

COMPLIANCE AND ENFORCEMENT

From

EIA PERSPECTIVE



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COMPLIANCE AND ENFORCEMENT From EIA PERSPECTIVE

What is compliance?

The obligation for all persons, including individuals, companies and government agencies to obey the law. This can include, but is not limited to:

- the obligation to comply with conditions under an environmental permit/development consent
- the obligation to comply with provisions of an environmental management plan

What is enforcement?

The application of **tools** to correct non-compliance and to remediate actual or potential harm caused by environmentally destructive behavior. This can include:

- monitoring compliance (issue verbal corrective measures)
- Compliance Letter
- compliance notices
- Infringement notices
- Prosecution



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Compliance letter

Details directives and corrective actions to take and comply with (no legal status).

Compliance Notice

Require a person to carry out certain activity or cease undertaking certain activity.

- in writing, identify the activity that is the cause of the alleged breach
- identify the reason for issuing the notice, i.e. the potential damage to the environment
- identify what provision of the Act has been breached
- identify the timeframe for action
- notify the offender that failure to comply with the notice can result in penalties, fines or imprisonment





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Infringement Notice

An infringement notice is a statutory response to a breach that:

- Imposes a financial penalty
- Is a compliance tool rather than prosecution
- Usually used for one-off breaches that can be remedied
- Often acts as a method of deterrence

The Environment Enforcement Officer must have the details in the notice of:

- What the offence was
- Evidence to prove elements of the offence
- Who committed the offence
- The person's address
- Where and when the offence took place
- The appropriate fine to be issued
- Where and when to pay the fine

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Don't invent

Enforcement tools – link to legislation.

84. Compliance notices

- (1) A compliance notice is a notice requiring a person to—
 - (a) carry out specified actions by a particular time; or
 - (b) cease taking specified actions by a particular time.
- (2) An environment inspector may issue a compliance notice to a person who the inspector reasonably believes is contravening, has contravened, or is likely to

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87. Infringement notices

- (1) If an environment inspector reasonably believes that a person has contravened this Act, the environment inspector may issue, in writing, an infringement notice to that person.
- (2) An infringement notice must set out the following information—

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Prosecution

When is prosecution appropriate?

As prosecution is lengthy and expensive the following factors must be considered:

- seriousness of the breach
- real or potential harm to the environment, economy, resources, government, community members or public wellbeing
- whether there are multiple breaches
- whether prosecution will act as a future deterrence

Prosecution is often handled by the Police prosecutor however it can also be handled by the Environment Enforcement officer (Environment Inspector etc.)

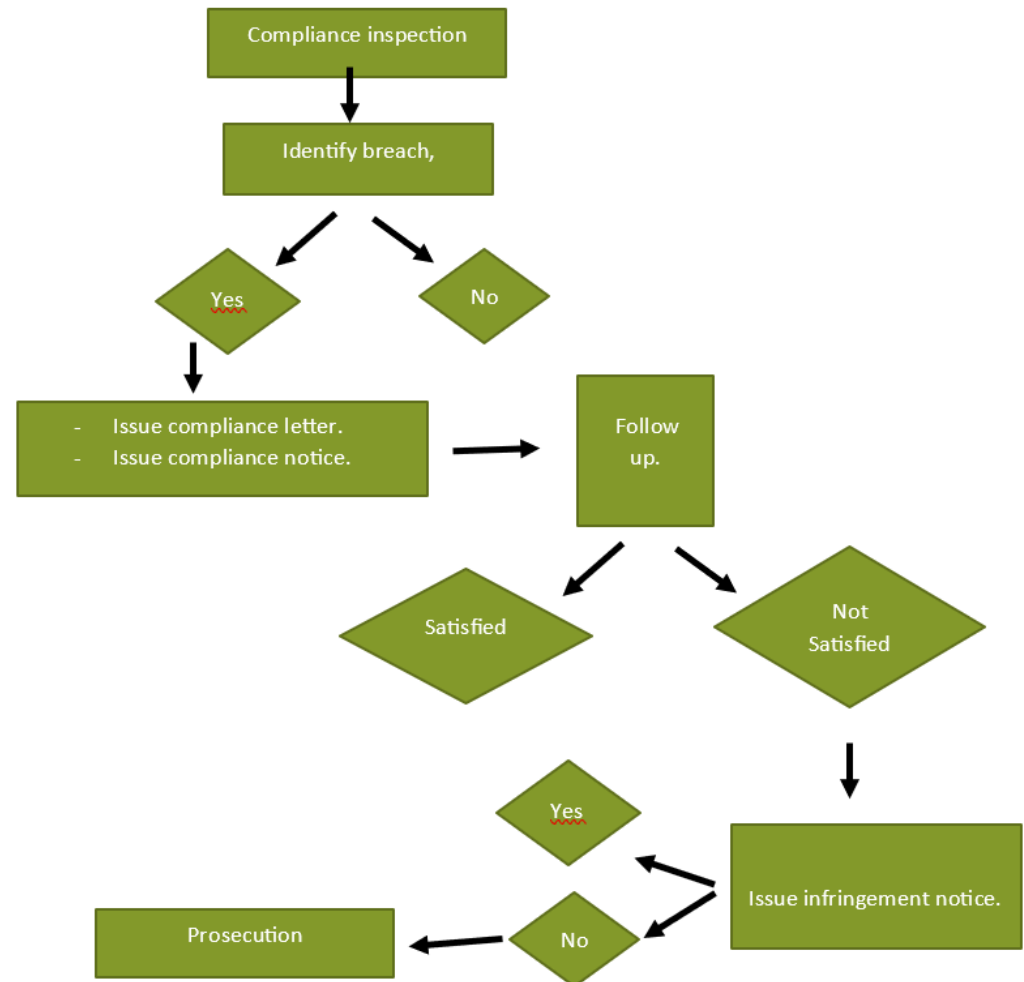
Always have legal back up

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- (5) A person who-
- (a) has been issued a notice under this Division; and
 - (b) refuse to take the notice or does not comply with the notice,
- shall be prosecuted accordingly for the offence he/she commits.

