

COMPLIANCE AND ENFORCEMENT POLICY AND PROCEDURES

POLICY

1. PURPOSE

This policy provides the Agency-wide framework to guide the delivery of the Department of Primary Industries, Parks, Water and Environment's (DPIPWE) compliance and enforcement activities.

A diagrammatic representation of the Framework is provided at Figure 1.

Compliance is the term used to describe conformity with legislation.

2. OBJECTIVES

The objectives of this policy are: to assist DPIPWE deliver on its legislative responsibilities; to further the aims and objectives in the DPIPWE Corporate Plan; and to support the Government's Policy Objectives. To achieve these objectives DPIPWE will:

- Ensure that information is readily available to the community for compliance obligations to be met.
- Provide a clear framework to enable staff to be confident, capable and supported in their compliance and enforcement functions.
- Ensure compliance and enforcement decisions and actions are fair, proportionate and consistent, and undertaken in a timely manner (see Figure 2).
- Promote a proactive compliance culture that focuses on cooperation as the preferred approach.
- Demonstrate accountability to stakeholders and the community that allegations of offending will be investigated and that appropriate compliance and or enforcement action will be taken in accordance with legislation and DPIPWE policy.

3. PRINCIPLES

DPIPWE has compliance staff and enforcement functions in all Divisions. To ensure these diverse operational groups deliver compliance and enforcement activities consistently and in accordance with best practice, the following principles apply.

Effective Community Engagement

- Ensuring that the community is aware of and understands their compliance obligations, is a priority for DPIPWE.
- Educational material is designed to be targeted and accessible, and is subject to regular review and improvement.

Accountability

- Application of DPIPWE's compliance and enforcement responsibilities will be undertaken in a timely and transparent manner.
- Enforcement actions will be fair, respectful, impartial and proportionate to the seriousness of the offence.
- DPIPWE provides recourse for complaints through its Agency-wide External Complaints Policy and by the provision of Information through its Right to Information Program.

Risk Based Approach

- DPIPWE applies a risk and principles based approach to plan and implement compliance and enforcement strategies.
- This approach is depicted in the framework at Figure 1.

Effective Information Management

- DPIPWE aims to align management of compliance and enforcement with best practice standards, including the Australian Government Investigations Standards 2011.
- DPIPWE manages data and information in accordance with legislative requirements (*Archives Act 1983*, the *Criminal Code Act 1924*, *State Service Act 2000*, *Personal Information Act 2004*, *Right to Information Act 2009*). Confidentiality is a key component of these requirements.
- Collection and management of this data assists DPIPWE to identify and manage regulatory risk, develop strategies and take appropriate enforcement actions where required.

Ensuring Capability and Performance

- DPIPWE continually monitors and assesses its compliance and enforcement activities under a continual improvement framework.
- DPIPWE's compliance and enforcement policy, processes and outcomes are reviewed and assessed regularly.
- Actions to address issues and deliver improved outcomes focus on communication and engagement strategies, officer recruitment strategies, minimum training standards and alignment of activities with best practice.
- DPIPWE tracks effectiveness of compliance and enforcement effort and reports outcomes in the DPIPWE Annual Report and the DPIPWE Budget Chapter.

4. GOVERNANCE

Protection of Tasmania's natural and cultural assets to meet statutory and community expectations includes a diverse number of functions and activities across a range of industries.

The *Administrative Arrangements Act 1990* and the current Administrative Arrangements Order assign responsibility to administer legislation to Ministers and to DPIPWE.

DPIPWE delivers its legislative responsibilities, including compliance and enforcement, through its Divisions.

5. RESPONSIBILITIES

DPIPWE's regulatory objectives are a response to the legislation it administers. Each legislative instrument has an intent describing its purpose, often providing for controlled use of natural resources through mechanisms like permits, leases and licenses and may also provide for sanctions through: cancellation of permits, remedial orders, fines and court proceedings.

Regulatory objectives are also drawn from the Resource Management and Planning System objectives, which many Acts make specific reference to.

The DPIPWE Corporate Plan and the Government's Policy Objectives also set direction for compliance and enforcement actions.

