule of relevance is simply, *does the information gathered relate to the suspected non-compliance*. A simple rule of thumb when seizing anything that may become evidence is to ask yourself; *"how would I explain the relationship between this thing I am seizing and the inspection I am conducting?"*

The final element is the *secure storage of information*. Where possible, courts require that evidence presented is done so in its original state. Therefore it is important for information gathered by DNRM officers during their inspection activities to be securely stored should it be required to be presented as evidence in a later court case. This is achieved by securing information such as documents or items like water pumps in a locked receptacle. Many regulatory

agencies have a secure area such as a room dedicated to the storage of items that may later become evidence.

Natural justice/procedural fairness

Outside of the court requirements for information and evidence it is also worth reiterating the requirement for natural justice / procedural fairness to be observed throughout any action taken against non-compliance detected during an inspection activity. The fundamental rule that any adverse action taken by government against an entity (business or person) requires that, among other requirements, that the action taken will withstand scrutiny and be in the public interest. It is therefore imperative that information gathered by DNRM officers is done so according to the rules above regardless of the action taken.

This is also necessary because, as indicated in the compliance phase of the framework in Image 14, if compliance is not achieved with some other action the branch manager may decide to recommend a detailed investigation which will then rely upon the primary evidence gathered by the DNRM officer during their inspection activity.

Compliance Phase	Investigation Phase	Prosecution Phase
Responsibility of North, South and Central Region Divisions within Service Delivery (RD)	Responsibility of Operations Support, Compliance and Systems Branch (CB)	Conducted by In-house Legal Branch (IHL)

Compliance Phase

- Potential non-compliance detected
- Receiving DNRM officer
- RD Branch conducts initial preliminary assessment
- RD Branch Manager
- RD Branch technical investigation and recommendation
- RD Branch Manager decision
- Compliance action
- Check compliance
- Compliance achieved
- Non-compliance
- ED Region decision
- Refer back to RD Branch
- Detailed investigation action

Investigation Phase

- CB Team leaders (North/South) allocate to Investigators
- Investigation and recommendation
- Enforcement action — NO / YES
- CB Manager recommends appropriate action to Compliance Committee
- Compliance Committee (CC) decision to proceed — NO
- CB prepare FBoE
- CB Manager refers contested PIN back to CC for further direction
- Issue PIN → Contested PIN
- PIN finalised
- CC recommendation for referral to IHL

Prosecution Phase

- In-house Legal
- IHL recommendation
- Prosecution
- No Prosecution / Alternative compliance
- Refer back to RD Branch for action
- DDG instructs IHL to prosecute
- Complaint and summons
- Court process
- Prosecution outcome
- Refer back to RD Branch for action

≈90% of alleged offences managed by RD Branch – low level compliance action	≈5-10% of alleged offences progressed to enforcement/investigation	≈2%-5% of alleged offences progressed to Court action
ENCOURAGING and ASSISTING COMPLIANCE	DIRECTING COMPLIANCE	SANCTIONS
Incident investigation	Formal investigation/evidence compilation	Court imposed penalties and sanctions
Prevention programmes	Statutory notice enforcement	

MODULE 4: EXERCISE REGULATORY POWERS

1. Understanding legislation

The focus of this module is the legislation under which Authorised Officers operate and draw their powers and offence provisions from. The section explains what enabling legislation is and how it provides powers to Authorised Officers as well as understanding conditions and responsibilities of those powers.

On completion of this element you will be able to:

> Access and interpret the Authorised Officer's enabling legislation and supporting legislation.

> Describe the scope of powers available to Authorised Officer's under enabling legislation and conditions and responsibilities associated with them.

> Demonstrate compliance with legislation, standards, policies and procedures influencing regulatory powers under enabling legislation.

> Identify the scope of an Authorised Officer's powers and consider options when encountering situations outside of the scope of their powers.

> Identify and manage risks associated with the exercise of regulatory powers.

1.1   Powers under enabling legislation

Enabling legislation

Authorised Officers are required to carry out the regulatory functions including audits, inspections and investigations in accordance with the regulatory provisions and powers prescribed within the relevant legislation that is being considered in the context of the departmental activity.

Such legislation is commonly referred to as *"enabling legislation"* because, as the name suggests it enables Authorised Officers to carry out their work. Enabling legislation provides Authorised Officers with the ability to use specific statutory powers to perform a number of regulatory functions such property audit inspections and preliminary investigations.

DNRM officers, authorised to use statutory powers, must display comprehensive knowledge of the powers and responsibilities provided by the enabling legislation and be confident in exercising of these powers. This includes the ability to competently access and interpret the enabling provisions within legislation. Some sources or tools that Authorised Officers can use to access and maintain an up to date knowledge of their requirements under their enabling legislation may be:

Legislation web sites

The Internet has a number of online resources to gain up-to-date electronic versions of legislation. Authorised Officers must ensure that they regularly check the legislation they working with to establish it is the most current version.

Amendments to legislation can occur at any time without a complete rewrite of the entire Act and are sometimes implemented with minimal notice to operational staff.

Whilst Internet sites providing legislation make life easier for Authorised Officers it also provides a means by which the public can easily access legislation. Authorised Officers should not assume that stakeholders have not gone online and researched legislation to gain an understanding of the powers available to the officer prior to them attending their property.

Two of the most common Internet sites which have Queensland legislation available on them are:

Australasian Legal Information Institute (AUSTLII) – www.austlii.edu.au

Queensland legislation – www.legislation.qld.gov.au

This module will focus on the key enabling legislation and subordinate legislation regulated by the DNRM being the:

- *Water Act 2000*
- Water Regulation 2002
- *Sustainable Planning Act 2009*
- Sustainable Planning Regulation 2009
- *Land Act 1994*
- Land Regulation 2009
- *Vegetation Management Act 1999*
- Vegetation Management Regulation 2012.

Department Intranets

Government department intranets generally will have direct access to legislation that is relevant to their regulatory role. Electronic versions of enabling legislation used by the agency may be stored locally on the intranet or will provide a link to one of the above sites where the legislation exists.

Legal Units

Regulatory agencies may well have a dedicated legal unit who are well versed in the specific enabling legislation that relates directly to the agencies regulatory responsibilities. Officers at these units are a good source of interpretation and demonstration of what powers are available to investigators and other Authorised Officers

Circulars or Bulletins

Government circulars or bulletins are often published in respect to changes or amendments to enabling legislation, case studies surrounding such legislation, and new policies and procedures which determine how such enabling legislation and associated powers can be used.

Training

Ongoing training in the use of enabling legislation powers and responsibilities are an effective means of maintaining up-to-date knowledge.

Mentors and other Authorised Officers

As an Authorised Officer, the experience of senior or more experienced Authorised Officers is an effective way of not only sourcing information about current enabling legislation and powers used by the Department but also on the procedures and policy associated with the correct use of such powers.

Specific legislation

Land management legislation

The *Land Act 1994* dates back to the foundations of European settlement in Queensland. Since it's commencement in 1860, it has set the provisions and processes for allocating and administering land tenure throughout the State.

Regulatory functions under *Land Act 1994* are triggered by prescribed offences for non-compliance with lease, licence or permit conditions on allocated State lands and for trespass related activities on unallocated state lands.

Vegetation management legislation

The Queensland *Vegetation Management Act 1999* commenced on 15 September 2000 and it created unprecedented changes in the way mapped remnant native vegetation in this state was to be managed. Since its commencement, there have been a number of major amendments and improvements made to the legislation. Amendments passed in 2009 extended protection to certain areas of regrowth vegetation.

In December 2013 Queensland vegetation management laws were reformed and some key changes included:

- Introducing three new types of clearing purposes defined in the *Vegetation Management Act 1999:*
  - High Value Agriculture (HVA) clearing means clearing carried out to establish, cultivate and harvest crops but does not include clearing for grazing activities or plantation forestry;
  - Irrigated High Value Agriculture clearing means clearing carried out to establish, cultivate and harvest crops, or pasture excluding clearing for plantation forestry, that will be supplied with water by artificial means; and
  - Necessary environmental clearing being clearing of vegetation which is necessary to restore the ecological and environmental condition of the land or stabilising watercourse banks or rehabilitate eroded areas or prevent erosion or for ecological fire management, divert channels, prepare for natural disasters, remove silt to mitigate flooding or remove contaminants from land.
- Producing a range of self-assessable vegetation clearing codes;
- Simplifying the mapping system; and
- Removing high-value regrowth regulations from freehold and Indigenous land.

All mapped remnant and regrowth vegetation regardless of the land tenure upon which it is found is protected under the *Vegetation Management Act 1999* with the exception of *Protected Area Tenures* under the *Nature Conservation Act 1995* and *State Forest Tenures* under the *Forestry Act 1959*.

Regulatory functions under the *Vegetation Management Act 1999* are mainly triggered by unlawful vegetation clearing which is deemed to be *"assessable development"* under the *Sustainable*

Planning Act 2009. The majority of investigative powers and procedures to assess compliance are contained within the *Vegetation Management Act 1999*.

Authorised Officers in this field also need a basic understanding of key resource designations provided under the *Vegetation Management Act 1999* such as regional ecosystems and vegetation categories.

Water resource management

Legislation governing the management of water resources in Queensland goes back as far as the *Water Authorities Act 1891*. The primary purpose of the legislation has remained the same; to manage the conservation and utilisation of water regardless of its use.

The most recent legislation is the *Water Act 2000* which was introduced into Parliament on 22 June 2000, passed on 7 September 2000, and assented on 13 September 2000. The *Water Act 2000* was developed to fulfil Queensland's responsibilities under the Council of Australian Governments' (COAG) 1994 Water Resources Policy and under National Competition Policy guidelines.

Regulatory functions under the *Water Act 2000* are mainly found in Chapter 2 and Chapter 5. Chapter 2 establishes a system for the planning, allocation and use of water in order to advance sustainable management and efficient use of water and other resources.

Chapter 5 covers investigations, enforcement and offences. This chapter includes Authorised Officers powers, enforcement matters in relation to the issue of Compliance Notices and general offences.

The *Water Act 2000* has working links to the *Sustainable Planning Act 2009* (formerly *Integrated Planning Act 1997*) with development assessment criteria and offence provisions being shared between both Acts.

Factors influencing enabling legislation

Statutory powers sometimes provide a lawful authority to operate beyond the common law rights we usually take for granted. For example, a power to conduct a monitoring activity authorises an intrusion onto private property to conduct the activity. Such an activity, without a statutory power, would be unlawful, without the consent of the owner, occupier or other authorised person at the property, and could result in a civil or criminal action against the person entering the property unlawfully.

The statutory powers provided by enabling legislation do not exist in a static or insular environment; they bring with them stated or implicit responsibilities.

All legislation is subject to amendment, open to interpretation, challenge and clarification, so too are the powers contained in enabling legislation. Regulatory powers may enable Authorised Officers to perform certain acts however the manner in which these activities are carried out may be determined by a number of factors.

These influencing factors can be found in:

- Enabling legislation
- Case law

- Other legislation (e.g. work health and safety and privacy legislation)
- Codes of Conduct (e.g. treating others with respect)
- Procedural guidelines
- Organisational or agency policy.

An example of this can be found in the categorisation of authority as determined by DNRM policy for Authorised Officers in the regulation of water resources. The enabling legislation provides a range of statutory powers to any officer authorised under the *Water Act 2000*. The powers of Authorised Officers include the application for and execution of search warrants (ss.751 – s.754) and seizure of evidence (s.757A). However the DNRM have decided that the use of certain powers such as those identified above will be subject to certain conditions and as such have put in place policies and procedures detailing those conditions.

The departmental policy requires that officers authorised under the *Water Act 2000* be categorised as either a category 1 or category 2 Authorised Officer. Through the policy the Department restricts the powers of category 1 Authorised Officers until such time as the Authorised Officer receives further training and experience. Once the required training and experience is achieved the Department will endorse the Authorised Officer as a category 2 officer which expands the scope of powers the officer can exercise.   .

Enabling legislation states **who** Authorised Officers are and **what** Authorised Officers can do. In determining **how** these things are done the Authorised Officer must look beyond the enabling legislation. It is incumbent on the Authorised Officer to ensure they have a current understanding of all these matters.

Appointment of Authorised Officers

Legislation will provide for the appointment of Authorised Officers (see Image 15).
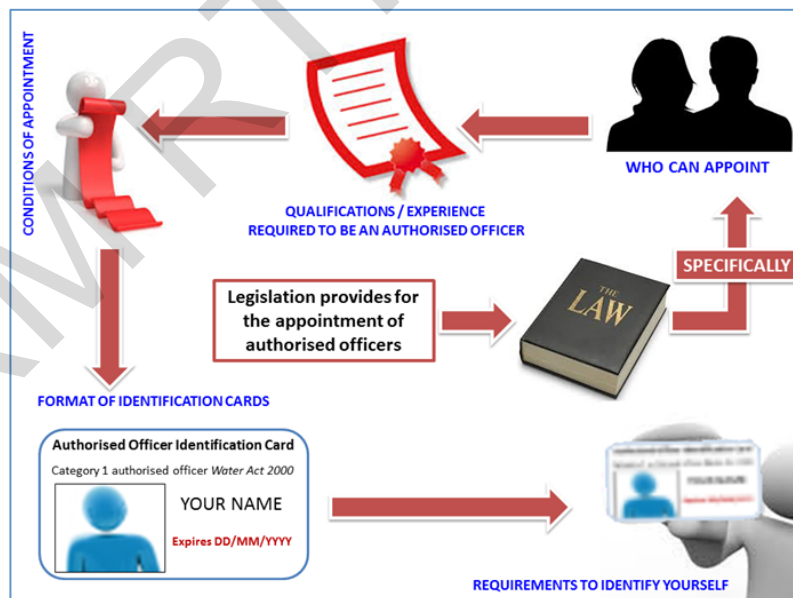
Image 15: Appointment of Authorised Officers

PAGE 55

Generally this will specify who may appoint Authorised Officers, the term of the appointment, and provide for conditions of appointment and termination of the appointment.

In the *Water Act 2000* (s.739), the *Land Act 1994* (s.395) and the *Vegetation Management Act 1999* (s.24) Authorised Officers/persons are appointed by the chief executive only if the chief executive is satisfied that the person they are appointing *is experienced and adequately trained to perform such a role*.

It should be noted that the *Water Act 2000* makes reference to *Authorised Officers* whilst the *Land Act 1994* refers to *Authorised Persons*. For the purpose of reference in this module the term *Authorised Officer* will be used to refer to both.

The *Water Act 2000* (s.740), *Land Act 1994* (s.397) and the *Vegetation Management Act 1999* (s.25) have provisions where an Authorised Officer's appointment can be subject to conditions which can come from different authorities including the chief executive such as the example used above.

Commonly enabling legislation will also require Authorised Officers to be issued with a delegation of appointment and/or an identity card. Where this is so, the section may specify that the delegation of appointment or identity card is to be signed by the person authorising the officer and also state specific requirements of the identity card.

The *Water Act 2000* (s.742), *Land Act 1994* (s.397) and the *Vegetation Management Act 1999* (s.27) require an Authorised Officer to be issued with an identity card which must:

- contain a recent photograph of the Authorised Officer;
- be signed by the Authorised Officer;
- identify the person is an Authorised Officer under the Act; and
- state expiry date.

Each of these acts have clauses which allow for the issuing of a single identity card for all of the enabling legislation the DNRM officer is authorised to use powers under.

Experience shows that a common point raised in court proceedings concerning the Authorised Officer's identification card is the currency of the photograph shown. This has caused other agencies to introduce a policy and procedure whereby the Authorised Officer's identification card is renewed on a specified schedule usually every two years. Authorised Officers should familiarise themselves with any such policy or procedure and abide by it.

Powers under the legislation

Everyone has a common law right to ask any other person a question or make a reasonable request of the person and it is the common law right of the person being asked the question or request to refuse to answer it or comply with it.

For example, requesting permission to enter onto a person's land or asking for the production of a document in the person's possession. This is the distinction between an ordinary person and a person authorised by legislation to enact powers. The enabling legislation must provide for the power to override the refusal and for example, enter the land regardless of the person's refusal or seize the document. Powers provided by enabling legislation are limited to the regulatory activities specific to that legislation only. For example, if enabling legislation provides for Authorised Officers

to undertake a monitoring activity under the *Water Act 2000*, such an activity can only be conducted in the monitoring to detect non-compliance *under that specific legislation* and not for some other matter such as using the *Water Act 2000* to enter the property to investigate vegetation clearing or a trespass activity under the *Land Act 1994*.

An exception to this is in certain circumstances where certain agencies such as Police may have overarching powers that apply across a broad spectrum of legislation. For example in Queensland the *Police Powers and Responsibilities Act 2000* provides such broad spectrum powers to police officers across a range of Queensland legislation.

The enabling legislation, powers and directives under which a regulatory agency operates determine the types of activities undertaken by the agency. Although the content of such legislation, powers and directives will be different for individual agencies, each will have an identifiable framework under which it operates which will consist of common powers.

DNRM's key enabling legislation has the following framework which is common in the regulatory industry:

- **Entry onto land and places with or without warrant to exercise powers**
  The *Water Act 2000* (ss.746, 747, 748 and 749), *Land Act 1994* (s.400) and the *Vegetation Management Act 1999* (s. 30) provide for the power to enter land for inspection activities but with a range of conditions that must be met before entering and upon entering. Conditions and responsibilities associated with statutory powers will be discussed later in this module.

- **Authorising certain information gathering activities**
  The *Water Act 2000* (ss.746, 747, 748 and 749) authorises entry onto land as well as certain compliance monitoring activities such as reading, repairing or replacing devices. Authorised Officers can also test or assess equipment, take samples and construct monitoring equipment.

  Similarly the *Land Act 1994* (s.400) also provides power to enter and undertake information gathering activities such as inspecting the land, photograph and filming, taking samples and monitor compliance through the installation and/or reading of a monitoring device.

  The *Vegetation Management Act 1999* (s.36) is slightly different where the powers after entry are provided in a separate section. However the general powers after entry a very similar to the other acts in that the place entered can be searched, inspected, tests, photograph and samples can be taken. Documents can be copied and assistance can be taken onto the place to exercise the powers.

- **Entry with a warrant**
  The *Water Act 2000* (ss.751 to 754) and *Vegetation Management Act 1999* (ss.32 to 35) provide for the application and issue of a warrant. The provisions also detail the procedures that must be done before entry under a warrant.

- **Coercive powers**
  Coercive powers are specific powers enabling the Authorised Officer to compel specific information or acts. The most common coercive power is the power to demand name and address of a person found committing or suspected of committing an offence against the legislation. Failure to comply with coercive powers generally has an offence provision for failing to comply. However it should also be noted that provisions exist to protect the person

from prosecution for failing to comply if they present a *"reasonable excuse"* such as protecting themselves from self-incrimination.

- **Require name and address**
  The *Water Act 2000* (s.758) and the *Vegetation Management Act 1999* (s.49) provide for the power to require name and address however a similar power is not evident in the *Land Act 1994*.

- **Require production of documents or provide information**
  The *Water Act 2000* (ss.760 and 763) and the *Vegetation Management Act 1999* (ss.52 and 51 respectively) provide for the power to require production of documents or providing information subject to certain conditions.

- **Manage evidence**
  The *Water Act 2000* (ss.757A to 757J) and the *Vegetation Management Act 1999* (ss.39 to 48) provide for the seizure of things as evidence. Authorised officers can also secure seized things to prevent tampering and require a thing seized to be brought to the Authorised Officer. There is also a requirement for the issue of receipts of things seized and requirements around the forfeiture and returning seized things.

