



Compliance Framework

SYNOPSIS:

This document outlines NSW Maritime's framework for fulfilling its compliance obligations.

Document 11-43 Version 1.0

14 July 2011

OPEN ACCESS

Foreword

Our coastal and inland waterways are a valuable resource that is used and enjoyed by our maritime community for pleasure and business.

NSW Maritime works with the maritime community to develop effective strategies to ensure that our waterways are used in a safe and enjoyable manner. These strategies are underpinned by the marine and environmental legislation administered by NSW Maritime`.

While the majority of the maritime community in NSW use our waterways responsibly, there are always situations where this is not the case and breaches of marine and environmental legislation will occur. Where breaches occur, NSW Maritime will take appropriate action with a clear emphasis on ensuring safe use and management of our waterways.

The purpose of this Compliance Framework is to inform the community about NSW Maritime's approach to managing compliance with the legislation it administers, and the processes it employs to ensure enforcement actions are implemented in a fair and equitable manner.

The Compliance Framework is supported by NSW Maritime's operational policies and procedures which guide its Authorised Officers in the implementation of its legislative obligations.

NSW Maritime's Compliance Framework will guide its compliance activities to ensure they are consistent with its vision of serving our boating community by providing safe waterways and support for the maritime community of NSW.

Steve Dunn
Chief Executive

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1. Introduction

Context

- 1.1. NSW Maritime is the State's safety regulator for commercial and recreational vessels. NSW Maritime also regulates the safety functions of NSW Port Corporations; manages two regional ports at Eden and Yamba; owns and manages the seabed of the major ports, including Sydney Harbour; is the consent authority for water based development in Sydney Harbour; manages the waterfront land vested in it; and uses revenue to support better boating infrastructure across the State.
- 1.2. NSW Maritime undertakes compliance work in tandem with other agencies including the NSW Police Force (especially the Marine Area Command) and the NSW Department of Primary Industries (Fishing and Aquaculture).
- 1.3. NSW Maritime promotes compliance with relevant legislation to ensure that:
- Activities on the State's navigable waters are undertaken in a safe and environmentally responsible manner
 - The two regional ports are managed in a safe and secure manner
 - Sydney Ports Corporation, Newcastle Port Corporation and Port Kembla Port Corporation adhere to the Port Safety Operating Licences granted by the Minister
 - Structures built on NSW Maritime's land are lawful
- 1.4. For more details on NSW Maritime's compliance role, see Appendix A.

Legislative Context

- 1.5. NSW Maritime has compliance obligations and responsibilities under a range of maritime, planning and environmental legislation listed in Appendix B.

Overview

- 1.6. NSW Maritime fulfils its compliance role by:

Compliance category	Description
Community education and engagement	➤ Educating and raising community awareness of legal obligations and encouraging a culture of support for NSW Maritime's compliance activities.
Monitoring behaviour and compliance	➤ Monitoring activities, to identify problem behaviours and areas of non-compliance and to devise pro-active programs to improve compliance outcomes.
Investigating alleged breaches	➤ Investigating allegations of breaches examining evidence to determine if action is required.
Taking appropriate action	➤ taking appropriate enforcement action where a breach has been shown to have occurred, including prosecution.

2. Community Education and Engagement

- 2.1. NSW Maritime's main aim is to encourage compliance through education. NSW Maritime recognises that lawfulness is best achieved through engaging with the community, delivering information programs and effective education.

Education through Safety Campaigns

- 2.2. A key feature of NSW Maritime's education function is safety campaigns. These are run locally, regionally and statewide to target key compliance areas and are designed to respond to seasonal, persistent and emerging trends in boating safety.
- 2.3. NSW Maritime extends the effectiveness and reach of safety campaigns by maintaining and building safety partnerships with boating groups, industry bodies and national and international safety bodies.
- 2.4. Active engagement with the maritime community is detailed in the *Boating Safety Communication & Education Plan*. The objectives of the plan include:
- a) Encourage a culture of boating safety in NSW;
 - b) Improve boating safety;
 - c) Improve the reach of safety messages through contemporary technology, media and partnerships; and
 - d) Support Boating Service Officers (BSOs) in their on-water duties, by ensuring the boating community is well-informed regarding boating rules and requirements.