Figure 1: DPIPWE Compliance and Enforcement Framework

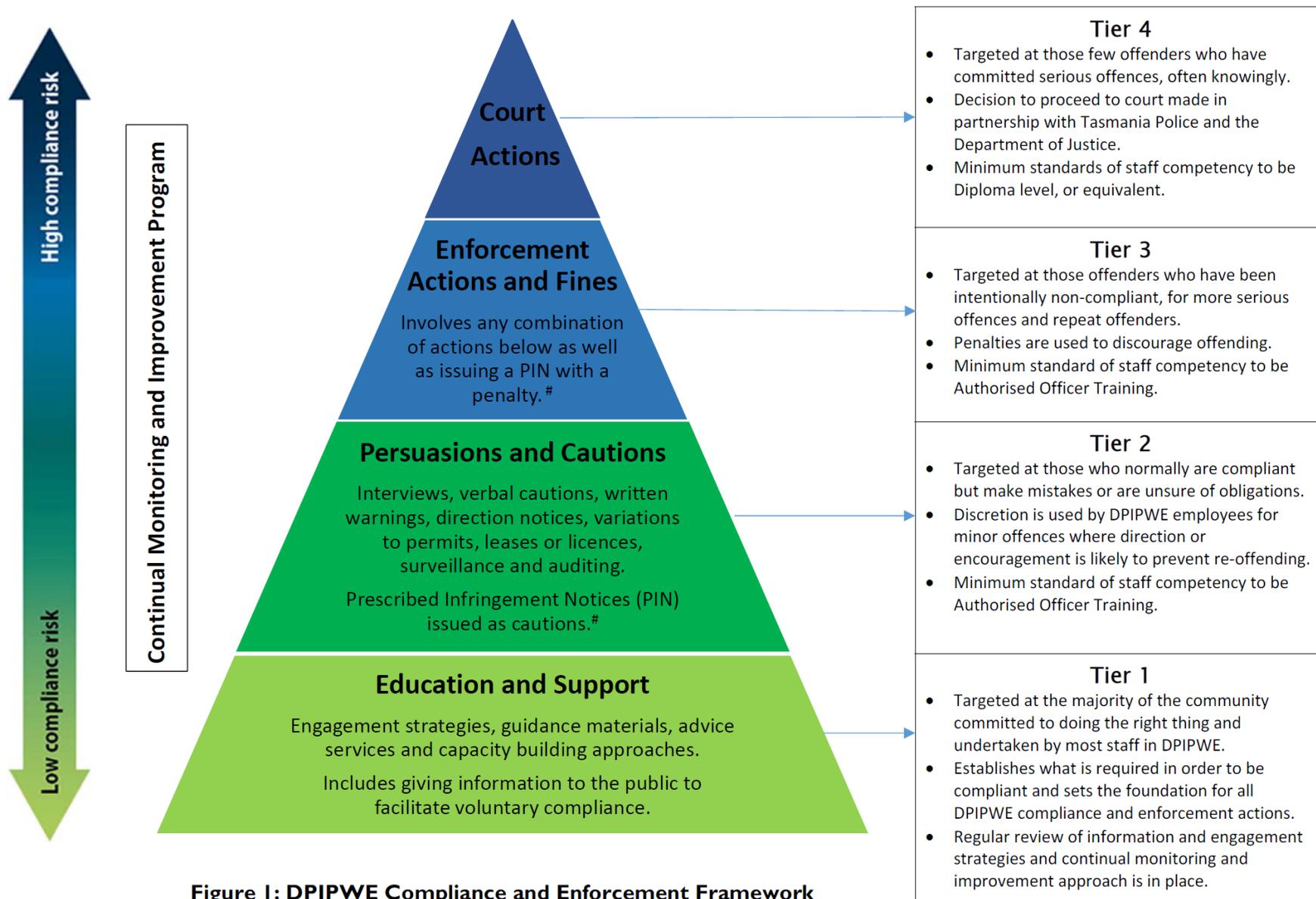


Figure 1: DPIPWE Compliance and Enforcement Framework

Refer also to the Agency-wide Standard for issuing PINs contained in the Procedures Document.

PROCEDURES

1. INITIATING POLICY

These procedures are made under the Compliance and Enforcement Policy.

2. SCOPE

The procedures apply to all Agency staff, including Inland Fisheries Service and Environment Protection Authority Tasmania staff.

3. WORKFLOW AND DIRECTIONS

Education and Support

- 3.1. All staff involved in compliance and enforcement will ensure the Tasmanian community has access to information to assist them to be compliant with legislation.
- 3.2. Each Division will regularly assess its stakeholder engagement strategies, guidance materials, advice services and capacity building approaches.
- 3.3. Division Heads are responsible for ensuring education and support information is periodically reviewed and suitable for target audiences.