For further information DNRM officers should refer to the procedural guide **Compliance Toolbox - Obtaining Evidence** and **Evidence Handling and Storage.**

Conditions and responsibilities of statutory powers

Suffice to say the exercise of statutory powers is integral to the role of the Authorised Officer and a comprehensive understanding of their application and scope is of paramount importance to the Authorised Officer.

Authorised Officers are authorised to carry out inspection activities and various compliance, investigation and enforcement activities under terms of reference, supported by procedures and, in most instances, enabled by legislation. It is essential that they are aware of the parameters by which their authority is enabled and defined.

Legislated powers often carry **conditions** and **responsibilities** that detail the circumstances under which the powers can be invoked and place responsibilities on the Authorised Officer invoking the powers. Conditions and responsibilities can be found written within the provisions in the legislation.

Conditions are specific requirements the Authorised Officer must meet in order to use the power. They can be both physical requirements and psychological requirements.

There is one condition common to every power an Authorised Officer can use and that is the person must be an Authorised Officer appointed in accordance with the legislation. This specific condition ensures that only those authorised to use a power are able to. This condition represents an example of a physical requirement.

Another example of a condition which has a physical requirement can be found in the *Water Act 2000* where entry is going to be made onto land for monitoring or information collection (ss.746 and 747). There is a condition that entry under these sections be made "at any reasonable time". The key consideration here is what is deemed to be a reasonable time and without a clear definition in the act it will become the discretion of the court's to decide if the entry was made at a reasonable time. As discussed previously a reasonable time may well have been considered in a court case and therefore case law may well define this for the Authorised Officer.

An important consideration in the exercise of powers is the conditions specified through definitions within the Act. An example of this can be found in the *Water Act 2000* (ss.746 to 748) where the Authorised Officer has the power to enter "land". The important point here is that the Authorised Officer is entering land as defined in s.745 of the Act. Authorised officers should know the definition of land to ensure that they exercise powers and enter only that "land" which they can enter.

An example of a condition which represents a psychological requirement is a requirement that the Authorised Officer must first have a reasonable suspicion or belief in order to exercise the power. An example of this can be found in the *Water Act 2000* (s.748) where an Authorised Officer can enter land to search for other unauthorised activities but only if the officer has a reasonable belief that the other unauthorised activities specified in the section are occurring.

Responsibilities are the specific requirements the Authorised Officer must do when exercising a power and will generally be physical requirements.

As with conditions there is one responsibility common to every power an Authorised Officer uses. This is a responsibility to identify yourself as an Authorised Officer.

The *Water Act 2000* (s.744), *Vegetation Management Act 1999* (s.29) and the *Land Act 1994* (s.398) all contain provisions requiring the production and/or display of an Authorised Officer's identity card and that that Authorised Officer may not exercise the power unless the identity card is first produced or displayed and clearly visible. Authorised Officers do have an opportunity to exercise the power without first identifying themselves if it is not practicable but they must produce their identity card for the person's inspection at the first reasonable opportunity.

Other examples of common responsibilities are advising a person of their rights, warning a person that non-compliance may constitute an offence and providing copies of documents and/or receipts for things seized.

It is worth noting that there is often a fine line between what constitutes a condition and what constitutes a responsibility. The key is to recognise that there are obligations associated with the exercise of the power and that those obligations are done at the correct time and in the correct manner to ensure that the power being exercised is done so lawfully. If a DNRM officer is unsure of their obligations in the exercise of a power they should seek assistance from their supervisor or manager or the legal unit within the Department.

Encountering matters outside the scope of powers

Sometimes Authorised Officers will come across a situation which is outside of the scope of their powers. It is important to understand that exercising a power which is not authorised by law may result in the admissibility of any information gathered as part of that act being challenged in court. DNRM officers should not undertake any regulatory action outside of the scope of their authority.

If an Authorised Officer comes across a situation which is beyond the scope of their authority they need to understand what action they can take to manage the situation. The situations they may encounter will generally fall under two categories:

1. A breach of natural resource management legislation outside of their scope of authority e.g. an Authorised Officer under the *Vegetation Management Act 1999* finds evidence of a breach of the *Water Act 2000*; or

2. A breach of legislation not directly associated with their role e.g. locating a large quantity of pesticide drums leaking pesticide into a watercourse which may constitute a breach of the *Environmental Protection Act 1994.*

A breach of natural resource management legislation will generally fall within the scope of another regulatory unit within DNRM and appropriate processes for referral of your suspicion are in place the matter should be entered into CIRaM and then referred to the relevant agency by letter or telephone conversation with those details recorded.

A breach of legislation outside of the scope of the DNRM will become the responsibility of an outside agency and will need to be referred appropriately. Where agencies share information or undertake joint investigations a Memorandum of Understanding (MOU) will usually be in place. MOU's will detail how departments will manage joint investigations and/or how information will be shared. Authorised Officers should familiarise themselves with any MOU's the DNRM have in place.

If an Authorised Officer comes across a situation where a breach of other legislation is suspected the officer must be sure to appropriately gather information to support their suspicion. The primary source of information in such instances will be the officer's own observations which must be immediately and accurately recorded in the officer's official notebook. If the officer engages in a conversation about the suspected breach this should also be recorded. All of the information gathered by the officer must be passed on immediately to the relevant authority for further investigation.

Whilst the Authorised Officer is lawfully on a property they can gather information within the scope of their authority such as photographs or video and question a client about matters pertaining to their area of authority under the Act (*Water Act 2000* (s.755(3)) and *Vegetation Management Act 1999* (s.36(3)). They may also be able to compel certain information such as name and address or a requirement to produce certain documents but this must remain within the scope of their enabling legislation.

For example, an Authorised Officer for the *Water Act 2000* who suspects land clearing has taken place cannot demand the name and address of the person suspected of the land clearing. Also, the Authorised Officer cannot remain in a place longer than lawfully permitted so if an Authorised Officer has concluded their monitoring or compliance enforcement they have no further lawful right to remain at the place and must leave.

If prudent, Authorised Officers may be in a position to capture evidence via a photograph or video recording. For example, whilst filming land clearing on a property the vision captures a water pump and hose leading into a local catchment or a freshly dug dam.

Authorised Officer's must be careful not to overstep their authority or alert anyone to their suspicion of a breach of legislation outside of the DNRM scope as this may jeopardise a future criminal investigation. For example, if an officer observes what they believe to be cannabis plants growing behind a shed. If the officer is seen photographing the plants or asks questions about them this can create a high risk environment for the officer but it may also alert the occupier to their suspicion which may result in evidence being destroyed before the police can investigate.

Authorised Officers with dual authority across several pieces of enabling legislation can lawfully enact powers under both pieces of legislation provided they clearly advise the occupier that their

inquiries under one piece of legislation have concluded and they are invoking powers for a different matter. Officers are recommended to advise the occupier of this using the following statement:

"At this time I have concluded my inquiries regarding the vegetation matter. I now wish to advise you that I am an Authorised Officer under the Water Act 2000 (Produce identification) and intend making inquiries in relation to a matter concerning the Water Act that I have observed. Do you understand that?"

If in doubt, abide by the rule of *"observe, note and report"*.

Risks associated with exercising statutory powers

Risk management is not simply about mitigating loss, damage or harm. Effective risk management can, at a strategic level, identify opportunities and improvements to practices, policies and procedures and at a tactical level identify opportunities that assist in effective investigation planning.

Risks associated with regulatory activity will generally center on the lawful acquisition of evidence. However there are specific elements of a regulatory activity that require heightened risk management for example the execution of warrants. Risk management is the foundation for the tactical implementation of the compliance plan. It provides the rationale for what is done, when it is done, by whom, how and where it is executed.

The exercise of statutory powers is, by and large, an intrusion into the day to day activities of those who are subject to the powers. This can create aggravation and animosity which may escalate into a dangerous situation for those exercising the powers.

This may be aggravated by:

- people engaged in illegal activities and the seriousness of that activity;
- client cultural background;
- client literacy levels;
- environmental factors affecting the person(s) e.g. drought, flood etc; and
- past experiences with the Department or other government agencies.

The exercise of statutory powers should always be preceded by a risk or threat assessment, in accordance with accepted organisational standards and appropriate steps taken to mitigate or manage the risk.

Risks associated with the exercise of regulatory powers may also result from:

- workplace hazards
- environmental hazards
- equipment failure.

This is reinforced in the *Compliance Inspections – Procedural Guidelines.* Step five requires DNRM officers to consider work health and safety issues as part of the pre-inspection process. Part of that process should include a threat assessment associated with the statutory powers which will be utilised as part of the inspection activity.

The primary departmental documents DNRM officers should refer to in relation to exercising regulatory powers is the procedural guide in the *Compliance Toolbox - Powers of Authorised Officers* and the *Regulatory Powers Guide to Entry and Authorised Officers.* This document will assist Authorised Officers manage the risks faced whilst exercising regulatory powers. Officers should be fully conversant with these guides and it is recommended that a hard copy or electronic copy be carried with the Authorised Officer at all times whilst in the field.

2. Offences under legislation

On completion of this element you will be able to:

> ➢ Locate and interpret offence provisions and their associated points of proof.

> ➢ Correctly interpret and apply legislation to a changing operational environment and strategic compliance objectives.

2.1   Locate and interpret offence provisions

An important attribute of any officer in a regulatory field is the ability to identify offences and omissions that comprise non-compliance with legislation that they are empowered to administer, regulate or investigate.   It is important that Authorised Officers are familiar with the acts and omissions that exist under legislation administered by their agency.

As an Authorised Officer, if you are responsible for monitoring or enforcing compliance you must be able to recognise acts or omissions committed by persons (or entities) that constitute an offence. To do this of course you first need to know what an offence is.

Definition of an Offence

An offence can be described as a provision in legislation determined by the governing power of the state (the government) aimed at the prevention of active or passive (act or omission) behaviour/conduct. It is an act or omission which renders the person doing the act or making the omission (not doing an act) liable to punishment. Image 16 below describes the categories of offences in Queensland.

The prevention of offences is usually sought through proactive means (education) or through the deterrent effect of punishment as a result of reactive means (investigation) and subsequent prosecution and conviction once the matter has been proved in a court of law.

TWO KINDS OF OFFENCES

REGULATORY

FAILING TO SETTLE A DEBT E.G. SHOPLIFTING

CRIMINAL

CRIMES & MISDEMEANOURS

SIMPLE / SUMARY

OR

Judge only

Judge and Jury

PRESIDED OVER BY

Magistrate

❑ DISTRICT OR SUPREME COURTS
❑ INDICTABLE OFFENCE – MUST SHOW THE ACCUSED HAS A CASE TO ANSWER BEFORE GOING TO TRIAL
❑ SUBJECT TO CONDITIONS - ACCUSED HAS THE RIGHT TO TRIAL BY JUDGE AND JURY
❑ MISDEMEANOURS ARE OFFENCES WITH SEVEN YEARS OR LESS IMPRISONMENT PENALTY (IN MOST CASES)

❑ MAGISTRATES COURT
❑ "LESS SERIOUS" OFFENCES
❑ SIMPLE OFFENCES ARE OFFENCES NOT IDENTIFED AS A CRIME OR MISDEMEANOUR
❑ SUMMARY OFFENCES MUST BE HEARD BY A MAGISTRATE (*SUMMARY OFFENCES ACT 2005*)
❑ INDICATBLE OFFENCES CAN BE HEARD SUMMARILY WITH STRICT CONDITIONS

Image 16: Categories of offences in Queensland

Identifying and confirming offences under legislation

In order to determine the precise nature of the prohibited matter, it is necessary to analyse the definition of the offence. Rarely is a mere act sufficient for criminal liability. The definition of an offence will, invariably, specify other elements, such as time, place and most importantly specific actions and/or the intention of the person committing those actions. These specific criteria are referred to as the *elements of an offence*. It is by identifying these *elements* that we are able to confirm that an act or omission is an offence as defined under legislation.

Proofs or elements of an offence, (variously referred to as principal facts, points of proof, elements of the charge or ingredients of the offence) are those facts, which by law are necessary to establish the liability (guilt) of the person charged with the breach.

Where the facts are in dispute by the defence, as in the case of a not guilty plea, the prosecution must produce evidence to prove the facts and as such the elements of the offence.

Where a person enters a plea of not guilty after being made aware of the charge against them, the person is not necessarily denying in every case the actual behaviour alleged, but is implying – *you*

have made the allegation, now you prove it. It is then incumbent on the prosecution to prove the allegation beyond a reasonable doubt.

Wherever there is a plea of guilty the facts in issue are, in most cases, conceded by the accused.

Elements of an Offence

The *elements of an offence* are the issues which must be identified and proven to establish the criminal liability of an individual or entity for an offence.

To use an analogy in a culinary sense – each of the elements could be likened to the ingredients of a cake. If the cookbook stipulates certain ingredients in the cake mix and one or more of those ingredients are left out, the result is obvious. Similarly, if an ingredient (i.e. element) in an offence is overlooked or not proved then the case will fail.

The elements of an offence may be divided into two broad categories, namely **common elements** and **specific elements** (or criminal elements):

Common Elements: Common elements are specific facts which must be proven regardless of the offence. In essence they are common to every offence even though the majority of them are not written as part of the offence provision. The common elements are:

- the identity of accused;
- the time of the act;
- the date of the act;
- the place of the act; and
- the jurisdiction in which act occurred

If the prosecution fails to prove any of the common elements then it is probable, regardless of the amount of other available evidence then the prosecution will not succeed.

Specific or Criminal Elements: These are the elements which are unique to the particular offence provision in the legislation.

Often it is difficult to glean accurately the specific elements of each offence. This may be facilitated by closely examining and dissecting the definition or section of the relevant statute or the wording of the information or indictment that may already exist on a system or in reference manuals. If DNRM officers are unsure of the elements of an offence they should seek assistance from their supervisor.

The wording contained in the formal charge (contained on the document called an information or an indictment) is, basically, the statement embracing overall the common and specific elements of the offence that is alleged.

*Specific or Criminal Elements fall under two (2) categories namely **Physical elements** and **Fault (or mental) elements***.

Physical elements are best described as the conduct or act which is, according to the offence the wrong thing to do by law. For example, the *Water Act 2000* states that it is an offence for a person to tamper with a device installed by the chief executive to monitor water (s.811(2)). Therefore if a

person removes the device from where it was placed by the Department that physical act may represent a breach of the element of tamper in this offence.

It should be noted that this represents just one physical element of the alleged offence and offences may contain several physical elements. All physical and fault elements must be proven in order to satisfy the court the offence has actually be committed.

Another example from the *Vegetation Management Act 1999* would be if a person continually stands in front of an Authorised Officer as they try to lawfully enter a place. The physical act of standing in front of the officer may represent obstruction of the officer which can, if proven constitute an offence of obstructing an Authorised Officer (s.60).

Physical acts or conduct must be done voluntarily on the part of the person doing the act or conduct. If the act or conduct is shown to have been done involuntarily in the element cannot be proven. For example, a person is illegally pumping water from a catchment and supplying it to their neighbour. The physical act or conduct of the offence is represented by the taking of the water from the catchment.

However, if the reason they are taking the water and supplying their neighbour is because the neighbour had threatened them with violence if they did not take the water and supply it to the neighbor this may show the person is taking the water involuntarily and therefore the physical element of voluntariness may not be able to be proven to the satisfaction of the court.

Fault elements are associated with showing that the person doing the wrong act or conduct knew in their mind that the act or conduct was the wrong thing to do.

In modern legislation the requirement of proof of guilty mind falls into four categories namely:

- Intention
- Knowledge
- Recklessness
- Negligence.

The state of a guilty mind is usually expressed in terms such as – intentionally, wilfully, wantonly, maliciously, knowingly or recklessly and with a degree of conceptual difficulty – negligently. These terms are sometimes written into the offence itself.

Intention: This covers the expressions intentionally, wilfully, wantonly, maliciously and requires proof that the person meant to engage in the conduct or knew that by engaging in that conduct certain outcomes would result or engaged in the conduct knowing that certain circumstances would or did exist.

Knowledge: Requires proof that a person was aware that a circumstance or result exists or will exist in the ordinary course of events. For example, in most offences which surround the *unlawful possession* of an item (i.e. drugs, chemicals, firearms, protected fauna, or other restricted items) it is incumbent on the prosecution to prove that the offender had knowledge and control of the forbidden item. That is to say they *knew* that it was in their possession and they had some form of *control* over it (i.e. ability to remove it, handle it or otherwise deal with it).

Recklessness: The modern concept of intending to commit an unlawful act includes the concept of recklessness. If a person is acting in good faith but inadvertently does the wrong thing, they are not generally held to have been reckless.

When a person voluntarily and deliberately acts or fails to act and they know that there are consequences, such as harm to another person then they take responsibility for those consequences and have acted recklessly. Whether a person intends to do harm or whether they are content to take the chance of doing it, there is equal justification for holding them responsible for the harm.

*Negligence: O*ffences involving negligence are those, which are viewed generally as unjustified, risk producing conduct in that it is, conduct which creates an unjustified risk of harm to a person or property.

Identifying offence provisions within legislation

The manner in which offences are described in legislation can vary from Act to Act. Sometimes it can be confusing as to what constitutes an 'offence provision' and what are simply machinery provisions. Machinery provisions are those provisions within legislation which are designed to expand the operation of the Act such as setting time frames and steps to be taken such as in appeals. They are often incidental or ancillary to offence provisions. An example of a machinery provision can be found in the *Water Act 2000*:

Section 863 Applying for an internal review

(1) The application must be made within 30 business days after—

(a) if the person is given an information notice about the decision or a compliance notice— the day the person is given the information notice or a compliance notice; or

(b) if paragraph (a) does not apply and notice of the decision is published—the day notice of the decision is published.

In this example section 863 is the machinery provision to apply for an internal review and specifies that the application for review must be made within 30 business days.

Different legislation lists offences within its provisions by varying means. A guide is generally to look for provisions which contain a reference to *imprisonment* or a *penalty*, for example:

Water Act 2000 - Section 809 Using water contrary to water use plan

A person must not use water in a water use plan area contrary to the plan. Maximum penalty—1665 penalty units.

Vegetation Management Act 1999 - Section 50 Failure to give name or address

(1) A person of whom a requirement is made under section 49 must comply with the requirement, unless the person has a reasonable excuse. Maximum penalty—50 penalty units.

Defences and definitions

Defences

Along with an understanding of elements of an offence, Authorised Officers should also have knowledge of defences that might provide a lawful excuse for someone committing an act or omission which constitutes an offence. Defences can sometimes be found as specific sections within the Act but can also form part of the offence provision as can be seen in the example from the *Vegetation Management Act 1999* (s.50) above.

Section 50 states that the person must comply with the requirement under section 49 to provide their name and address *"unless a person has a reasonable excuse"* which is the defence provision. Therefore it is important where an Authorised Officer intends collecting information to prove an offence that they are fully aware of any defences which may go along with that offence.

It is important to note that the prosecution is not compelled to disprove defences, however it is advantageous if the Authorised Officer negates defences as part of their information gathering process. Negating a defence involves questioning the person suspected of the wrongdoing in such a way that the person's credibility can be questioned if they later raise that defence at a later time.

For example, in questioning a person regarding a failure to provide name and address the Authorised Officer might ask that person why they failed to provide their name and address. If the person at that point raises a *reasonable excuse* it must be further explored because this may justify the person not complying therefore the offence may not able to be prosecuted. However, if they simply say they didn't want to provide their name and address (not considered a reasonable excuse) the person's credibility would certainly be questioned if they later raised a different excuse in an attempt to claim they had a reasonable excuse.