APPLYING COMPLIANCE AND ENFORCEMENT TOOLS. EIA PERSPECTIVE

Compliance and Enforcement Procedure



APPLYING COMPLIANCE AND ENFORCEMENT TOOLS

Case 1: Compliance notice: *Drums of fuel and oil shall NOT be left openly on site but shall be stored in a secure and sheltered place within 1 week*



Before



1 week after during follow up inspection



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APPLYING COMPLIANCE AND ENFORCEMENT TOOLS

Case 2: Infringement notice: Carrying out an activity or development without an environmental permit

INFRINGEMENT NOTICE

Pursuant to Section 60 of the Environment (amendment) Act 2007

By hand:

To: [Redacted]
Managing Director
[Redacted]

This Infringement Notice ('the Notice') under the Kiribati Environment (amendment) Act 2007 ('the Act') is issued on this day, Thursday 22/04/21 to [Redacted] for breaching section 22 of the Act by carrying out "environmentally significant activities" without an environment licence.

On Wednesday 14/04/21, [Redacted] was found by the Environment Inspectors carried out the following activities without an environment licence.

1. Alteration to the environment by clearing of land vegetation of an area of 2,000 meters square or more
2. Landfilling by excavating

In accordance with Section 60 of the Act, [Redacted] has been fined and is required to pay the total amount of two thousand and five hundred Australian dollars only (AUD2,500.00).

If the fine is not paid to satisfy this Notice within 28 days starting from the day the Notice is issued, the MELAD will proceed to prosecute you for an offence.

The fine has to be paid to the Account Office of MELAD at Bikenibeu during working hours.

If the fine is paid to satisfy the Notice in time, the MELAD won't take action against you for the contravention of the Act and you are not going to be taken to have convicted of the offence.

[Redacted]
Environment Inspector
Environment Conservation Division, MELAD

ACKNOWLEDGMENT OF RECEIPT

Iacknowledge receiving a copy of this notice by hand.

Signed:

Dated



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Scenario 3: Prosecution: *If a police handle prosecution*

The Police Prosecutor will need:

- Witness statements
- Elements of law breached
- All evidence





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Scenario 4: Prosecution: *If an Environment Enforcement Officer (Environment inspector) take on prosecution*

You will need:

- Appointment by instrument as a prosecutor
- To receive basic training on prosecution – prepare and file case, court protocols.

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<u>Environment & Conservation Division</u>			
Director of Environment	L4	1	1
Deputy Director of Environment	L5	1	1
Program Manager (EMIS)	L6	1	1
Program Manager (WACMOS)	L6	1	1
Program Manager (BCCS)	L6	1	1
Program Manager (LCS)	L6	1	1
Senior Environment Data Analyst	L7-6	1	1
Senior Environmental Inspector	L7	1	1
Senior Biodiversity Conservation Officer	L9-7	1	1
Senior Environment Information System Officer	L9-7	1	1
Senior Chemical/Hazardous Waste Management Officer	L11-10/9-7	1	1
Climate Change Planning Officer	L11-10/9-7	1	1
Environment Outreach Officer	L11-10/9-7	1	1
Solid Waste Management Officer	L11-10/9-7	1	1
Environment Inspector	L11-10/9-7	3	3
Environment Prosecution Officer	L11-10	1	1 RWP
Environment Impact Assessment Officer	L11-10	1	1
Assistant Environment Inspector	L11-10	1	1



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COMPLIANCE AND ENFORCEMENT

Common Issues and challenges

- **Outdated laws:** Some foundational environmental acts are outdated and cannot address emerging issues adequately.
- **Inadequate resourcing:** Limited financial and human resources prevent proper review of EIA reports, monitoring of project compliance, and enforcement actions. High staff turnover also leads to frequent loss of trained personnel.
- **Weak inter-agency coordination:** Poor collaboration between environmental agencies and other government bodies hampers consistent compliance monitoring and enforcement.
- **Limited awareness:** Stakeholders often lack understanding of EIA processes and requirements. This affects the quality of EIA reports and community engagement.
- **Weak legislation:** Some laws do not specify clear provisions, procedures or requirements for compliance, monitoring, and enforcement including the power of environment regulators. Penalty provisions are also sometimes inadequate.
- **Capacity:** Environment regulators do not have the capacity and proper skills to handle and process offences including investigation, collection of evidence, writing witness statements and submission of cases for prosecution.
- **Priority:** Environmental offences are often considered not priority over other cases such as domestic violence, murder when it comes to prosecution. As a result they lapsed their timeframe for hearing.



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THANK YOU