Responding to non-compliance

- 3.4. Where non-compliance is observed or reported DPIPWE staff have a range of options available including: verbal warnings, written warnings, direction notices, variations to permits, leases or licences, Prescribed Infringement Notices (PIN) issued as Conditional Cautions, the issuing of a PIN that includes a monetary penalty, and prosecution in the courts (See Figure 2).
- 3.5. Staff will consider the following matters before deciding what, if any, enforcement action is appropriate:
 - a) the seriousness of the alleged non-compliance, taking into account the intent of the relevant legislative provisions;

- b) whether there has been a clearly identified prima facie breach of legislation;
- c) whether there has been failure to comply with any formal request, lawful direction or notice given by an inspector or authorised officer;
- d) the length of time since the incident, taking into consideration the limitation provisions of the *Justices Act 1959* or other applicable limitation provisions;
- e) any mitigating or aggravating circumstances including, where relevant, whether the alleged offender has a history of similar offences;
- f) the level of public concern/interest in that type of offence;
- g) the prevalence of the offences of the type alleged, and the need for specific and general deterrence of such offences;
- h) the precedent which may be set by any failure to take enforcement action; and
- i) the enforcement approach adopted to similar incidents under this policy taking into account the specific circumstances.
- j) The Department of Public Prosecutions – *Prosecutions Policy and Guidelines*.

- 3.6. Where issuance of a PIN is deemed an appropriate measure all staff will follow the 'DPIPWE Standard for Issuing PINs' which is at Figure 2.

Enforcement Actions

- 3.7. Enforcement actions relating to more serious offences will be undertaken in
- 3.8. accordance with the Australian Government Investigations Standards 2011.
- 3.9. Division Heads will ensure that staff have attained qualifications deemed necessary under the Policy prior to undertaking enforcement actions (refer to Figure 1).

Information Management

- 3.10. All information relating to compliance and enforcement is to be recorded.

- 3.11. Division Heads will ensure that there is a Departmental contact point available for the community to seek information about legislative requirements, or to report non-compliance, relevant to their Divisions.
- 3.12. Information regarding alleged non-compliance will be recorded and acted upon in an objective and efficient manner.
- 3.13. Division Heads and the Executive will ensure measurement, analysis and improvement measures are undertaken to ensure compliance and enforcement activities are efficient and effective and deliver the objectives of the Policy.
- 3.14. Divisional compliance and enforcement operation manuals, standard operational procedures or plans must be consistent with the principles outlined in the Policy.
- 3.15. A continual monitoring and improvement culture will be held by all staff and acted on at an Agency-wide level.