Definitions

Acts/ omissions may contain definitions that also need to be proven. These should be treated as separate elements upon which investigative activity should also be undertaken to prove those definitions.

Definitions are often found in the definition or interpretation areas of the Act or in the *Acts Interpretation Act 1954* (Qld). If no definition is provided then the common definition as described by Oxford dictionary are to be assumed.

For example, in section 809 above the offence states *"a person must not use **water**"*. In the *Water Act 2000* there is a definition for *"water"*. If an Authorised Officer collecting information for a suspected breach of section 809 they must ensure that the water in the water use plan area fits within the definition.

Statute of Limitations

A *statute of limitations* is a specified period of time, set in law, by which legal proceedings must be commenced against a person or entity. In the case of the DNRM legal proceedings will generally be commenced by the swearing of the complaint and issuing of a summons to the person or entity suspected of the wrongdoing. The summons will order the person or entity to appear in court on a specified date to have the matter heard.

For further information about swearing a complaint and serving a summons, DNRM officers should refer to the procedural guide *Compliance Services Serving of Complaint and Summons*.

The *Water Act 2000* (s.931) specifies that proceedings must commence within *one year* of the commission of the offence or the offence coming to the knowledge of the complainant but not later than *two years* after the commission of the offence.

The *Vegetation Management Act 1999* (s.68) specifies that proceedings must commence within *one year* after the commission of the offence or the offence coming to the knowledge of the complainant but not later than *five years* after the offence is committed. There is also provision in this Act for a Magistrate to consider extending the statute of limitation if they believe it is just and equitable given the circumstances.

The *Land Act 1994* (s.431H) specifies that proceedings must commence within *one year* of the offence being committed or the offence coming to the complainant's knowledge but within *five years* after the offence is committed.

Some offences are ongoing such as trespass; that is to say that each day of occupation represents a separate trespass offence. For example, if a person has occupied state land, without a permit for five days that would represent five separate offences of trespass.

DNRM officers should note that the procedural guide *Serving of Complaint and Summons* (Part 4 Section 4.1 Timeframes for Proceedings) specifies all investigations should be completed within a 60 working day (three month) timeframe to prevent issues with statutory limitations.

Please note that a statute of limitations does not affect the Department's ability to use regulatory instruments to respond to non-compliance. The issuing of regulatory instruments such as a compliance notice or restoration notice are mechanisms initiated to gain compliance. The offence is created when the person fails to comply with the notice that was issued.

Proving offences

Australia's judicial system is based on the *adversarial process (system)* which operates on two common points.

Firstly, the **burden of proof** which is split into two types being the *legal burden* and the *evidentiary burden*. The legal burden basically means that the person accusing is required (in most cases) to prove their case to the required standard of proof. The evidentiary burden expands on the legal burden by requiring the person accusing to present sufficient evidence to support their accusation.

This is the case in the vast majority of legislation however in some instances, such as in section 812A of the *Water Act 2000*, there is a defined liability for particular contraventions which places the burden of proof on the entitlement holder where there is an absence of evidence as to who was responsible for a particular contravention. These types of provisions, where they exist, are being reviewed by the Queensland Government and are being removed from legislation. It should be noted that by December 2014 this section will be repealed from the *Water Act 2000* following amendment which will bring the act into line with the standard prosecution principles by requiring the Department to present sufficient evidence to support the accusation.

Secondly, the **standard of proof** which relates to the amount of proof required to meet their legal burden of proof. The standard of proof required in a criminal matter is *BEYOND A REASONABLE*

DOUBT. In a criminal matter the defence must only satisfy an evidentiary burden *ON THE BALANCE OF PROBABILITIES*. In civil or administrative matters both the legal and are evidentiary burden are satisfied *ON THE BALANCE OF PROBABILITIES*.

The difficulty lies in what constitutes or defines the concept of "beyond a reasonable doubt". A general rule is that the evidence is sufficient to satisfy a reasonable non-expert person passed the point that they could entertain any doubt as to the existence of the thing or occurrence of the event.

A standard of proof based on the balance of probabilities can be defined as a satisfaction that the existence of the thing or occurrence of the event was more likely than not to have occurred.

3. Information collection methodologies and reporting

On completion of this element you will be able to:

➢ Demonstrate appropriate information gathering procedures to comply with legislative and organisational requirements.

➢ Reporting non-compliance according to organisational requirements.

3.1   Field operations

Site Inspection procedures and purpose

There are generally two reasons for a site inspection to be undertaken by an Authorised Officer of the Department.

They are (i) a proactive inspection, such as planned or random auditing of authorisations with involvement with the landowner or (ii) a reactive inspection where Authorised Officers are responding to an Incident or complaint which has been received by the Department.

Both inspections serve the same purpose which is to determine compliance and to gather information on what is permitted and what is 'on the ground'.

Both types promote compliance with the client as the client is advised of the regulatory frameworks which apply to their situation.

Both inspection types utilise the same inspecting planning process which is identified in Image 17 below.
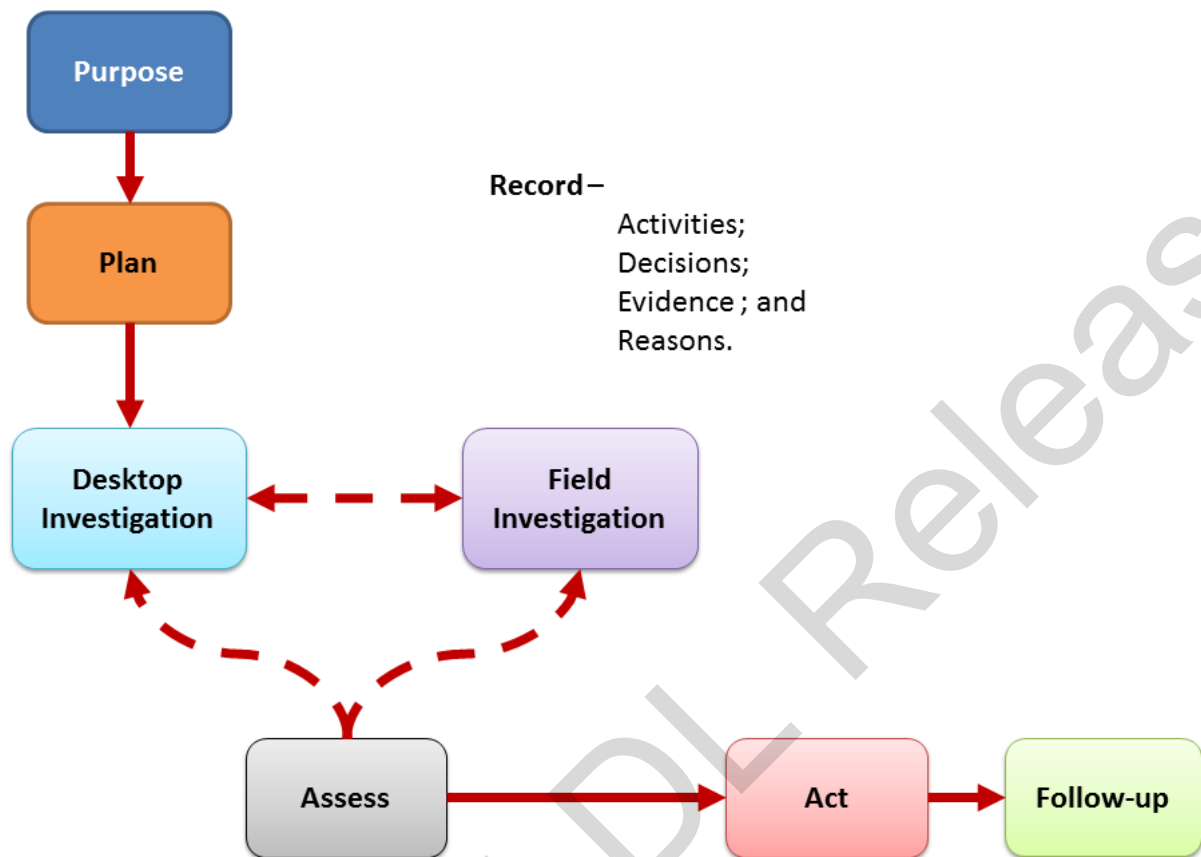
Image 17: Inspection planning process

In the planning process Authorised Officers must set their objectives, have an understanding of all relevant technical aspects of the inspection, be aware of any previous compliance history at the site and be aware of the legislative provisions they will be utilising such as powers of entry and information gathering provisions.

Inspections may involve the gathering of information on site by several processes. These are, but not limited to, taking photographs or video, taking samples of water or vegetation for further analysis, entering information into a notebook or electronic device e.g. iPad, electronically recording conversations by devices or simply asking the occupier questions.

In circumstances where an Authorised Officer is aware that certain things at a site may need to be seized or a detailed search of the property is necessary to gather information that may be utilised in any court action then the Business Unit Manager is to seek the assistance of a Senior Investigator from Operational Support Compliance and Systems who will undertake the detailed search utilising current search and seizure protocols.

Image 18 below details the roles and responsibilities in the compliance and investigation phases.
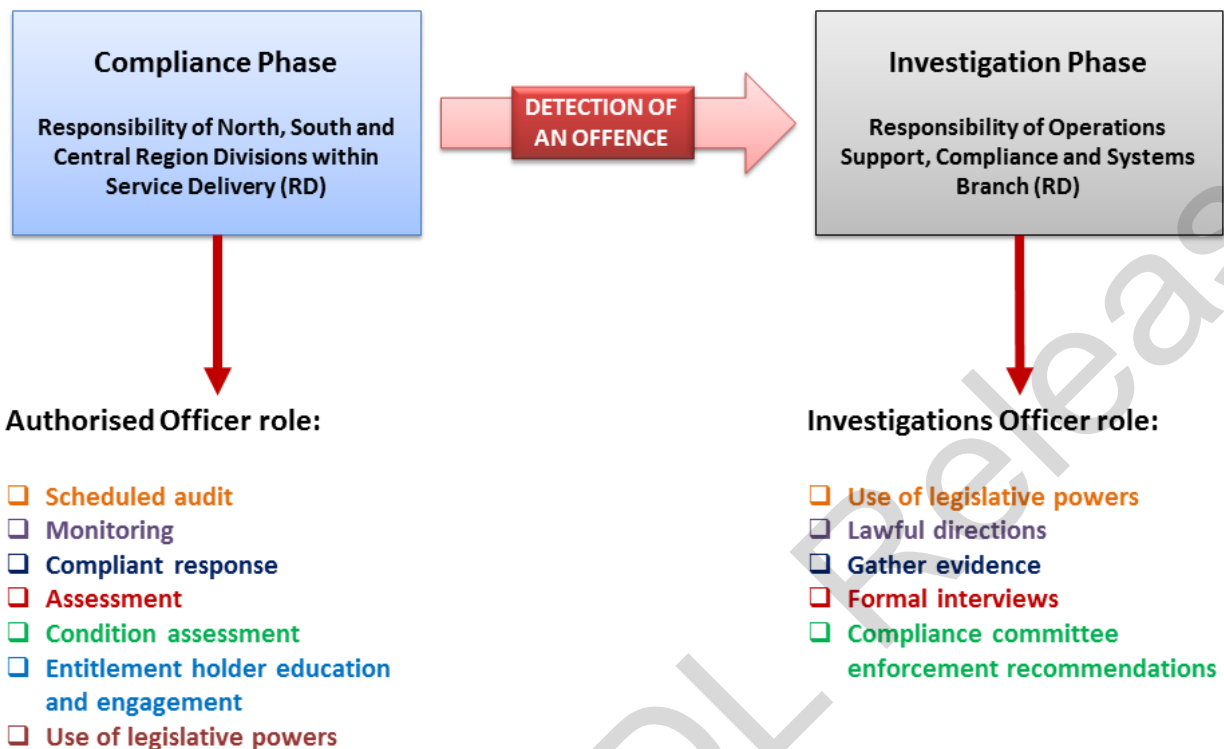
Image 18: Roles and responsibilities in compliance and investigation phases

Sampling

The *Water Act 2000* (s.755(3)(c)), *Vegetation Management Act 1999* (s.36(3)(c)) and the *Land Act 1994* (s.400(1)(d)) all provide for the taking of samples as part of Authorised Officers powers.

The taking of samples as part of inspection activities is a heavily scrutinised process due to the potential for contamination of the sample. Great care must be taken in the entire sampling process from the preparation of the sampling equipment through the gathering of the sample and the security of the sample till it is tested.

As advised previously the process of taking samples for evidentiary purposes will be coordinated and undertaken by the Senior Investigator who may instruct an Authorised Officer at the time to assist in the process to ensure correct sampling techniques are followed.

Documents

The *Water Act 2000* (s.755(3)(d)) and the *Vegetation Management Act 1999* (s.36(3)(d)) provide for the copying of documents found at the place.

All manner of documents may be analysed as part of an information collection process.

As with the sampling instructions if an Authorised Officer believes that a document may need to be seized as part of the inspection process a Senior Investigator should be on site to undertake the seizure or evidence gathering procedure and will ensure the obligations with regard to the rules of evidence are followed. If a Senior Investigator is not available it is preferable to photograph the document in situ and have the photograph as the necessary evidence in relation to the document.

The *Water Act 2000* (s.760) and the *Vegetation Management Act 1999* (s.52) allows for the requirement to produce documents however it is important to note that the provision indicates that the document can only be retained for the purpose of copying it and after it is copied the document must be returned to the person soon as practicable. Authorised Officers may require the person responsible for the document to certify it is a true copy prior to returning the original document.

Photographs

'A picture tells a thousand words'…sometimes. Photographs can be a useful adjunct provided they clearly illustrate, or illuminate a relevant fact or issue.

The *Water Act 2000* (s.755(3)(b)) and the *Vegetation Management Act 1999* (s.36(3)(b)) provide for the power to inspect, measure, tests, photograph or film any part of the place or anything at the place. The *Land Act 1994* (s.400 (1)(c)) provides the power to photograph or film anything on the land.

A standard procedure for photographing evidentiary material is to provide a minimum of three photographs. If for example the subject of the photograph was a felled tree in a field the procedure would be as follows.

1. *Photograph one* - Wide photograph showing the position of the felled tree in the field trying to capture a reference point such as a road or land feature to identify the location of the field.

2. *Photograph two* - Narrowing the scope of the photograph to show the felled tree in the field.

3. *Photograph three* - A photograph of the tree itself and any identifying marks to prove the species and the means by which it had been felled.

Authorised Officers using photographs for information collection should use a funnel analogy when photographing, that is commencing with a broad view and then progressively narrowing that down to the actual thing that is the focus of the photographic series. In today's digital age there should not be any concern with taking too many photographs.

Digital photographs can become evidence and therefore Authorised Officers should take care to protect the authenticity of the device used to store the digital image.
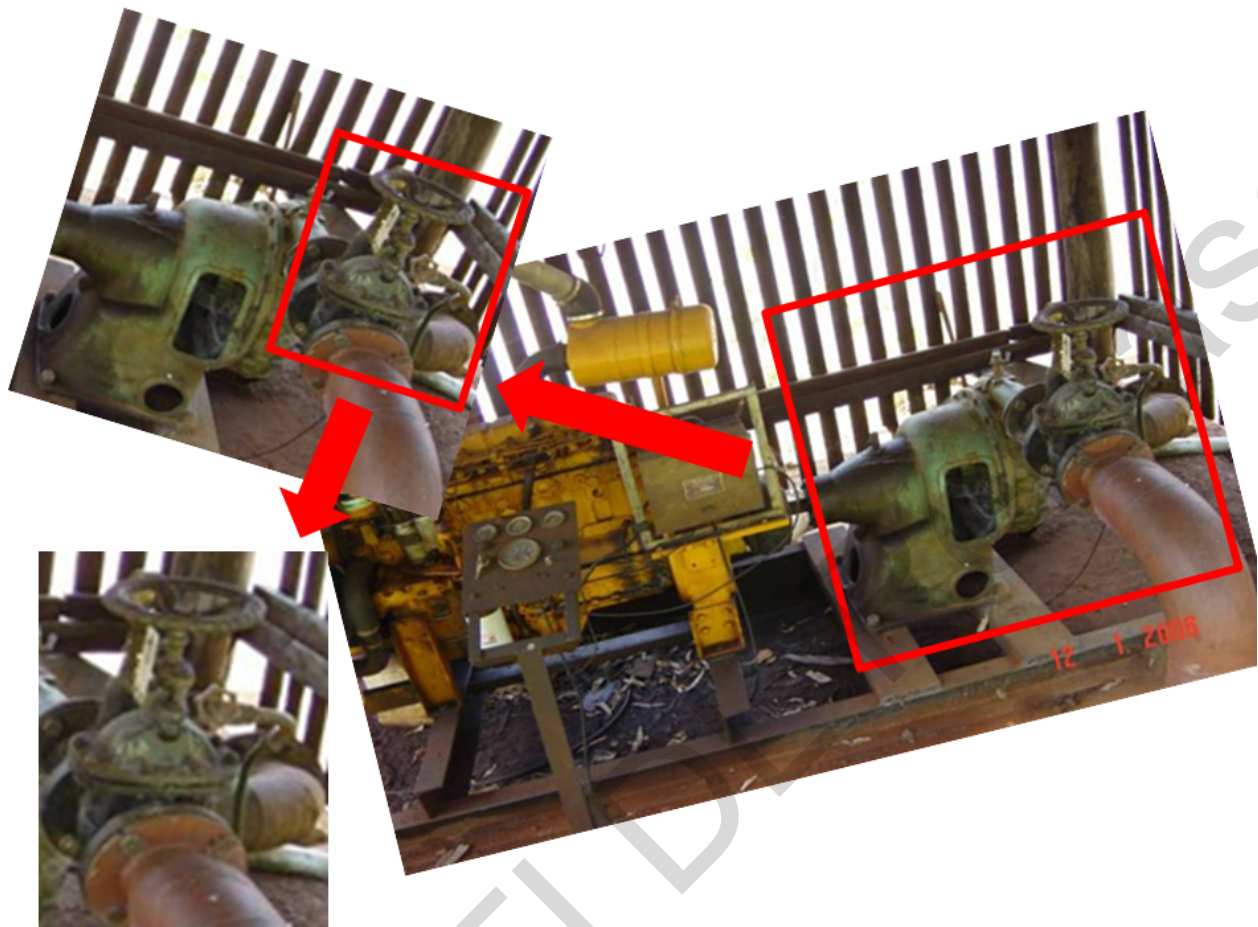
Image 19: Example of photographing in stages

Video recordings

Like photographs video can provide valuable information.

Standard procedures for videoing evidentiary material include:

- Keep the video running. Stopping and starting can raise questions of selective filming and 'staging'.
- The same principle as photography in identifying items of interest, a broad general shot before close ups.
- Voice over commentary to provide a vocal explanation of images.
- Where possible use tripods or a single stabilising leg.
- Be mindful of background noise such as wind blowing across microphone.

Video recording of a sampling procedure will greatly assist with the credibility of the process should it be subject of a criminal prosecution.

PAGE 73

Notebooks

A key record keeping method is using official notebooks. It is preferable that notebooks used for official purposes be issued by the organisation and a record of notebooks issued be kept.

Notebooks should be of a size which is easily transportable with a designated space to record the details of the Authorised Officer the notebook was issued too. A key feature of an official notebook is sequentially numbered pages (preferably with no pages missing).