Engagement

- 2.5. To help the community understand NSW Maritime's roles and responsibilities, NSW Maritime undertakes community engagement through events ranging from boat shows to stakeholder forums to web based information services.

3. Monitoring Behaviour and Compliance

3.1. NSW Maritime actively monitors compliance with legislation.

3.2. Compliance monitoring aims to:

- determine broad levels of compliance and identify compliance trends;
- identify significant areas of non-compliance; and determine the appropriate response (eg: education campaigns and/or enforcement action);
- devise pro-active and targeted operations and programs to improve compliance outcomes; and
- ensure compliance obligations are being met.

3.3. Compliance is reviewed at least annually to ensure trends are identified and actions and strategies remain relevant.

3.4. Compliance monitoring activities include the following:

Compliance monitoring activities	
Detection	➤ Detection activities include observation, inspections and on-water regular patrol.
Audits, surveys and reviews	➤ Regular audits, surveys and reviews are conducted to verify compliance with the range of licences and leases granted by NSW Maritime.
Reports of alleged breaches	➤ All detected or reported allegations of breaches are recorded, assessed and considered for action.
Research and analysis	➤ Statistical information on compliance and enforcement activities is maintained and analysed to highlight trends which inform compliance strategies and activities, including education programs

4. Investigating Alleged Breaches

- 4.1. NSW Maritime takes the report of any alleged breach of legislation seriously and investigates in a professional manner. We ensure that investigations are:
- Objective, fair and impartial;
 - Consistent with the presumption of innocence;
 - Within the limits of authorised powers;
 - In accordance with the law; and
 - Respectful of individuals.
- 4.2. During an investigation, Authorised Officers gather evidence of the alleged breach in order to establish whether an offence has been committed and the identity of the person(s) who may be responsible. Evidence may take the form of records, expert opinion and reports, photographs, witness statements, records of interview, videos, samples and physical evidence, and any other form of relevant evidence.
- 4.3. Where appropriate other enforcement agencies may be involved in an investigation.

Types of Breaches

- 4.4. The types of breaches dealt with NSW Maritime can be broadly categorised as:

Types of breach	
Safety Breaches	➤ Offences that threaten the safety of persons or damage to property, for example speeding.
Environmental Breaches	➤ Offences that constitute breaches of the marine legislation, EP&A Act and the POEO Act, for example oil spills from vessels
Other Breaches	➤ Other types of offences, for example illegal mooring occupation or property offences.

5. Taking Appropriate Action

- 5.1. NSW Maritime has a range of possible enforcement actions it can take depending on the nature of the breach and the severity of the matter. Under the relevant legislation enforcement action can include:
- Advisory and formal warning letters
 - Penalty notices
 - Notice to remove and other statutory notices or directions
 - Prevention notice
 - Clean up notice
 - Demolition / work order
 - Defective vessel notice
 - Suspension of licence / suspension of approval / suspension of request.
 - Cancellation of licence / cancellation of approval / cancellation of request.
 - Detention of a vessel
 - Court prosecution
- 5.2. An explanation of what each of these options entail is provided at Appendix C.

6. Other Matters

Review of Decisions

- 6.1. NSW Maritime may undertake a review of enforcement decisions.
- 6.2. All applications for decision review must be in writing, and must be made by the person against whom the decision has been made (or a legal representative acting for that person).
- 6.3. In the case of a young person (person under 18 years of age), an application may be made by a parent or guardian.
- 6.4. Applications for decision review may be made to NSW Maritime directly, or in cases where a Penalty Notice has been issued, to the State Debt Recovery Office.
- 6.5. Upon consideration of all the evidence, and the relevant views and opinions (including that of the applicant), a decision and explanation of NSW Maritime's position will be made and appropriate action taken.