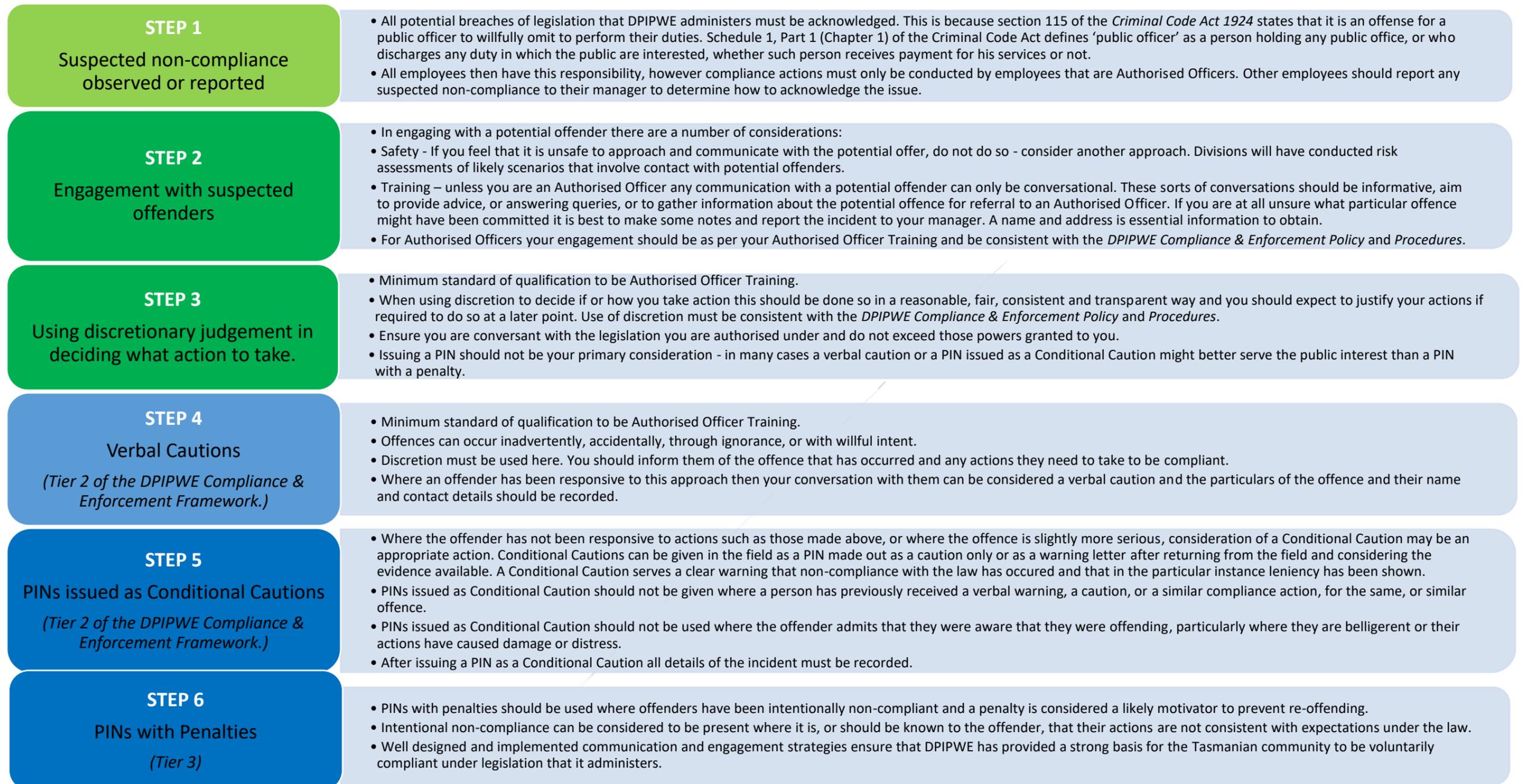
Responsibilities

- 3.16. Division Heads will ensure that Divisional compliance documents are regularly reviewed as part of the annual Divisional planning cycle.
- 3.17. Division Heads will ensure support of staff through mentoring, in order to ensure quality in the delivery of its compliance and enforcement program.
- 3.18. Division Heads will ensure that staff are adequately trained.
- 3.19. The Agency-wide Compliance and Enforcement Framework, contained in the Policy, and the Agency-wide Standard for Issuing PINs (Figure 2) outline the standards of training that staff must have achieved prior to undertaken certain compliance actions.
- 3.20. These minimum qualifications are, in summary:
 - Tier 1 – actions that may be undertaken by all DPIPWE staff; including the development of guidance and communication materials, advice and facilitating voluntary compliance.
 - Tier 2 and 3 – minimum standard of qualification must be Authorised Officer Training.
Actions include: undertaking interviews, verbal cautions, issuance of direction notices and variations to leases or licences and issuance of PINs.
 - Tier 4 – minimum standard should be a relevant Diploma, or equivalent.
Actions include: decisions to proceed to court in partnership with Tasmania Police and the Department of Justice.

4. SUPPORTING DOCUMENTS

- Compliance and Enforcement Policy
- The [State Service Principles](#) and [Code of Conduct](#)
- *State Service Act 2000*
- [Tasmania's Legislation Online](#)
- [DPIPWE Corporate Plan 2015-2018](#)
- [DPIPWE Complaints Policy](#)
- The Department of Public Prosecutions – *Prosecutions Policy and Guidelines*.
- Australian Government Investigations Standards 2011
- Australian/New Zealand Standard 'Quality Management Systems – Requirements' AS/NZS ISO 9001:2016

Figure 2: DPIPWE Agency-wide Standard for issuing Prescribed Infringement Notices (PINs).



Key Messages

- PINs enable some offences to be dealt with without a court appearance.
- PINs can only be issued by Authorised Officers.
- PINs can only be issued in relation to prescribed offences under legislation – always use discretion in considering whether a PIN is the best approach.
- Infringement notice powers are subject to full public sector accountability.
- Regularly check for changes to penalty unit rates on the Department of Justice web page.

- Never issue a PIN if insufficient evidence exists that a prescribed offence was committed.
- Never issue a PIN if the offender <18 years of age.
- Never be inconsistent or unfair with how you issue PINs.
- Never Issue a PIN if there is a more appropriate regulatory tool.