Each entry should be closed off with a line across the page and any space left on a page should be ruled off and every new entry started with the **date and time** of the entry. Other details are a personal preference for the note taker but could include:

- Corroborator's name;
- Location;
- Reference number / details for the case (particularly if notes are separated by other entries); and
- Personal details of the person or entity subject of the inspection (e.g. name and other relevant details).

Consistency in note taking is important for the Authorised Officer to assist with locating notes important to them and it also enhances the Authorised Officer's credibility and professionalism.

Notebooks should be used to maintain a chronological record of information such as:

- Action / Powers exercised;
- Evidence seized including receipting of seized items;
- Conversations conducted including questions and answers;
- Observations;
- Decisions and applicable mitigating/extenuating circumstances;
- Further investigative activities to be undertaken; and
- Reminder/s of questions to ask, witnesses to interview or other evidence to gather.

The purpose of notes are:

- An accurate contemporaneous record of events, conversations and observations;
- A permanent written record; and
- A means to assist memory.

The evidentiary value of notes is contingent on their:

1. Accuracy
2. Comprehensiveness
3. Timeliness – When they were made, that is to say where they made at the time of; or as soon as practicable after the conversation or event to which they relate – any delay in recording notes can bring the accuracy of the Authorised Officer's recollection into question.

An easy acronym to assist Authorised Officers in completing notes is ELBOWS which stands for:

E   Entries should be in ink. Erasures should be avoided. Alterations should be denoted by a single line through the entry and initialled by the writer. The idea is to change not hide the entry.

L   Leaves (PAGES) of the notebook should be secure and consecutively numbered with entries made in chronological order.

B   Blank pages or parts thereof should be avoided OR RULED OUT. Each entry should be ruled off and initialled by the writer.

O   Overwriting should be avoided. This has a similar effect to erasure and should be treated similarly.

W   Writing between lines should be avoided. Entries should be clearly set out line by line so that they are easily understood.

S   Statements of conversation should be written verbatim. It is important for the writer not to record their interpretation of the words of others.

For further information DNRM officers should refer to the procedural guide ***Compliance Services Use of Notebooks***.

Electronically recording conversations / notes

The digital age has provided a variety of resources which are capable of digital recording conversations. The number one advantage of audio recording conversations is that the audio recording provides protection for all parties involved in the conversation because it represents a true and accurate record of the conversation and is accepted by the courts as the preferred method of recording conversations for legal purposes.

There are also a number of other advantages to digitally recording conversations, they are:

- It is more accurate in that the entire conversation is recorded as opposed to handwritten notes where important points in a conversation can be missed due to the Authorised Officer being distracted with recording that notes.
- A digital audio recording will also show the meaning the speaker places on a word which can alter the broader meaning of the conversation. This is also referred to as the inflection placed on a word.
- A recording can also show the attitude of the client towards the Department, Authorised Officer or their responsibilities under the act.
- Audio recording in Authorised Officer's observations or a conversation is much faster than handwriting.
- Enhances your professionalism as an Authorised Officer and the professional image of the Department.
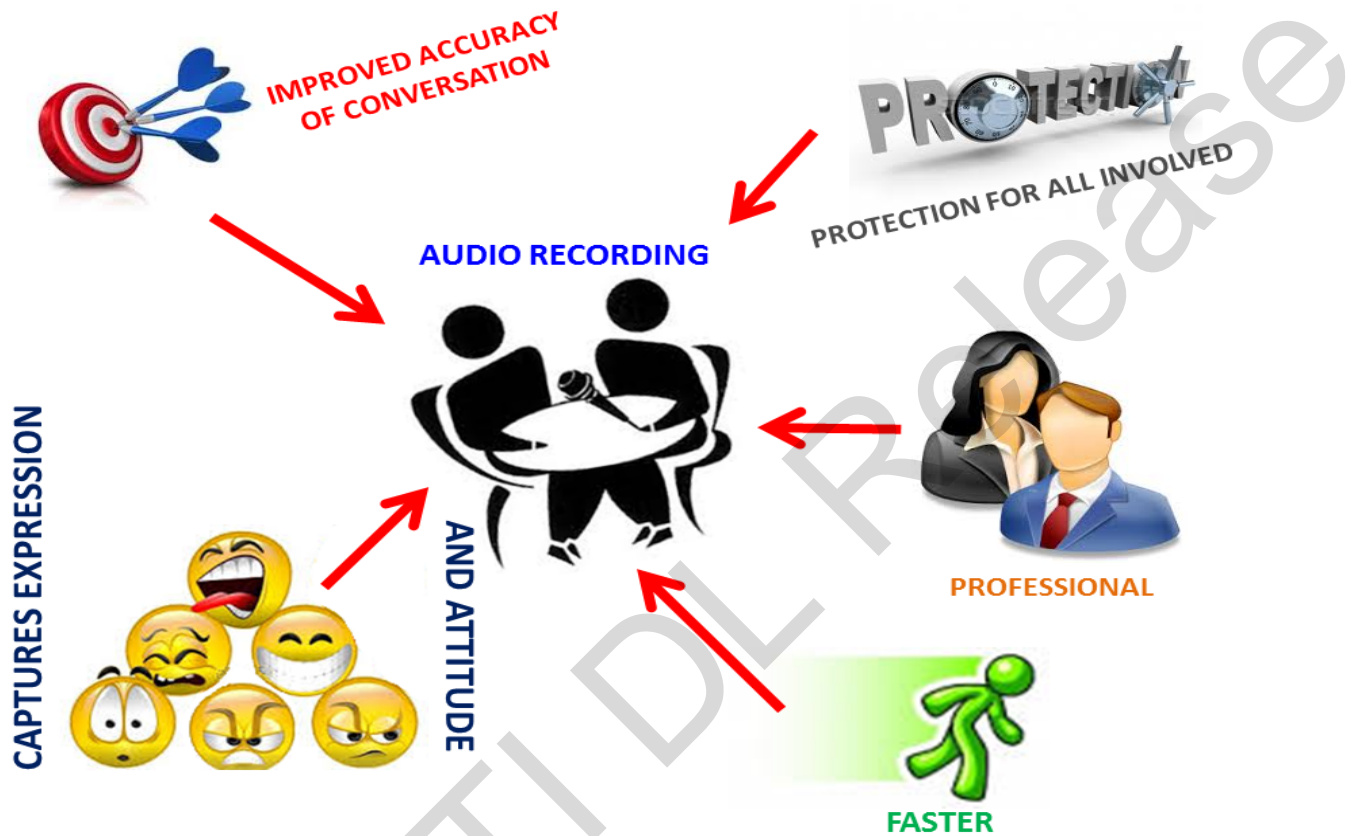
Image 20: Advantages of audio recording conversations

It is best practice to still make handwritten notes in your official notebook as a backup should the audio recording fail for some reason. These notes may not necessarily have to be as detailed as when an audio recording is not being used. Further to that the Authorised Officer should ensure that the audio recording equipment they using is operating as expected throughout the entire time it is being used in the field. To this end a well prepared Authorised Officer will ensure that the recording equipment is operational before they leave the office that they have appropriate backup such as batteries or digital storage cards should they be needed in the field.

Ethically and professionally it is best practice to advise anybody you may be audio recording of this fact. For fairness and transparency; where an audio recording is being conducted as the formal questioning of a person for a suspected wrongdoing that person should receive a copy of that audio recording and any subsequent transcript of the conversation.

For further information DNRM officers should refer to the procedural guide *Compliance Services Interviewing Potential Defendants*.

Covert recording

The use of audio and video recording equipment is governed in Queensland by the *Invasion of Privacy Act 1971* (Qld). Under this Act a digital audio recorder is considered a listening device (s.4) and that listening device may be used to record a conversation under certain circumstances. Provided the person recording the conversation is a party to the conversation then they can lawfully record the conversation using a listening device without informing the other parties of the conversation that they are recording it (s.43).

The law around covert recording of conversations is consistent in most states around Australia with the exception of New South Wales where strict laws apply around the covert recording of conversations. It is worth noting that in all states a person may commit an offence where they miss use a covertly recorded conversation. If an Authorised Officer covertly records a conversation with the stakeholder they must maintain strict security of that recording and use it only for official purposes (s.45).

What about audio recording telephone conversations?

The recording of conversations on the telephone is strictly regulated by State and Commonwealth legislation. This legislation sets out a complex set of requirements but we will attempt to simplify this with the following guidelines.

*   Under Commonwealth law *(Telecommunications (Interception and Access) Act 1979)* it is *illegal* to listen to or record a signal transmitted through a telecommunication system (i.e. a telephone conversation using equipment which is electronically connected to or intercepts the signal) *without first getting the consent of the parties involved in the conversation to that conversation being recorded*. By way of example you may have telephoned an organisation and being told at the start of any conversation either by an audio recorded warning or the person you are speaking to that the conversation will be recorded for whatever purpose a specify. You will also be asked to state if you do not wish the conversation to be recorded. This process complies with the legislation and should serve as an example of what should be done before recording telephone conversation using equipment attached to the system.

*   It is *lawful* to record all listen to a telephone conversation if that conversation is recorded by a device which is external to the telecommunications system and only records the conversation after the sound (i.e. the conversation ceases passing over the telecommunications system). It is important to note that after the conversation ceases passing through the telecommunications system Commonwealth law ceases but state law prevails. Therefore Authorised Officers should be mindful that a person they are having a telephone conversation with can lawfully record the conversation with an audio recorder placed next to the phone and the telephone speaker without advising the officer the conversation is being recorded.

It is not the intention of this publication or the Department to endorse the covert recording of conversations by Authorised Officers. However this information is important for Authorised Officers because it means that any conversations they are involved in with a stakeholder that stakeholder can lawfully be audio recording that conversation. If Authorised Officers operate at all times as if they are being audio recorded they will be less inclined to say or do something that could be misinterpreted or used against them.

3.2 Reporting non-compliance

Accurate reporting of the outcomes from any inspection activities is important for a number of reasons. Firstly, where non-compliance is discovered a CIRaM incident notification is to be created. An inspection report attached to that Incident Notification will form the basis of the appropriate action taken. The inspection report detailing non-compliance must contain the appropriate information but also sufficient detail in order for the action taken to be justified. The second key reason for inspection outcome reporting is for statistical reasons as we discovered in Module 3.

Without accurate reporting of non-compliance the compliance phase of the DNRM *Case Management Workflow* process (as identified in Image 21) would break down because it is the details provided by DNRM officers in the field and completing accurate reports that the branch will rely upon to make their decision on the appropriate action to take for non-compliance.

To assist Authorised Officers with reporting non-compliance the Department has prepared a *Reporting Toolkit*. The reporting toolkit is a series of preformatted reports specifically designed to capture the relevant information required when reporting non-compliance.

The primary reporting mechanism for all departmental inspection activities is the *Inspection Toolkit*. This is a comprehensive document recording all the details from the pre-inspection record through to recommendations for the further action. It is a preformatted document which can be completed electronically.

The toolkit allows for the insertion of information such as photographs directly into the document. It also has a self-check prompt to ensure natural justice is being observed and exercised.

To support the *Inspection Toolkit* the Department has prepared other preformatted reports such as the *Assessment Report for Compliance Notice* which as the name suggests is used were a compliance notice or enforcement notice is recommended in the *Inspection Toolkit* report.
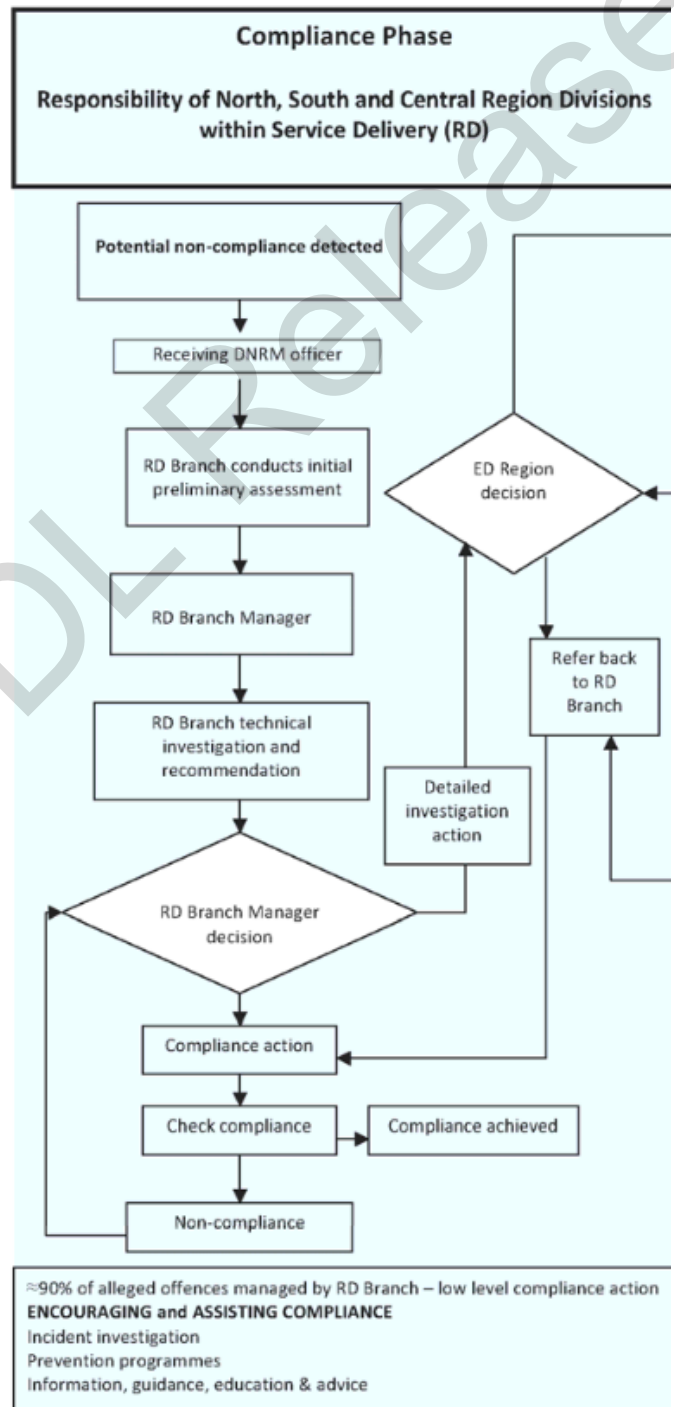
Image 21: DNRM's Case Management Workflow Compliance Phase

PAGE 78

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

MODULE 5: NATURAL RESOURCE MANAGEMENT (VEGETATION)

1. Resource terminology

This module explores the knowledge required to manage natural resources specific to vegetation and the ways in which natural resources associated with vegetation are being used and how they align to the government's four pillar economy strategy.

On completion of this element you will be able to:

➢ Explain resource terminology and its appropriate use with relevant stakeholders

1.1   Definition by legislation

Authorised Officers will encounter situations across a broad scope of natural resource use and engage with a variety of stakeholders. A challenge for Authorised Officers in executing their duties appropriately includes ensuring both the Authorised Officer and the stakeholder are *"on the same page"* when it comes to terminology. In the regulatory environment the legal definition will be what is relied upon when proving a breach of legislation. As discussed in Module 4 definitions can be found across Commonwealth and State legislation.

Vegetation

Common terms encountered when administering the *Vegetation Management Act 1999* include:

"Vegetation" is a native tree or plant other than the following—

    (a) grass or non-woody herbage;
    (b) a plant within a grassland regional ecosystem prescribed under a regulation;
    (c) a mangrove

> **Refer: UK 1 – What Vegetation is regulated under the *Vegetation Management Act 1999*. A= Woody vegetation that is a native tree or plant other than a b & c above.**

"Regulated Vegetation" is vegetation that is subject to the provisions of the Vegetation Management Act 1999 and has been identified and mapped into 5 Categories for the purposes of applying the legislation. The Categories are A, B, C, R and X, each of these categories applies different levels of protection to the mapped vegetation. The relevant categories are explained further below.

"Bio-regions" Queensland is separated into 13 bioregions based on broad landscape patterns that reflect major structural geologies and climate as well as major changes in floristic and faunistic assemblages (see Image 26). This Bio-regional approach has enabled public recognition of the need to protect biodiversity in all parts of the State. The entire Vegetation Management Framework including the regional ecosystem mapping is built on the recognition of these bioregions.

> **Refer: UK 2 – Queensland is separated into 13 Bio-regions. What is the basis for the designation of a bio-region?**
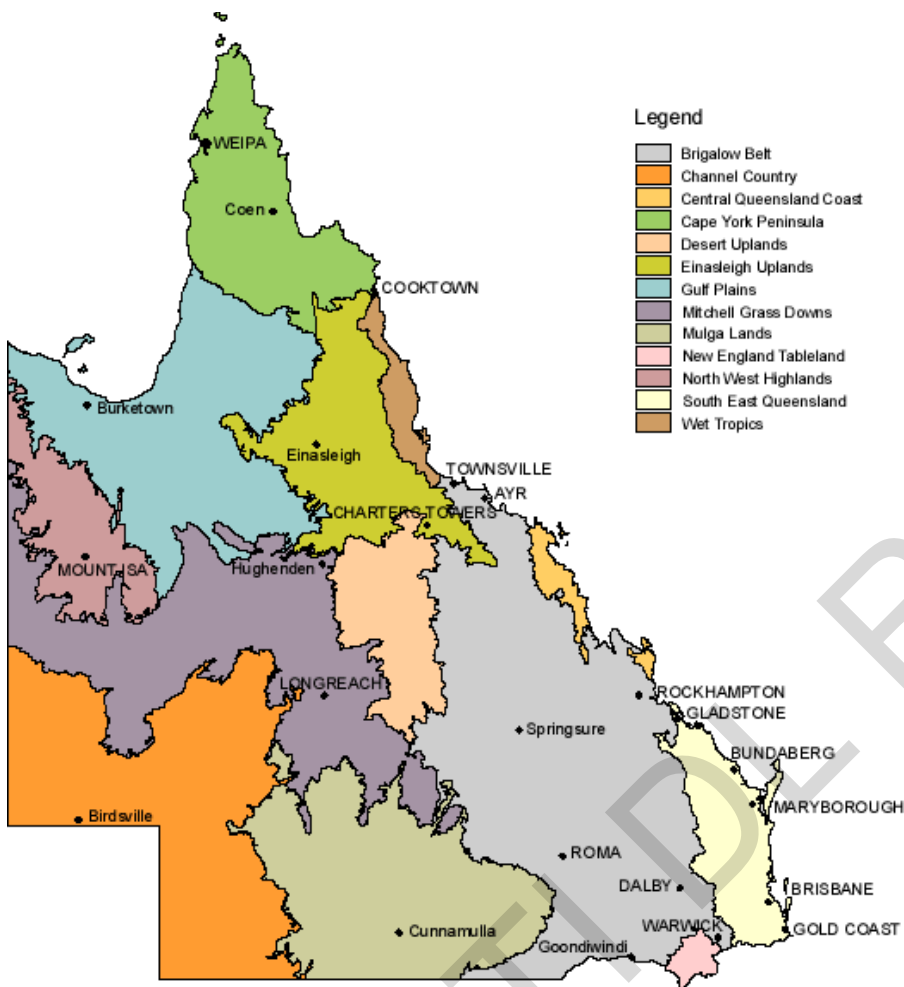
Image 26: **Queensland's thirteen bio-regions**

"Land zone" - There are 12 land zones recognised in Queensland (see Image 27). Each represents a significant difference in geology and the associated landforms, soil and physical processes that gave rise to distinctive landforms and will continue to shape them. Generally speaking, the land zones correspond to broad geological categories and can be readily identified on geological maps. Land zones are a fundamental part of describing regional ecosystems.