Rights of Appeal

- 6.6. Upon receipt of NSW Maritime's decision, if the applicant is not satisfied, they may direct their complaint to an appropriate third party. In some cases, this may be the Administrative Decisions Tribunal (ADT) or in the case of a penalty notice review, the local court. A person who is not satisfied with any conduct of NSW Maritime or its officers can make application to the NSW Ombudsman for the matter to be examined. NSW Maritime's decision will include details of the appropriate review body.

Ethical Conduct

- 6.7. NSW Maritime officers are committed to the highest standards of professionalism and integrity, expecting high ethical standards of themselves and their colleagues in order to maintain the trust of the maritime community.

Feedback

- 6.8. NSW Maritime aims to continuously improve the delivery of services to its clients and therefore welcomes all types of feedback about its level of service delivery.

Appendix A Compliance Role

Recreational Vessels

- A.1 Compliance monitoring of recreational vessel activities including on-water monitoring on NSW coastal, off-shore and in-land waterways is the responsibility of Authorised Officers, including Boating Safety Officers (BSOs).
- A.2 BSOs conduct patrols to ensure people using NSW waterways do so in a safe and environmentally responsible manner.
- A.3 Patrols are used to monitor whether vessels are operating in compliance with appropriate water traffic rules such as speed restrictions and vessel wash requirements.
- A.4 BSOs conduct regular vessel inspection checks to ensure, for example, the safety equipment carried on board vessels meets minimum standards, is in good working order and easily accessible. These checks also monitor compliance with licensing, registration and mooring management requirements and the conduct of persons on board vessels.
- A.5 Recreational vessel activity is also monitored by the NSW Police Force Marine Area Command.

Aquatic Licences

- A.6 Aquatic Licences are issued to organisers of events on public waterways, with conditions, to ensure a balance between organised activities and other waterway users.
- A.7 Compliance with the conditions of Aquatic Licences may be monitored in two ways:
 - a) BSOs on-water monitoring of the event that is the subject of an Aquatic Licence; and
 - b) Pre and post major event briefings and de-briefings (eg, start of the Sydney to Hobart Yacht Race).

Commercial Vessels

- A.8 Off the water, commercial vessels are monitored for compliance with construction, equipment, and standards through the survey system. The survey system is designed to ensure all vessels operating commercially on NSW waters meet certain minimum standards of safety to protect persons, property and the environment.
- A.9 On the water, commercial vessel activity is regularly monitored for compliance by NSW Maritime BSOs, Investigators and SMS Auditors; and by the NSW Police Force Marine Area Command. These activities include compliance, licensing and safety equipment checks, and on-water auditing of safety management systems.

Safe Commercial Vessel Infrastructure

- A.10 Approximately 260 public ferry wharves are inspected to ensure the safety of users and operators of ferry services.

- A.11 Compliance monitoring responsibilities include inspection of commuter wharves, such as Sydney Harbour ferry wharves and wharves used by smaller commercial operators such as charter vessels in regional NSW, for any identified risk to the health or safety of persons using or operating public passenger services provided by ferries or other passenger carrying vessels.
- A.12 Processes are in place to ensure a separation of function between the inspection and the maintenance functions which is the responsibility of “owners” of the wharves they inspect.

Port Operations

- A.13 Responsibility for the port safety and environmental functions of the Ports of Newcastle, Sydney Harbour/Port Botany and Port Kembla reside with the Newcastle, Sydney and Port Kembla Port Corporations, respectively. This compliance is monitored through audit of their respective Port Safety Operating Licences.
- A.14 NSW Maritime is responsible for ensuring there are appropriate mechanisms in place to maintain high standards of marine safety and environmental protection in the trading ports and coastal waters of NSW at Yamba and Eden.

Property and Planning

- A.15 The bed of Sydney Harbour, Botany Bay, Newcastle Harbour and Port Kembla Harbour is publicly-owned land, managed by NSW Maritime. As a responsible landowner, NSW Maritime has an obligation to ensure that all works taking place on this portfolio are lawful, safe and provide an appropriate return to the NSW Government.
- A.16 The use or occupation of NSW Maritime’s land requires an appropriate tenure agreement – such as a lease or licence. NSW Maritime can take legal action for breaches of existing agreements or for works which take place without an existing agreement.
- A.17 As a consent authority for Sydney Harbour, NSW Maritime also has enforcement powers under the *Environmental Planning and Assessment Act 1979*. This includes the ability to make orders and to bring about proceedings in the NSW Land and Environment Court.

Environmental Protection

- A.18 NSW Maritime is the Appropriate Regulatory Authority for most vessel related pollution issues under the *Protection of the Environment Operations Act 1997* (POEO Act), including noise pollution. It also has compliance functions, along with the Port Corporations, in relation to ship sourced oil pollution and other vessel discharges such as sewage under the *Marine Pollution Act 18-987*.
- A.19 NSW Maritime Authorised Officer are able to exercise the functions of an Enforcement Officer under the POEO Act, in particular to issue a Penalty Notice.
- A.20 Compliance monitoring of these responsibilities is conducted through direct observation or by following-up on information received to establish whether an offence may have occurred.

Appendix B Acts and Supporting Regulations

Marine Pollution Act 1987

Marine Pollution Regulation 2006

Marine Safety Act 1998

Marine Safety (General) Regulation 2009

Marine Safety (Commercial Vessels) Regulation 2010

Maritime Services Act 1935

Management of Waters and Waterside Lands Regulations—N.S.W.

Port Authority—Land Traffic Control Regulations—N.S.W.

Passenger Transport Act 1990

Passenger Transport (Drug and Alcohol Testing) Regulation 2010

Passenger Transport Regulation 2007

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2000

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Protection of the Environment Operations Act 1997

Protection of the Environment Operations (Noise Control) Regulation 2008

Protection of the Environment Operations (General) Regulation 2009

NSW Maritime also has functions under other legislation that are administrative in nature and do not require specific compliance responses. These include:

Ports and Maritime Administration Act 1995

Ports and Maritime Administration Regulation 2007¹

Marine Safety Legislation (Lakes Hume and Mulwala) Act 2001

No principal regulations, rules or other instruments are available for this Act.

Navigation Act 1901

No principal regulations, rules or other instruments are available for this Act.

¹ Excluding provisions under Port Safety Operating Licence obligations.

Appendix C Glossary of Terms

Advisory Letter—

A letter advising a person of the requirements of legislation or good boating practice issued as a result of a specific event or incident.

Informal Warning Letter—

A letter advising a person of the marine or environmental legislative requirements that are applicable to a specific situation in which they are/were involved.

Formal Warning—

A letter informing a person that, unless the action specified in the notice is taken within the time set, action by issue of a Penalty Notice will be taken, or as a warning instead of a Penalty Notice.

Penalty Notice—

A notice under the relevant legislation requiring a person to pay a penalty amount for an alleged offence. A person issued with a Penalty Notice may elect for the matter to be heard by a Court.

Notice to Remove—

A notice requiring a person to remove a structure on NSW Maritime's land or an obstruction to navigation.

Other Statutory Notice or Direction—

A notice or direction served requiring a person to comply with the Marine Safety Act 1998 for items such as a notice to produce a document or other thing for the purposes of an investigation.

Prevention Notice—

A notice requiring a person or vessel operator to take steps to prevent a pollution or noise incident.

Clean Up Notice—

A notice requiring a person or vessel operator to take steps to clean up a pollution incident.

Demolition / Work Order—

An order requiring a person to demolish or remove an illegal structure or to remediate the site.

Defective Vessel Notice—

A notice requiring a person to remedy a noise related vessel defect.

Suspension of Licence / Approval / Request—

Suspension of a person's licence or approval or request because of alleged illegal activity.

Cancellation of Licence / Approval / Request—

Cancellation a person's licence or approval or request because of alleged illegal activity.

Detention of a Vessel—

By notice served on the master or owner of a vessel, NSW Maritime is able to detain a vessel to investigate whether it is unsafe or for the purposes of an investigation.

Court Prosecution—

Where NSW Maritime takes court action against a person for an alleged offence.