"Floristic Composition" – means vegetation species that naturally form groupings into distinct ecological communities. Ecological communities are aggregations of species which interact with each other and the abiotic surrounding. Within their abiotic surrounding, ecological communities form ecosystems. These communities are sometimes commonly referred to as forest types that are distinctive groupings of vegetation species found growing together. An example of this is a Bluegum dominated forest with Red Iron Bark and Gum Top Box that occurs on alluvial plains in South East Queensland and is described as 12.3.3.

Land Zones

<u>1</u>	Tidal flats and beaches _	
<u>2</u>	Coastal dunes _	
<u>3</u>	Alluvium (river and creek flats) _	
<u>5</u>	Old loamy and sandy plains _	
<u>7</u>	Ironstone jump-ups _	
<u>8</u>	Basalt plains and hills _	
<u>9</u>	Undulating country on fine grained sedimentary rocks _	
<u>11</u>	Hills and lowlands on metamorphic rocks _	
<u>12</u>	Hills and lowlands on granite rocks _	
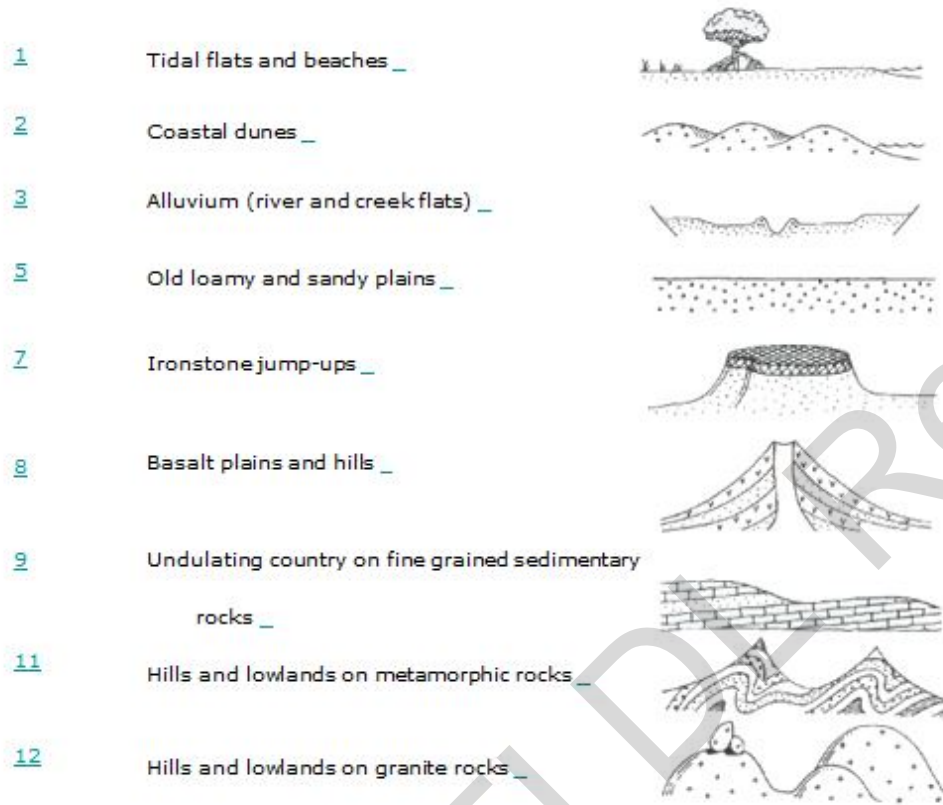
Image 27: **Queensland's twelve land zones**

"Regional ecosystems" – means a vegetation community in a bioregion that is consistently associated with a particular combination of geology, landform and soil. This is a combination of the three elements described above being Bioregion, Land Zone and Floristic Composition. Regional ecosystems are given a unique number which is established under the Regional Ecosystem Description Database. This identifying number is comprised of the Bioregion + Land Zone + Floristic composition, and always in this order e.g. 12.3.3 12 = South East Queensland Bioregion. 3 = Alluvial Plains Land Zone. 3 = Eucalyptus teriticornis (Blue gum) woodland to open forest.

> **Refer: UK 3 – What are the three components of a Regional Ecosystems description in order?**

"Regional Ecosystem Conservation Status" means the protection priority applied to each regional ecosystem based on its current extent compared to its pre-European extent now that all of Queensland's Regional Ecosystems have been identified and mapped. Regional Ecosystems are categorised into three types of conservation status declared under the *Vegetation Management Act 1999* being:

- *Endangered* regional ecosystems

PAGE 89

> To be declared an *"Endangered Regional Ecosystem"* (s.22LA) the area of remnant vegetation in the regional ecosystem is (1) less than 10% of the pre-clearing extent of the regional ecosystem or (2) 10% to 30% of the pre-clearing extent of the regional ecosystem and be less than 1000 hectares (ha);

• *Of concern* regional ecosystems; and

> *"Of Concern Regional Ecosystems"* (s.22LB) must satisfy that the area of remnant vegetation in the regional ecosystem is (1) 10% to 30% of the pre-clearing extent of the regional ecosystem or (2) more than 30% of the pre-clearing extent of the regional ecosystem and be less than 1000 hectares (ha);

• *Least concern* regional ecosystems.

> *"Least Concern Regional Ecosystems"* (s.22LC) must satisfy that the area of remnant vegetation in the regional ecosystem is more than 30% of the pre-clearing extent of the regional ecosystem and more than 1000 hectares (ha).

Refer: UK 4 – Explain the three conservation statuses of regional ecosystems?

The Regional Ecosystem mentioned above grows on fertile river flats that have been favoured for agricultural and urban development since European settlement. Due to these factors this Regional Ecosystem has been cleared and reduced below 30% of it pre European extent and therefore meets the criteria of an endangered conservation status.

"Remnant vegetation" (see Image 28) is vegetation which is part of a regional ecosystem as well as:

• Forming the predominant canopy of the vegetation covering more than 50% of the undisturbed predominant canopy cover; and
• Averaging more than 70% of the vegetation's undisturbed height; and
• Composed of native species representative of a regional ecosystem.

Remnant Vegetation is:

Vegetation that is an endangered, of concern or a least concern regional ecosystem that exhibits more than 50% undisturbed predominant canopy and averages more than 70% of the vegetation's undisturbed height. See the parts to remnant definition
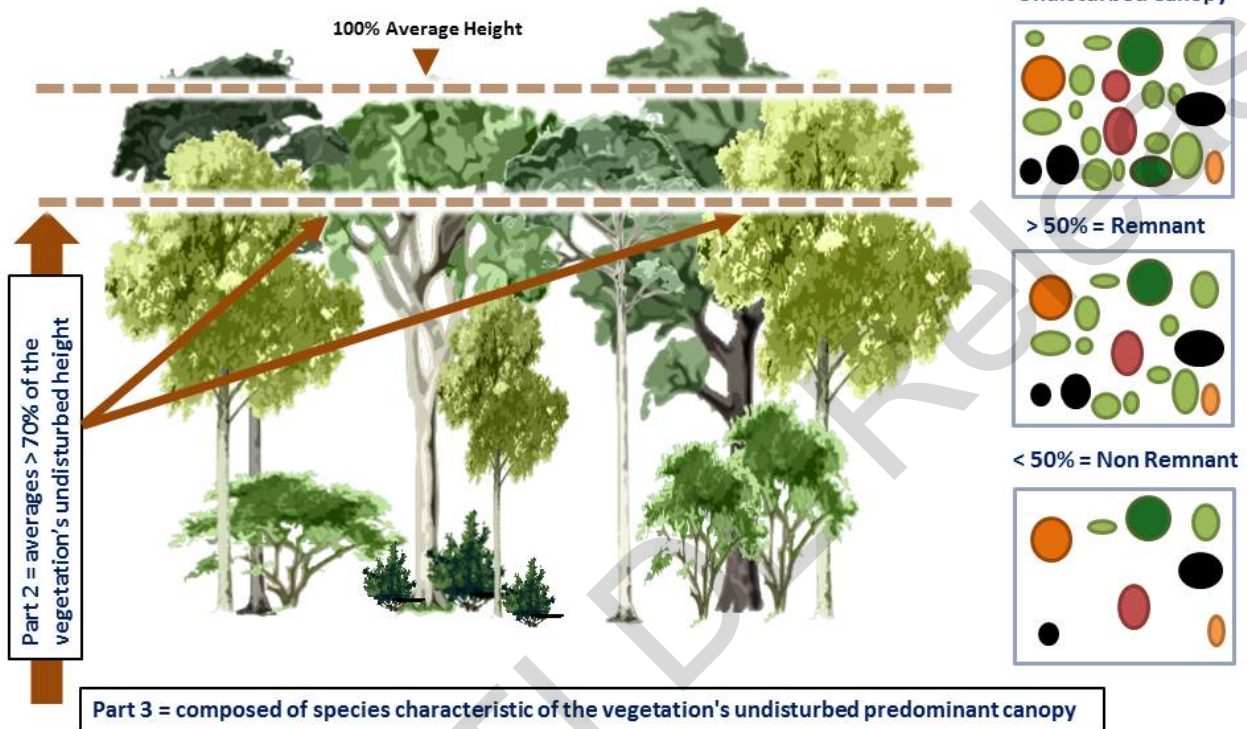
Image 28: Diagram explaining remnant vegetation

> **Refer: UK 5 – Under the Vegetation management Act what are the three criteria that must be met before vegetation is considered remnant? A = Parts 1 – 3 in image 3.**

Vegetation is usually organised into layers, or strata. The Queensland Herbarium has adopted a method in which there is a maximum of seven layers or strata at any one site (see Image 29). In determining whether or not vegetation in a regional ecosystem meet remnant status, different elements of the vegetation strata are used for determining the predominant canopy height, the canopy cover and the floristic composition of that ecosystem.

Height intervals for each stratum are regarded as the heights (height of the top leaves) of the tallest and shortest individuals in that stratum. There may be one emergent layer, E, dominated by trees or less commonly shrubs (see Image 29). There may be up to three tree layers (in addition to an emergent layer):

- T1, usually referred to as canopy;
- T2, also referred to as sub canopy; and
- T3, often referred to as low tree layer, not always present particularly in low woodlands.

There may be two layers that are dominated by shrubs:

- S1, tallest shrub layer. This may also include some low trees. If only one shrub layer is present, then it is S1; and
- S2, lower shrub layer. This may be referred to as a sub-shrub layer, often not recognised apart from shrub dominated vegetation such as heathlands

There is one ground layer (G) although it may be absent.
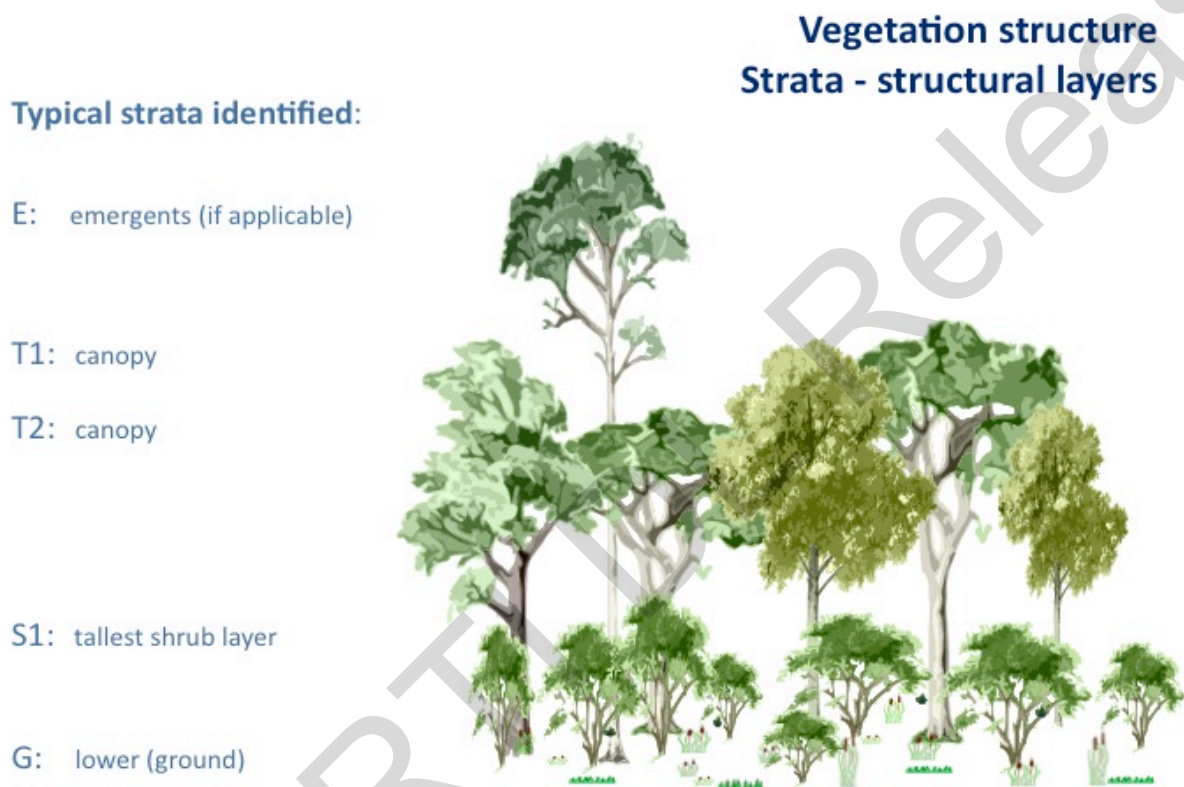
"Regulated Vegetation Management Map" – is the map certified under the *Vegetation Management Act 1999* (s.20A) by the chief executive as the regulated vegetation management map for a part of the State and showing the vegetation category areas for the part. It is regularly updated and is supported *by Vegetation Management Support Maps*.

"Vegetation Management Support Maps" are a series of certified maps enabled through the *Vegetation Management Act 1999*. They include:

- *Vegetation Management Wetlands Map* (s.20AA) – Showing particular wetlands for the state;

PAGE 92

© State of Queensland, Department of Natural Resources and Mines, 2014.

- *Vegetation Management Watercourse Maps* (s.20AB) – Showing particular watercourses for the state;
- *Essential Habitat Maps* (s.20AC) – Showing areas of the state the chief executive reasonably believes are areas of essential habitat for protected wildlife.

Each area of natural resource management will have their own terminology which could also be different across regions throughout the state. Authorised Officers should familiarise themselves with any terminology which may be unique to a specific region and have a complete understanding of the legal or departmental definition equivalent to that terminology.

An issue of non-compliance with any of the natural resources can come about by such simple things as misinterpretation of terminology. Such situations present a good opportunity for Authorised Officers to educate stakeholders and develop a stronger partnership between the stakeholder and the Department.

2. Natural resource management

On completion of this element you will be able to:

➢ Outline natural resource management strategies.

➢ Align the ways stakeholders use the resource mapped against the four pillar economy strategy.

➢ Describe monitoring methodologies.

2.1 Assessing operational work involving natural resources

Natural resource use such as primarily vegetation clearing and taking or interfering water is strictly regulated through a framework of legislation of which the key statutes are the:

- *Sustainable Planning Act 2009*;
- Sustainable Planning Regulation 2009;
- *Vegetation Management Act 1999*; and
- *Water Act 2000*.

The *Sustainable Planning Act 2009* underpins the framework by managing development assessment primarily through the *Integrated Development Assessment System* (IDAS). The IDAS sets out the process for development assessment through five stages from application to compliance as well as five categories of development of which natural resource management primarily relies on three categories being:

- Exempt development;
- Self-assessable development; and
- Assessable development.

The *Sustainable Planning Act 2009* allows for regulation to prescribe development as a specific category and the definition of development includes *"operational work"* which incorporates clearing

vegetation to which the *Vegetation Management Act 1999* applies as well as operations of any kind in construction or installation of anything that allows the taking or interference with water.

Through the provisions of the *Sustainable Planning Act 2009*, the Sustainable Planning Regulation 2009 defines exemptions and inclusions across the three categories of development applicable to vegetation and water resource use. These exemptions and inclusions are primarily found in Schedule 3 and Schedule 24 of the Sustainable Planning Regulation 2009 with the exception of self-assessable clearing codes for vegetation clearing.

Self-assessable clearing codes specific to vegetation clearing are created under the hand of the Minister in accordance with the authority specified in the *Vegetation Management Act 1999*. Also of note is self-assessable and assessable operational work relating to the taking of or interfering with water are operations mentioned in a *Water Resource Plan* or wild river declaration.

There are a range of offences under the *Sustainable Planning Act 2009* for failing to comply with relevant approval processes or self-assessable code requirements. The *Sustainable Planning Act 2009* also provides for other compliance options specifically the issuing of a show cause notice (s.588) inviting the person to show cause why an enforcement notice (s.590) should not be issued for committing a development offence. Enforcement notices can require a person to take a range of actions in association with the development such as demolish or remove work.

2.2   Vegetation management

Vegetation clearing

A primary goal of DNRM officers in vegetation management is monitoring land/vegetation clearing to protect regulated native vegetation and regional ecosystems. Image 30 describes the legislative framework for the assessment of operational work relating to vegetation.

As we have previously discussed the primary legislation applicable is the *Vegetation Management Act 1999* and Vegetation Management Regulations 2002. As with the *Water Act 2000* the vegetation management legislation works in concert with the *Sustainable Planning Act 2009* and Sustainable Planning Regulations 2009. Vegetation management as defined in the *Vegetation Management Act 1999* includes:

1. Retention or maintenance of vegetation to –

   • avoid land degradation; or
   • maintain or increase biodiversity; or
   • maintain ecological processes;

2. Retention of riparian vegetation; or

3. Retention of vegetation clumps or corridors.

Refer: UK 6 – According to the *Vegetation Management Act 1999* what does "vegetation management" include?
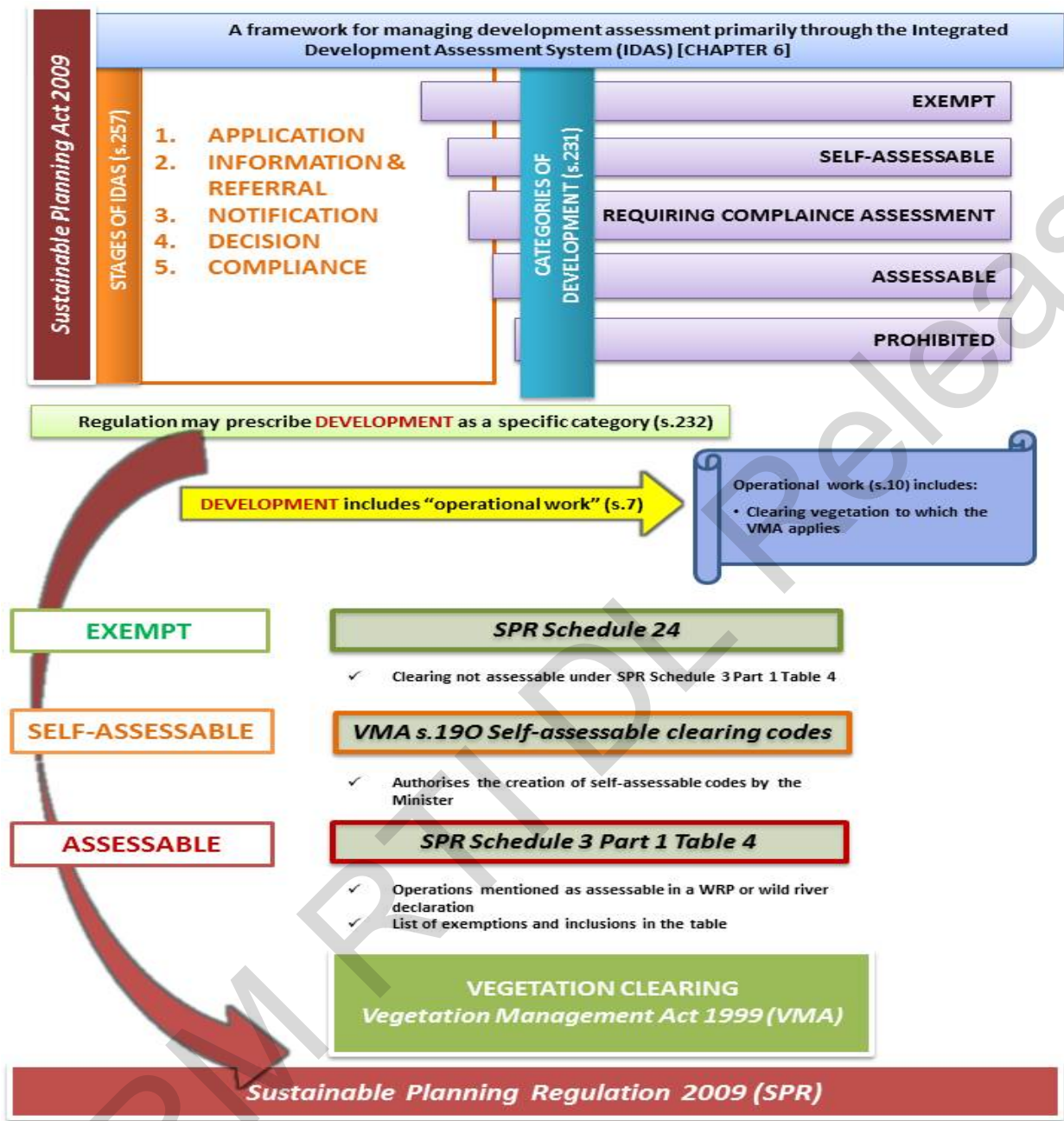
Image 30: Legislative framework for the assessment of operational work relating to vegetation

Legislation is also supported by *Module 8* of the *State Development Assessment Provisions* which have been introduced to regulate the clearing of native vegetation within Queensland. This module's purpose is to:

- Conserve remnant vegetation clearing across all three types of regional ecosystem;
- Conserve vegetation in declared areas;
- Ensure clearing does not cause land degradation;
- Prevent loss of biodiversity;
- Maintain ecological processes;

- Manage environmental effects of land clearing;
- Reduce greenhouse gas emissions; and
- Allow for sustainable land use.

Within Queensland vegetation clearing can be undertaken on Freehold and Leasehold land subject to the following conditions –

- Within an area not regulated by the *Vegetation Management Act 1999.*
- An Exempt activity within a regulated area.
- Under a Self-Assessable Code.
- Under and Area Management Plan.
- Under the Conditions of a Development Approval under the *Sustainable Planning Act 2009.*

Regulatory instruments in vegetation clearing

The types of clearing activities allowed and how they are regulated will depend on:

- The type of vegetation which is shown on the *Regulated Vegetation Management Maps* and other vegetation management supporting maps;
- The tenure of the land i.e. whether it is freehold, leasehold or Indigenous land;
- The location, extent and purpose of the proposed clearing; and
- Who is proposing to do the clearing i.e. whether it is government or a landholder.

> **Refer: UK 7 – What are the four criteria which will be used to determine the type of vegetation clearing activities allowed and how it will be regulated?**

Regulated Vegetation Management Maps are used to determine the requirements that apply to an area. The maps are available via the DNRM website or as an addition to *Google Earth* (see Image 31). The *Regulated Vegetation Management Map* categorises vegetation according to a colour coding system. The coloured coding represents a specific protection category for vegetation and also a corresponding management responsibility where vegetation clearing activities are to be undertaken. Clients access the map and enter the location where the clearing is to be conducted. The map will show the relevant category via the colour code and the client can then implement the appropriate authorisation process. The colour codes and related categories are:

- Category A (red): areas subject to compliance notices, offsets and voluntary declarations
- Category B (dark blue): remnant vegetation
- Category C (light blue): high-value regrowth vegetation
- Category R (yellow): regrowth vegetation within 50m of watercourses in priority reef catchment areas
- Category X (white): areas not regulated under the *Vegetation Management Act 1999*.
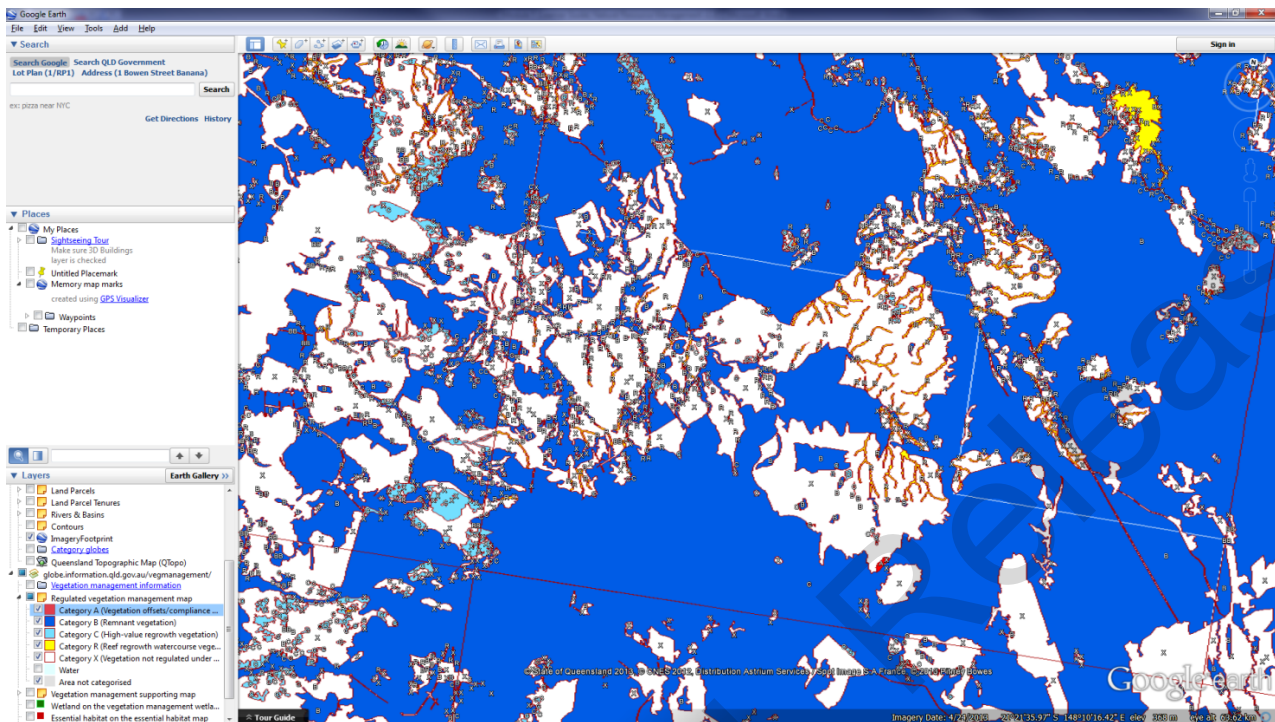
Image 31: Sample of the *Regulated Vegetation Management Map* from *Google Earth* showing the colour coding system

Exempt activities

To support the classifications in the legislation the DNRM have prepared a complete list of vegetation clearing exemptions which can be found in the departmental document *List of vegetation clearing exemptions*. This document contains eight tables detailing the exempt clearing activities and purposes for those activities referenced against the vegetation category on the regulated vegetation management or vegetation status on regional ecosystems mapping. These clearing exemptions are prescribed in Schedule 24 of the Sustainable Planning Regulations 2009.

Self-assessable activities

A natural progression should a clearing activity not be exempt would be for clients to determine if their clearing activities come under a self-assessable code. Codes have been created for self-assessable vegetation clearing in the following areas:

- Managing fodder harvesting
- Managing weeds
- Managing encroachment
- Managing native forest practice
- Managing category C Regrowth vegetation
- Managing category R Regrowth vegetation
- Managing clearing for necessary property infrastructure
- Managing clearing to improve operational efficiency of existing agriculture
- Managing necessary environmental works
- Managing clearing for an extractive industry
- Managing thickened vegetation in the Mulga Lands

- Managing thickened vegetation in the Brigalow Belt, Central Queensland Coast and Desert Uplands Bioregions
- Managing thickened vegetation in the South East Queensland and the New England Tablelands Bioregions
- Managing Thickened vegetation in the Mitchell Grass Downs and the Channel Country Bioregions
- Managing thickened vegetation in the North West Highlands, Gulf Plains, Cape York Peninsula, Wet Tropics and Einasleigh Uplands Bioregions

Notification

The general rule when conducting self-assessable clearing activities is that notification must be made to the DNRM using an approved form before the clearing activity is conducted. It is important to note that failing to notify the Department in accordance with the self-assessable code would be an offence under the *Sustainable Planning Act 2009* (s.574)

Area management plans

Area management plans (AMPs) can be used by a group of landholders or rural organisations to apply for certain land management activities. AMPs are authorised under the *Vegetation Management Act 1999* (Part 2 Division 5A) and are suitable for large areas with similar vegetation management issues such as controlling non-native plants or declared pests, clearing encroachment, fodder harvesting or necessary environmental clearing.

If an AMP exists which covers a particular property that property owner can conduct approved clearing activities under the plan using a simplified notification process. AMP's can remain in force for up to 10 years and anyone can apply for an AMP to apply to their particular area should one not exist.

Note - The expansion of Self Assessable Codes may reduce the need and use of AMPs into the future.

Development approvals

If the clearing activity is not covered by an exemption, self-assessable code or AMP a landowner can apply for a development approval to clear native vegetation for numerous purposes including:

- specific projects;
- for safety and access or construction;
- fodder harvesting, encroachment or thinning vegetation; and
- irrigated and non-irrigated high-value agricultural clearing.

Applications are assessed against the *State Development Assessment Provisions* with approved applications having the necessary permits issued. Failing to comply with the conditions set in a development permit or undertaking development without gaining a permit are offences under the *Sustainable Planning Act 2009* (Chapter 7 Part 3 Division I).

Voluntary declarations

The *Vegetation Management Act 1999* (s.19E) enables landholders to voluntarily protect an area of native vegetation not otherwise protected by the *Vegetation Management Act 1999*. There are several purposes that a landholder can seek to voluntary protect native vegetation on their land.

2.3   Natural resources and the four pillar economy

In May 2012 the Premier of Queensland pledged to grow a four pillar economy to provide better opportunities for all Queensland's in all walks of life. The four key pillars are agriculture, resources, tourism and construction. Natural resources and the appropriate management of them are a central concept to the success of this initiative.

Image 32:   DNRM's Blueprint Strategic Direction 1

In the DNRM *Blueprint* the role management of natural resources will play in growing the four pillar economy has been strongly endorsed. The DNRM has recognised in its first strategic direction (see Image 32) that it is a key economic development agency and has undertaken to grow the four pillar economy by:

- Creating a business environment that stimulates new investment and encourages innovation and research and development activities;

- Investing in the initiative so businesses gain confidence and invest, employ and grow these sectors in Queensland; and
- Making it easier to do business in Queensland.

In 2013 the *Vegetation Management Framework Amendment Bill 2013* was introduced to amend the vegetation management framework to, among other things support the four pillar economy. The sectors that make up the four pillar economy are all influenced significantly by natural resources therefore it goes to stand that DNRM officers are on the front line to achieving this initiative.

2.4   Monitoring methodologies

In Module 3 we looked at the principles of inspection and monitoring activities and the basic process involved in such activities.

All of the regulatory instruments and authorisations described above are forms of monitoring methodology. Each of the notification requirements associated with the self-assessable codes, area management plans and development applications represent a means of monitoring natural resource use and therefore directing inspection activities appropriately. For example, the notification process for vegetation clearing which is regulated under a self-assessable code is a monitoring method and may trigger an inspection process for monitoring compliance with the code.

Notification processes provide the means for the Department to maintain a database of information which can be used for long-term monitoring processes with the combination of other information sources. The Department's notification database is called CIRaM (Compliance Information Reporting and Management System). All instances of non-compliance with natural resource legislation must be recorded into this database. Some of the other means by which the Department can monitor natural resource use are:

- Through public reporting of illegal natural resources use;
- Planned Monitoring of Self Assessable Codes and Development Application Approvals
- Annual Compliance Plans;
- Statewide Landcover and Trees Study (SLATS); and
- Geographic Information Systems (GIS).

With such a vast space of land and vegetation to manage it can be difficult for the Department to monitor compliance with the *Vegetation Management Act 1999* across the state. Data maintained by the Department through regulatory instruments provide a digital overview of natural resource use around the state but when combined with other monitoring methods the information can provide an alternate and powerful means of monitoring.

Reporting of illegal activities such as land clearing relies upon members of the public willing to provide the Department with details of suspected non-compliance which can then be combined with other means of monitoring to build a picture of the validity of the alleged breach. By building a clearer picture as to the validity of the information the Department can then exercise its powers, such as conducting an inspection or executing a search warrant to determine if for example the land has in fact been cleared which can then lead to further inquiries.

As we discussed in Module 3*, Annual Compliance Plans* set out state-wide and regional specific targets for compliance monitoring. These monitoring activities present an opportunity for

Authorised Officers to observe, note and report suspected non-compliance across all of the natural resources managed by DNRM. As an example, an Authorised Officer is conducting an inspection regarding land clearing on a property as part of the annual compliance plan and observes that a dam has been recently constructed an adjoining paddock. This may represent a breach of the *Water Act 2000* so the officer reports their observations to initiate further fact finding activities to establish if non-compliance is evident.

The State Landcover and Trees Study (SLATS) monitors Queensland's forests and woodlands primarily to assess vegetation extent and clearing activities, in support of the *Vegetation Management Act 1999* and regional planning initiatives. As well as satellite images, detailed spatial data and reports can be produced to help landholders, scientists, industry and government improve land management practices.

Landsat Thematic Mapper (TM) and Enhanced Thematic Mapper (ETM+) satellite imagery have been used annually to compare the vegetation cover since 1988 to provide baseline landcover mapping over the entire state. Each image or scene represents an area of approximately 185km^2 on the ground which translates into over 80 scenes to cover the entire state.

Landsat takes multiple images of the same area each year but images taken during the dry season are preferred as they make it easier to distinguish between different vegetation types. Examples of a Landsat Thematic Maps can be seen at:

http://www.ga.gov.au/scientific-topics/earth-obs/basics/gallery/australian-locations/qld-cities

The images must be prepared before comparison is made with previous years by addressing variations in the sun's angle and atmospheric effect (radiometric correction), ensuring the individual pixels are exactly aligned on the ground (geometric correction and referencing) and removal of bad areas such as cloud cover and smoke (masking). In the example above the importance of image preparation before comparison is demonstrated.

Changes in land cover are identified through automated classification based on the analysis of previous foliage coverage which is checked through manual raster editing (picture editing) to isolate the changes to woody vegetation.

Where areas of land clearing are identified it is confirmed through extensive field work conducted by scientists from the SLATS program. Following the extensive verification process a final map is produced annually and utilized to assess and regulate natural resource use across the state.

Geographic Information Systems (GIS) is computer software which can be used to display data in a graphic way in real-world positions. GIS provide records in graphic format and Image 33 details just some of the GIS layers which can be used.

GIS data can then be combined with aerial photographs or satellite images which can give a clearer indication if some form of non-compliance is evident.

For example, a member of the public reports to the Department that vegetation has been cleared on a rural property. This report when compared with satellite images gathered across an extended period of time can show the condition of the land in question and also assist to pinpoint when the clearing took place and perhaps even provide evidence of how it was cleared and who was responsible.

> **Refer: UK 8 – Explain how "Geographic Information Systems" is utilized by DNRM within its regulatory function when managing Queensland's regulated vegetation?**

Image 33: Example of GIS mapping data

Further Reading

Methodology for Survey and Mapping of Regional Ecosystems and Vegetation Communities in Queensland Version 3.2 August 2012

http://www.qld.gov.au/environment/assets/documents/plants-animals/herbarium/herbarium-mapping-methodology.pdf

PAGE 102

MODULE 5: NATURAL RESOURCE MANAGEMENT (WATER)

73(2)Irrelevant

73(2)Irrelevant

PAGE 104

© State of Queensland, Department of Natural Resources and Mines, 2014.

16-006   File D   Page 108 of 142

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

PAGE 109

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

73(2)Irrelevant

MODULE 6: UNDERTAKE INSPECTIONS AND MONITORING

1. Operating in the regulatory environment

On completion of this element you will be able to:

- ➢ Identify and interpret policies, procedures and risks influencing inspection and monitoring activities.

- ➢ Schedule inspection and monitoring activities and determining and preparing resource as required.

- ➢ Execute inspection and monitoring activities according to policy and procedure and across a range of environments and clients.

- ➢ Analyse the regulatory environment and determine an appropriate response to non-compliance.

- ➢ Apply legislation, policies, procedures and assess risks associated with interviewing.

1.1 Conducting inspection or monitoring activities

As identified in Module 3 there are four common components to inspection activities being:

1. Planning the activity

2. Carrying out the activity

3. Acting on identified non-compliance

4. Reporting on actions

Planning in the context of an inspection activity is the process of deciding what objectives to pursue and what must be done to achieve those objectives. Effective planning involves:

- making decisions about what strategies will be adopted to achieve the objectives;
- identifying and allocating resources;
- scheduling to ensure timely completion of each component of the plan; and
- establishing the controls needed to ensure the intended objectives are achieved.

Legislation will direct the lawful inspection and monitoring activities for managing natural resources in Queensland. To support the legislation DNRM have prepared detailed policies and procedures for inspection activities undertaken by Authorised Officers. The *DNRM Compliance Inspections Procedural Guide* provides guidance in the pre-inspection, inspection and post inspection process for undertaking water compliance inspections.

To support inspection activities the Department has also prepared the DNRM *Compliance Inspection Toolkit and Checklist (CIT)*. This toolkit and checklist is to be used in close concert with the procedural guide which references the specific part of the checklist that relates to the inspection process.

The procedural guide details 14 steps in the inspection process and these are summarised in Image 39. As you will see the toolkit and checklist are referenced in the procedural guide.

Steps you through the inspection process

Step 1 - Collect and review background information about the client

Helps I.D. issues & understand the client PART A "Pre-inspection record" in CIT

Step 2 – Work through the *Compliance Inspections Checklist*

Minimum of two officers Reference *Regulatory Powers Guide*

Step 3 – Know your powers as an authorised officer & establish the inspection team

Step 4 – Identify the conditions for assessment

PART B "Pre-inspection record" in CIT Ensure all aspects of conditions are addressed during inspection

PRE-INSPECTION

Step 5 – Consider Workplace Health & Safety

Step 6 – Provide prior notice of inspection

I.D. and address potential health & safety issues that may arise during the inspection Reference *Safety & Risk Management Guide – Job Safety Analysis*

Planned compliance inspections = prior notification Complaint or incident = little or no prior notice

ON-SITE ACTIVITIES

Meet with property owner or their representative Explain all aspects of the inspection Sets the tone for the inspection

Step 7 – Conduct opening meeting

Step 8 – Conduct the site inspection

Collect, record and examine relevant information PART B "Inspection report" in CIT Observations in CIT or official notebook

Evaluate the information gathered Complete inspection report esp. *"Summary of Inspection and Recommendations"* Attach photographs

Step 9 – Evaluate the inspection information & complete inspection report

PART C "Further Compliance Action" in CIT Using other info in CIT determine appropriate response to non-compliance Reference *Choosing the Appropriate Tool to Respond to Non-Compliance*

Step 10 – Determine further compliance action

Step 11 – Complete *Assessment Report* for issuing of notices or orders

Step 12 – Provide for Natural Justice

Detail the basis for deciding on a particular tool to respond to the non-compliance Confirm Natural Justice considerations have been taken into account PART C "Further Compliance Action" in CIT

Step 13 – Record details of site inspection

POST-INSPECTION ACTIVITIES

Step 14 – Endorsement

Record all allegations of non-compliance in the DNRM case management system CIRaM

Where required have recommendations for statutory enforcement tools approved by the appropriately delegated officer

Image 39: **Compliance Inspections Procedural Guide Summary**

Planning inspection activities

While the objectives of inspection activities will usually remain constant i.e. information gathering through inspection or monitoring activities to establish compliance with legislation; for any inspection activity the outputs and specific information gathering methodologies may vary according to factors such as location. For the purpose of this information gathering methodologies could include:

- Installation and inspection of monitoring devices;
- Searching and observing;
- Measuring, testing, photographing or taking samples; and
- Document examination.

Inspection activities may be planned as part of an ongoing regime of natural resource management (proactive) or in response to a specific event or complaint (reactive). Where the inspection activity is part of an ongoing regime the planning process should identify what aspect of compliance is being targeted.

For example, as part of a proactive annual inspection regime each annual inspection may focus on a particular compliance requirement such as using correct equipment or maintaining the correct records or operating in a high risk locality.

Planning an inspection activity will also include a review of outcomes of previous inspections at the site or previous inspections involving that client including:

- Identifying issues and or problems arising from those inspection activities;
- Likely response to the inspection;
- Previous levels of cooperation; and
- Previous levels of compliance.

Where the inspection activity is in response to a specific event the same level of assessment will take place however; the focus will be determined by the scope of the event or complaint. Part of the planning process will be to identify exactly what regulations are in place and what compliance is required. This will assist in identifying what the Authorised Officer should expect to find and what form it may take.   This in turn will inform what information is needed at the inspection for corroboration and for assessment of compliance.

Authorised Officers can be assisted in the planning process by answering these three questions:

1. *"Why am I conducting this inspection?"*

2. *"Where and what am I going to look at?"* and

3. *"What do I expect to find?"*

DNRM officers should follow the Department's procedures and guidelines as detailed in the *Compliance Inspection Toolkit and Checklist* for compliance inspections. A key part of that process is to learn as much as possible about the client, their history, processes and potential concerns. Knowledge may come from staff who have had experience with the client or similar clients. Other sources of information may include permit or license conditions, negotiated agreements, databases, business licensing data, property records and, importantly, other agencies.

There are three steps to planning inspection activities – profile, plan and prepare (see Image 40).

Profile

Plan

Prepare

Image 40: **Three simple steps to planning inspection activities**

Agencies from other jurisdictions, either legislative or governmental, may have information and may provide valuable insight into planning an inspection activity.

Once the scope and purpose of the inspection activity has been determined attention can then turn to determining risks, resource requirements, specific procedures to be undertaken and the allocation of responsibilities to the inspection team.

Risks associated with executing monitoring activities

Hazards that can be encountered by Authorised Officers whilst in the field can be categorised under five broad areas. They are:

- Chemical hazards primarily associated with toxic substances such as acid or fertilizer.
- Fire and explosion hazards from natural sources such as bushfires or man-made such as a gas fire along with commercial explosives or even an Improvised Explosive Device (IED).
- Radiological hazards are associated with radiation which is the emission of energy as electromagnetic waves. The primary radiological hazard Authorised Officers are likely to encounter is sunlight exposure and associated sunburn if not protected.
- Biological hazards or *"biohazards"* are micro-organisms which affect human health and are predominantly made up of bacteria and viruses.
- Physical hazards are pretty much anything else for example location, remoteness, slips, trips and falls, loud noise and assault.

Authorised Officers cannot depend upon their senses alone to warn them of exposure or potential exposure to a hazard whilst in the field, as their reactions may not be quick enough to prevent injury or even death. Therefore they need to gather the necessary information, plan ahead and provide themselves with the correct *Personal Protective Equipment* (PPE). The PPE and other risk mitigating equipment required for an inspection will vary which is why conducting a thorough risk assessment process as part of your planning process is vital.

Working in the field and the nature of the environments an Authorised Officer will be exposed to presents a broad scope of risks such as:

- Geographic risks - the terrain that Authorised Officers will be exposed too;
- Climatic environmental risks – sun, wind, cold;
- Water, vegetation or animal borne bacteria and disease; and
- Bites and stings – insects, reptiles and plants.

The DNRM have prepared a framework of policies and procedures designed to assist Authorised Officers with risk management when operating in the field. Image 41 provides an overview of the

PAGE 121

DNRM work health and safety risk management framework and the complimentary procedures for managing hazards in the field.
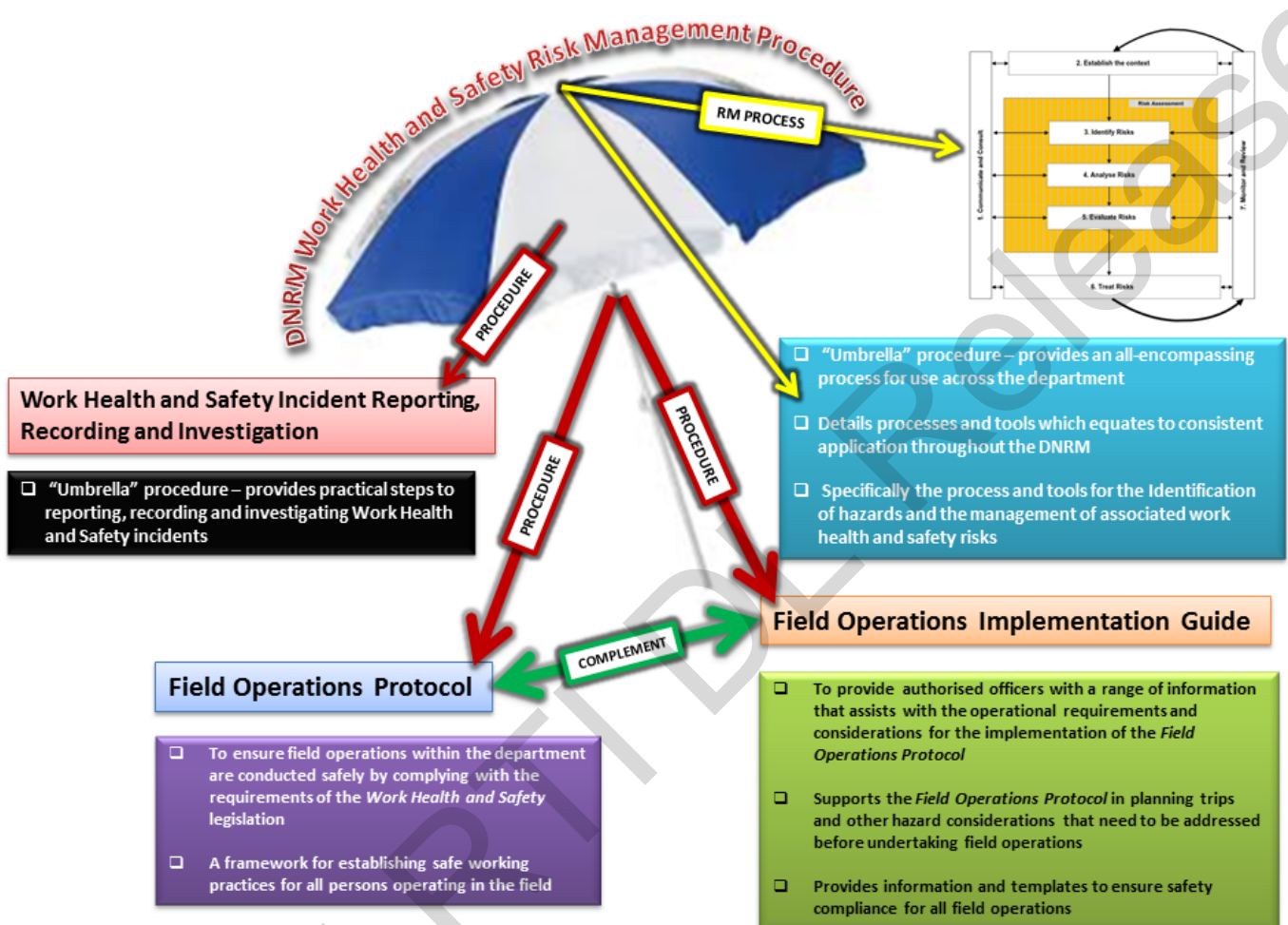
Image 41: DNRM Work, Health And Safety Risk Management Framework

Regional Work Health and Safety (WHS) representatives work with DNRM officers to ensure they are competent in applying the risk management framework in all aspects of their role and responsibilities. DNRM officers should consult the risk management information found on the Department's intranet at http://intranet.dnrm.govnet.qld.gov.au/hr/health-safety-wellbeing/incident-reporting-prevention. For further information contact your regional WHS representative.

Risks in interviewing clients

Conducting interviews with clients has a number of inherent risks associated with that process. By law any person being questioned by a regulatory authority where the answers to those questions might be used in a court of law as part of a prosecution must be cautioned appropriately. This rule must be strictly adhered to where a formal record of interview is being conducted.

Any conversation conducted with a client without them being cautioned may still be admitted into court through a process of the conversation being *"adopted"* during the formal record of interview. Where this directly affects an Authorised Officer is in the accuracy in recording the conversation so that it may later be presented by an investigator in a formal record of interview for the client to adopt the conversation.

Therefore the key risk for Authorised Officers conducting inspection activities is ensuring the accurate and timely recording of any conversation they have with the client as any conversation may later become vital to a criminal prosecution.

The DNRM's *Interviewing Potential Defendants Procedural Guide* outlines a manner in which Authorised Officers should prepare, conduct and finalise records of interview with potential suspects. The procedural guide is relevant to all Authorised Officers who have dealings with potential defendants on a *formal and informal basis*.

Other risks that Authorised Officers should be mindful of during interviewing are:

- A decreased sensitivity to the client's body language – the Authorised Officer is usually concentrating on the interview process and not taking notice of the client's behaviour. It is commonly the role of the interviewing officer's partner to keep a close watch of the client's behaviour and body language for indicators of potential physical threat.
- An increased potential for conflict - questioning someone about a breach of legislation generally invokes emotion.
- An inappropriate location – working and interviewing in the field presents limited opportunities for conducting conversations in a location appropriate to the seriousness of the interview. It is important when using audio recording equipment that interference from the elements, especially wind is minimised as this can override the audio recording and render it useless.

Resource management

The risk management process conducted during the planning of the inspection activity will provide an excellent opportunity for an Authorised Officer to reflect and determine what resources will be required to conduct the planned inspection activity.

Other factors which need to be taken into consideration are:

- The objectives of the inspection activity;
- The size of the inspection site; and
- The number of people on the inspection site.

Attachment 2 of the *Field Operations Implementation Guide* provides a comprehensive checklist of resources however this list is not exhaustive and resources specific to a particular planned inspection activity may be required. As stated in the introduction to the checklist; *"the following equipment checklist is to be used as a guide only. A risk assessment of the activity needs to be completed to assist in identifying the necessary items and quantity for each trip."*

The resources and equipment Authorised Officers use to conduct inspection activities may be personal issue or a resource sharing basis. Either way it is best practice, not to mention safer, to ensure the equipment is maintained and used in the manner for which it was intended.

Failure to maintain equipment is at the least unprofessional and at worst dangerous. Failures of equipment in the field or operational incompetence undermine the professionalism of the inspection process and can create an unhelpful atmosphere.

Personal protective equipment must always be worn or used in accordance with issued instructions. Failure to maintain PPE or improper use can remove not only the obvious layer of protection but also liability of the Department.

Once required resources have been identified they must be assembled and made ready. When using electronic equipment of any sort ensure that batteries are charged and a sufficient supply of data storage is on hand.

> *An important step in the planning process is ensuring all equipment is in working order and that those who will be expected to use the equipment have the skill and knowledge to do so.*

Checklists can also be utilised to identify processes the Authorised Officer intends to observe and document or even questions they intend to ask when using the resource. For example, a checklist to assist with the use of a sampling kit can include a list of things to photograph during the process or specific information the Authorised Officer must record about the process in their notebook. The checklist can also detail questions to be asked of the occupier during the sampling process such asking the occupier to confirm the sampling bottle is sealed according to the procedure. Checklists are an invaluable aid to any inspection activity. Prepared well before the inspection with the luxury of time and consideration they provide a valuable tool to maintain focus as the inspection activity is being executed.

Scheduling inspection activities

An important process in planning an inspection activity is appropriate scheduling. The *Compliance Inspections Procedural Guide* recognises the importance of scheduling in *Step 2* where it identifies the setting of an agenda and timetable for the inspection. This is an important part of completing the *WCIT*. Many factors will influence the scheduling of an inspection activity these include:

- Where does the planned inspection activity fall in terms of the prioritisation of all inspection activities required to be completed?

    Prioritisation can include many parameters such as the potential damage which may be caused to the natural resource by not executing an inspection activity as soon as possible. Prioritisation in any regulatory environment is a critical factor in scheduling as Authorised Officers will not be able to determine exactly what events will take place. For instance they may be required to be reactive if a complaint is received which may be determined as a higher priority and thus adversely affect all of the other scheduled inspection activities.

- Will targeted activities specific to the inspection plan be actually underway at the time of the inspection?

    For example, if the inspection activity plans to inspect land clearing will that land clearing actually be underway at the scheduled time of the inspection.

- If the presence of the client is important to the success of the inspection activity, will the client be available at the scheduled time?

- Do you need to abide by a legislated requirement or departmental policy on a specific notification period for announced inspection activities?

- If resources are shared then ensure that the resources required are available at the scheduled time to conduct the inspection activity. Keep in mind there may be a booking process to reserve resources for your particular needs.

- Where multi-jurisdictional operations are focusing on the same client does another agency require priority in executing an inspection activity or other regulatory function before the planned DNRM inspection activity can be undertaken.

In addition to scheduling the execution of the inspection activity there also may be a requirement to plan a schedule detailing the execution of the activities required to complete the inspection. For example, where one resource is required across a number of different sites at the same time then that resource will need to be scheduled on a priority basis to maximise its effectiveness. Again the prioritisation process can adversely affect a scheduled, non-urgent inspection activity by drawing critical resources away.

Executing the inspection activity

The procedural guide has two steps associated with the execution of the inspection activity being:

1. Conduct opening meeting; and

2. Conduct the site inspection.

Opening meetings

Opening meetings are designed to pave the way for the inspection activity to be conducted by being open and transparent with the property owner or their representative about the inspection activity and how it will be conducted. Some of the key objectives of the opening meeting are to:

- Explain the scope and objectives of the inspection program;
- Summarise the activities to be undertaken;
- Clarify lawful consent to conduct the inspection;
- Provide any relevant warnings or advice required as part of entry;
- Answer any questions raised by the property owner or their representative;
- Introduce and identify the inspection team;
- Explain the inspection process and reporting; and
- Determine safety, emergency and security procedures for the site.

The professionalism of the Authorised Officer during the opening meeting is vitally important and remaining polite even in the face of unreasonable clients provides the Authorised Officer with an advantage in that the client is likely to 'mirror' the officers behaviour and behave more professionally themselves. If the Authorised Officer *"loses it"* this can signal to the client it is OK for them to behave poorly as well.

Conduct the inspection

Following the opening meeting the examination and recording of information relevant to the inspection can commence. Authorised Officers are recommended to use the *Inspection Report* in

Part B of the *CIT* as their primary method of recording observations and findings and their official notebook as a secondary and backup method.

The use of various information gathering methodologies during field operations was discussed in detail in Module 4. The *Inspection Report* has provision in "Attachment A" to insert and describe photographs taken during the inspection activity.

1.2   Reporting on inspection activities

Evaluating the outcomes

Regardless of the type of the inspection activity undertaken, the objectives of the inspection activity, or the client, or location, there is always a requirement at the conclusion of the inspection to appropriately and fairly evaluate the outcomes. This will involve the evaluation of each piece of information gathered on its own merits as well is collectively with the other information.

It is important to remember that any information gathered could potentially become evidence which may be required in a later prosecution and the rules of evidence will apply to that information from the moment it was lawfully gathered.

Every member of the inspection team must gather information in a fair and equitable manner and present it for evaluation in its entirety and original format. It is important to understand that it is the expectation that Authorised Officers will gather and evaluate information which can prove non-compliance but also compliance or mitigating circumstances for non-compliance.

The evaluation of information must be factual and not based on assumption as it is the facts which the Department and, should it be necessary, the courts, will rely upon to decide on appropriate action to non-compliance. Guidelines for determining an appropriate response to non-compliance are discussed below.

Water compliance inspections

As we have discussed throughout this module, reporting on water compliance inspections will be completed through the *Water Compliance Inspection Toolbox and Checklist*. This document is a complete reporting mechanism which, as we have discussed, previously aligns with the procedural guide.

Vegetation management monitoring and auditing

Monitoring and auditing for vegetation management is conducted with a range of specific audit proforma documents each relating to the specific monitoring or audit activity being undertaken. These proforma documents are completed either in hard copy or electronically using a Department iPad.

The Department uses the Compliance Incident Reporting and Management System (CIRaM) as its primary system for recording all audit, incident and investigation reports. Each report including audit and monitoring activities will have a unique case reference number in CIRaM. This assists with tracking progression of matters from audit to investigation and onwards.

1.3   Determining an appropriate response to non-compliance

As we discussed in Module 5 there are a range of regulatory instruments used to regulate natural resource use in Queensland. Those regulatory instruments are also means by which the Department can monitor natural resource use and management and can be a precursor to initiating an inspection or a monitoring activity.

It is important at this point to remember that an inspection or monitoring activity does not necessarily have to be as a result of non-compliance detected. Inspection and monitoring activities can be part of a proactive approach to managing natural resource use through planning processes such as the *Annual Compliance Plan*. The Department's planning process is in itself a means of responding in some instances to non-compliance which has been detected through other means. Therefore proactive inspection and monitoring activities can also be influenced by the same factors that are considered as part of reactive response to non-compliance.

Once non-compliance has been identified and verified it must be addressed and dealt with in an appropriate manner. The DNRM *Compliance Response Guidelines* provide guidelines and procedures for responding to non-compliance. In a broad sense this policy is conceived of and executed in the context of the *enabling legislation*. The legislation will to some extent set the options available for responding to non-compliance and the degree of discretion allowed. This is known as the *Compliance Continuum* as we discussed in Module 2*.*

Image 42 expands on the compliance continuum options as defined by the response guidelines. Where non-compliance has been detected and there is no apparent legal justification or excuse for the failure to comply with the legislation the most appropriate action to respond to the non-compliance can be influenced by a number of factors. These factors can often be referred to as either *mitigating circumstances* or *extenuating circumstances* and *aggravating circumstances*. Mitigating or extenuating circumstances are those that might result in the Department taking action which will have less impact on the client who is non-compliant. Alternatively circumstances of aggravation might result in the Department taking action which has a greater impact on the client.

Enforcement action which includes:
- Take no action
- Formal warning notices
- Penalty infringement notices
- Statutory notices (Stop work, compliance, restoration notices)
- Cancellation of license, permit or authority
- Prosecution (Penalty imposed by the court)
- Court order (Suspension or cancellation of authority, restoration/rectification orders)

For minor non-compliance instruments such as "reminder notices" may be a viable option to achieve compliance

Consultation and development of measures such as "codes of conduct" and "codes of practice" to reduce regulatory burden on the department.

Where activities are impacting on the state's natural resources surveillance and monitoring programs are initiated.

Regulatory tools as discussed in *Module 5*

Increasing stakeholder awareness

Involving the community and industry in natural resource regulation

Using information technologies to communicate with clients e.g. mapping technologies, smart phone applications, YouTube

Enforcement

Surveillance and compliance monitoring

Administrative action

Authorisation and licensing activities

Self-regulation and co-regulation

Education, information, community and industry engagement

Image 42: Compliance continuum options defined

An example of a mitigating circumstance could be where a landowner was found to have been taking excess water from their catchment. During an inspection it was discovered that a pipe had been damaged by a private contractor and not reported to the landowner. It was the damage to this pipe that had caused a leak and as such the non-compliance. Combining this information with other information such as the landowner's genuine attempts to achieve compliance and having no prior history of non-compliance should influence the Authorised Officer's decision-making process when deciding on a response to the non-compliance.

As an Authorised Officer you will have to consider all of the circumstances in the information you provide to the Regional Division manager so they can make an informed decision on the appropriate action to take to address non-compliance.

The compliance response guidelines state:

> "The degree and type of compliance action taken should be commensurate with the nature and severity of non-compliance, and should represent value for public

money. In each case, action taken is ultimately at the discretion of the department."

The guidelines also suggest nine considerations to guide Authorised Officers in selecting an appropriate response to non-compliance, these include:

- The seriousness of the damage to a natural resource;
- The benefit gained from the act of non-compliance;
- Is the non-compliance continuing or repeated; and
- How effective a particular response to the non-compliance would be?

Two other common factors which must be considered by any regulatory authority are the political and public sensitivity towards the non-compliance. The political sensitivity can be determined somewhat through the Department's strategic plans and operational planning frameworks as these represent the desired direction of the Department which is steered by the political environment. Public sensitivity comes back to the assessment of the non-compliance measured against the determination as to whether the response to non-compliance is in the public interest.

2. Managing threats in the regulatory environment

On completion of this element you will be able to:

➢ Use conflict resolution models when managing unreasonable clients.

➢ Undertake appropriate threat, risk and safety assessments before and during inspection and monitoring activities.

2.1 Threat, risk and safety assessment

Enabling legislation while providing authority for investigators to act also regulates the manner in which an activity can be carried out. The actions of Authorised Officers are all subject to some oversight or control; either through standing tribunals or internal policies and procedures. With an increase in litigious action being pursued by clients as a result of excessive government action, it is extremely important that the actions of Authorised Officers are legal, professional and personal conduct is beyond reproach and responsive to any threats incurred in the regulatory environment.

The more difficult or stressful or tense a situation becomes, the greater the requirement for Authorised Officers to remain calm and professional. A key aspect of reducing tension, controlling personal conduct and managing conflict is communication with the client. While it is important to establish good communication and rapport with the client, unprofessional behaviour, over familiarity, the acceptance of hospitality or procedural sloppiness can cause an investigation to implode and will ruin the reputation of the Authorised Officer and the Department.

Communication and rapport must take place within the context of legal requirements, policy and procedure, for example, while not wishing to offend, excessive hospitality can be politely declined on the basis of policy requirements.

The Department's code of conduct provides a guide to the standards of behaviour and conduct required on the part of Authorised Officers and this was discussed in Module 1.

Maintaining operational safety

It is important to understand that the underpinning principles for assessing threat are no different to assessing risk in general. You still assess the threat against likelihood and consequence however unlike a risk in a workplace such as a dangerous piece of machinery which can be shut down, examined and appropriate risk management practices put into place. The threat assessment in the operational environment is fluid in that it changes constantly which in turn means you should adopt a fluid approach to your risk management process.

Let's face it no one likes having compliance action taken against them and many factors, often not apparent to Authorised Officers will influence how a person reacts when faced with compliance action.

Before we can conduct an appropriate threat assessment we must first understand where our threats come from. This is a challenge in itself because threats can come from anywhere so law enforcement agencies use simple acronyms to help officers focus on key things that influence the level of threat to them.

Threats are commonly categorised under three broad titles:

Persons – Any and all humans actually or potentially in a position to threaten safety;

Objects – Physical items in your immediate operating environment that could pose a threat to safety; and

Place – The physical environment you are operating in and risks associated with that particular environment.

So a simple way to keep these three broad areas of threat in your mind is to choose representative words that will create an easy to remember acronym such as the words used above "POP". The idea is when you think of threat assessment you automatically think of the three broad categories which should prompt your automatic and continuous threat assessment.

This is an important point to remember, *"Threat assessments are not a one shot deal"*. They are conducted continually because as we know in a regulatory environment circumstances change especially if the client realises your visit may result in enforcement action against them.

Hand in hand with the continual threat assessment is the risk rating. For law enforcement agencies around the world there are only two levels of risk:

1. *"Unknown risk"*

2. *"High risk"*

RISK RATING

Regulatory officers should never consider any person, object or place as LOW RISK.

HIGH RISK

OR

UNKNOWN RISK

NEVER ~~LOW RISK~~

In an operational environment assessing threat can be broken into four distinct stages:

- Stage 1 – Pre-deployment threat assessment;

- Stage 2 – Pre-contact threat assessment;

- Stage 3 – Contact threat assessment; and

- Stage 4 – Post-contact threat assessment.

Stage 1 – Pre-deployment threat assessment

As the name suggests this is the threat assessment which is undertaken prior to attending a location. In an ideal world we would always have the luxury of being able to take some time to conduct a thorough background check on a client so we are fully appraised of information such as their enforcement history, demeanour during previous contact and the likely layout of the premises you are attending.

However, as we all know this is not usually the case and as such you should adapt the four stages as best you can to the operational situation you find yourself in. For example, if you are tasked to undertake an inspection and you have the time and resources to conduct a threat assessment from the safety of your office before going to a location then do so. If circumstances are such that you are out of the office then processes should be implemented to conduct a threat assessment as best you can prior to arriving at a location. This may take the form of a telephone call to the office to establish as much information as possible about the client and location you are about to attend.

Stage 2 – Pre-contact threat assessment

This stage is about taking in the immediate environment at the location you are attending. If you are in a vehicle it could be as simple as driving past the location in question to take in the environment prior to entering on foot. But the pre-contact threat assessment does not end there, when approaching a location in the vehicle it may be safer to park one or two houses away and approach on foot or park the vehicle in a position that will enable a direct exit from the property.

Are you attending a business or a dwelling and what will your exit strategy be if needed. When approaching on foot you should take your time, and use your senses to take in the environment.

- What do you see?

- Are there objects in and around the location that could be used as weapons if the interaction becomes confrontational?

- If approaching a dwelling what state is it in, unkempt or well maintained? An example may be if there is empty alcohol containers littered around the dwelling.

Other things to look for are things such as signs of a dog which may require a different approach to the premises.

- What do you hear? If there are raised voices coming from the location then it could be an indicator that tensions may already be high even if it does not have anything to do with the purpose of your visit.

The use of your senses is an ongoing process and should be a tuned into your own protective behaviour assessment. Protective behaviour is about listening to your body's warning signals and trusting in them to keep you safe. In a regulatory sense this would be deciding not to go into a site or withdrawing from an unsafe situation before it escalates into physical violence.

Stage 3 – Contact threat assessment

The threat assessment during contact with a member of the public is a continuation of the pre-contact threat assessment. Continue to use your senses to scan and assess risks to you and your colleague/s. In line with this are two additional resources you can use; reading of body language and vocal nuance (the tone, pitch and volume of someone's voice) which are the two highest forms of taking in information.

An additional threat which must be monitored in the contact phase is entering (by invitation or not) onto the property of another. This needs particular ongoing assessment of the environment you are moving into. Remember you are on some else's 'turf' which they are familiar with and you may not be.

Stage 4 – Post-contact threat assessment

The post contact threat assessment involves the withdrawal from the client or location either under high risk conditions (i.e. things have gone bad) or unknown risk conditions (everything appears amicable and there's no immediate signs of threats).

Exiting under high risk conditions is something which you should plan for and be continually assessing as the contact progresses. For example – if things go bad while you are still on the footpath a quick exit can be conducted back to your vehicle. This exit strategy will be made much more difficult if you are inside business premises or isolated a long distance from your vehicle and the situation deteriorates. When circumstances mean you are isolated from options such as a vehicle then contingency plans must be considered in the exit strategy.

However, the post contact threat assessment does not end once you have left the location safely. Many regulatory officers have experienced 'stalking' type behaviour from clients which can range from mere nuisance to serious threats to safety. Personal details of regulatory officers should not be given out without some form of requirement or under policy and procedure.

DNRM have developed protocols to assist Authorised Officers to manage risks which arise from workplace hazards that may affect the health and safety of officers in the field. The protocols can be accessed at:

http://intranet.dnrm.govnet.qld.gov.au/hr/health-safety-wellbeing/risk-management/field-operations.

2.2   Conflict resolution

Conflict resolution styles

The nature of operating in a regulatory environment will inevitably result in an Authorised Officer having to manage conflict with clients. No one enjoys having compliance action taken against them and any compliance based activity such as inspections, even if conducted proactively can result in tension and conflict. Often this is caused by a *"fear of the unknown"* on behalf of the client.

Authorised Officers can make major inroads in managing conflict through simple communication and explanation of the entire process.

With conflict being pretty much inevitable it is important to understand that everyone tends to have a preferred style of resolving conflicts but there is no *"one size fits all"* conflict resolution style.

The conflict resolution style adopted by a person will generally depend on three factors being:

- How passionately does the person view their position in the conflict;
- What are they trying to achieve as a result of the conflict; and
- The relationship they have with the other person or people involved in the conflict.

When anyone is caught up in a conflict situation there are two key concerns to take into consideration; firstly, achievement of their goals and secondly maintaining a relationship with the other person or people involved in the conflict:

There are five styles or strategies commonly used when dealing with conflict with most people predominantly using the style they are most comfortable with. The five commonly used styles are:

1. Avoiding or Withdrawal

As the name suggests those who use this style will avoid conflict and anyone involved in it. People who use this style believe they cannot do anything about the conflict and will downplay it.

2. Forcing or Competing (aggressive)

This method is about overpowering others by forcing them to accept the aggressor's solution. Generally people who use this method of conflict resolution are not concerned with the relationship and regard their goals as more highly important.

3. Smoothing or Accommodating

The style places the relationship as the most important part of resolving the conflict. This style is about being accepted and liked through appeasing the others involved in the conflict. This style would be best used when the subject of the conflict is more important to the other person involved in the conflict.

4. Compromising

This style is in the vein of a *give-and-take* approach where one party to the conflict offers up part of what they are trying to achieve whilst encouraging the other party to do the same. This style usually results in neither party achieving what they really want.

5. Confronting or Collaborating

In this situation the parties each value their own goals and relationships and are strong in their resolve, but attempt to seek a solution that achieves the goals of the other person as well as their own.

The collaborative method of conflict resolution has been called the problem-solving approach. This involves working through the differences and finding a result that everyone accepts. However this approach comes at a cost primarily being time to dedicate to resolving the conflict and in order for a collaborative approach to be initiated it takes one of the parties involved to raise the conflict (confront) with the other party,

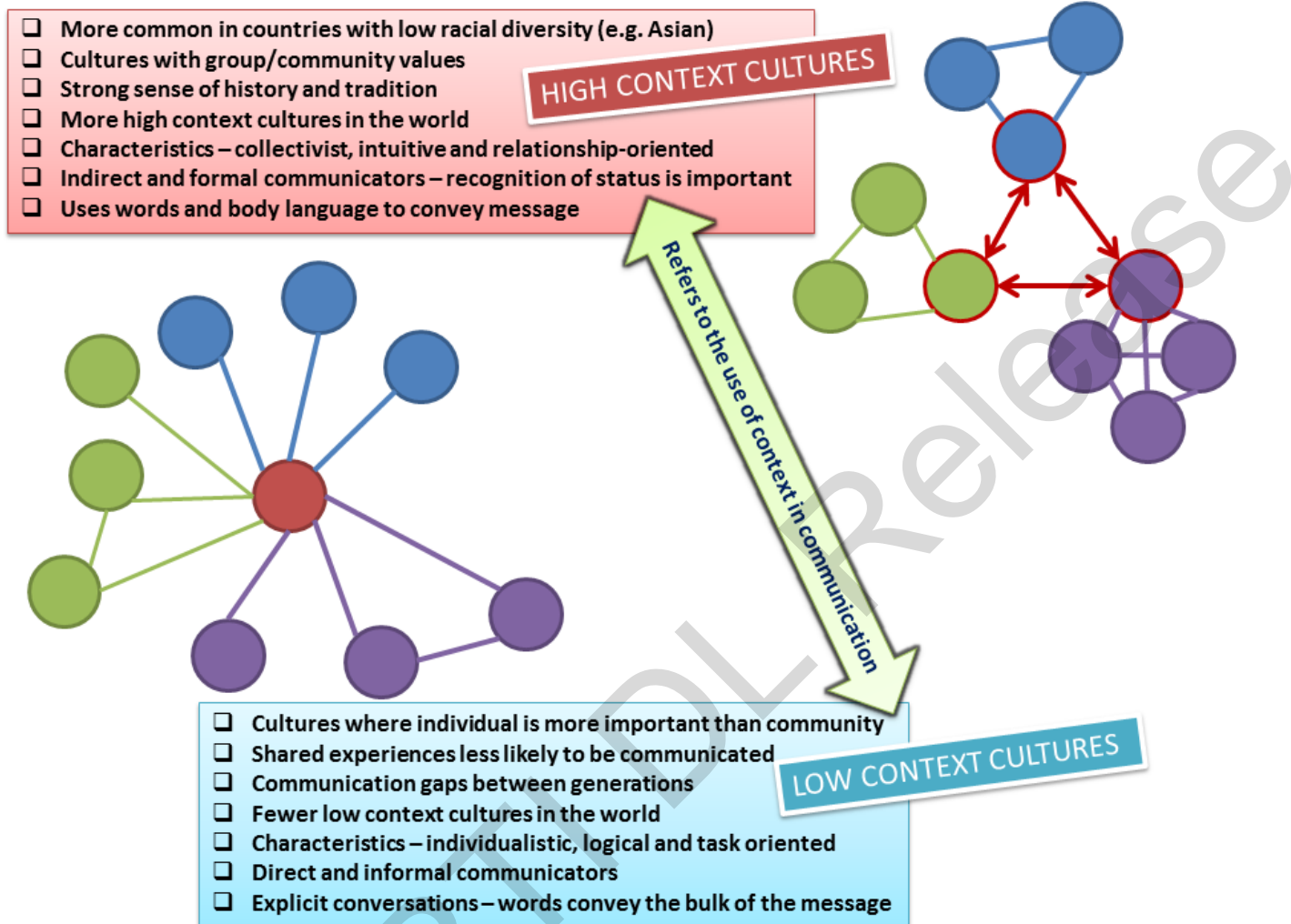## Cultural considerations in conflict resolution

In modern day Australia there are many different cultures and as an Authorised Officer your role will put you in contact with a wide variety of cultures. It is therefore important to consider culture in the broader context of dealing with clients but also managing conflict. Further, a significant driver of values, principles and behaviour is culture and closely tied to culture is religion. The way that Authorised Officers communicate and behave with clients of varying cultures can have significant impact on the success or failure of an inspection activity.

A key point that Authorised Officers should keep in mind when dealing with different cultures is whether the culture is a *low context culture* or a *high context culture*. Image 43 briefly outlines the difference between low and high context cultures and communication techniques which may assist with dealing with these cultures.

The Office of Multicultural Interests within the Department of Local Government and Communities of the Government of Western Australia have fact sheets publicly available which convey relevant information for dealing with particular religious or cultural group the fact sheet refers to. There are fact sheets relating to religious and cultural practices of the:

- Baha'i
- Buddhism
- Christianity
- Hinduism
- Islam
- Judaism
- Sikh

The fact sheets can be downloaded from the following website http://www.omi.wa.gov.au/omi_publications.cfm?pg=5 (look for *Culture and Religion Information Sheets* toward the bottom of the page).

❑ More common in countries with low racial diversity (e.g. Asian)
❑ Cultures with group/community values
❑ Strong sense of history and tradition
❑ More high context cultures in the world
❑ Characteristics – collectivist, intuitive and relationship-oriented
❑ Indirect and formal communicators – recognition of status is important
❑ Uses words and body language to convey message

HIGH CONTEXT CULTURES

Refers to the use of context in communication

❑ Cultures where individual is more important than community
❑ Shared experiences less likely to be communicated
❑ Communication gaps between generations
❑ Fewer low context cultures in the world
❑ Characteristics – individualistic, logical and task oriented
❑ Direct and informal communicators
❑ Explicit conversations – words convey the bulk of the message

LOW CONTEXT CULTURES

Image 43: High and low context cultures

As an example let's look at the Vietnamese culture in some significant points which may assist an Authorised Officer when communicating with a member of the Vietnamese community.

- Every word in Vietnamese language has only one syllable, and the language is based on tone.
- Values include modesty and humility about accomplishments in achieving harmonious relationships with others.
- Vietnamese avoid conflict preferring to speak about sensitive subjects indirectly.
- Direct eye contact during conversations is considered impolite and challenging.
- Aggression is considered rude.
- Vietnamese sometimes appear to answer "yes" (da) to all questions even if yes is not the intended answer or the complete answer.
- Strong emotions are not readily shared with strangers and smiling can be used to show a range of emotions.

PAGE 135

The relationship between religion and culture is also evident in the Vietnamese community where the Buddhist faith considers it impolite to touch the head of a person without getting permission from the person and pointing the soles of your feet towards people can invoke conflict.

If an Authorised Officer knows they are likely to encounter people from another culture or religion during an inspection activity they should make every effort to familiarise themselves with the customs and religious beliefs of that group. This will have a twofold effect whereby reducing the likelihood of conflict as well is improving the likelihood of corporation in respect.

Supporting clients

> *Just like doctors, nurses, teachers and police, authorised officers regularly deal with people experiencing a conflict or a dilemma. Sometimes these issues are not directly related to their [natural resource use].*

When a client expresses fear, frustration or anger over an issue of non-compliance an Authorised Officer should consider what other issues could be contributing to the client's behaviour. The Authorised Officer has an opportunity to better understand the social and psychological factors influencing the client and provide some support which may assist to gain a connection with the client.

When confronted with an emotional client Authorised Officers are encouraged to listen for indicators of factors other than the immediate enforcement of non-compliance which may be contributing to the client's behaviour. For example, the client makes a statement such as, *"This is the last thing I need on top of everything else!"* A statement like this indicates that there are other factors at play driving the client's behaviour which should be explored to establish what "else" is impacting on the client. The other factors may genuinely require the Authorised Officer to consider other options when responding to non-compliance.

Where there appears to be other factors influencing a client's behaviour Authorised Officers are encouraged to commit just a few minutes, usually 3 to 10 minutes is sufficient, and guide the client through a process exploring the influencing factors. Image 44 provides an overview of a process designed to assist a client to explore the contributing factors and guide the client to realize ways to achieving compliance.

By committing some time to understanding the client's position an Authorised Officer will be in a better position to recommend an appropriate response to non-compliance.

Image 44: A process to support clients to explore influencing factors