

# Complying with water management laws

## Fact Sheet

May 2018 Natural Resources Access Regulator



**Under the *Water Management Act 2000* (the WM Act), a water access licence or other approval from WaterNSW is generally required to extract water from rivers or aquifers (groundwater) to use for irrigation, industrial or commercial purposes. Requirements for a licence (or other approval) to access water depend on how and why the water is to be used.**

For more information about applications for water licences and approvals, please refer to the WaterNSW website at [www.watnsw.com.au/customer-service/water-licensing](http://www.watnsw.com.au/customer-service/water-licensing)

## Regulated activities, offences and penalties

The Natural Resources Access Regulator (NRAR) is responsible for ensuring compliance with NSW water management laws to enable secure and sustainable sharing of water between users and the environment.

Water theft and harming a water source are serious crimes which can threaten water supplies for authorised water users and harm the environment.

In order to protect authorised water users and the environment, the NRAR monitors and enforces compliance with the WM Act and the *Water Act 1912* (the Water Act). The Water Act is being progressively repealed and replaced by the WM Act; however some provisions are still in force.

### Regulated activities

The NRAR regulates various water-related activities to ensure compliance with water management legislation.

These regulated activities include but are not limited to:

- taking and using water from rivers, floodplains, lakes, aquifers and estuaries
- capturing and storing rainwater run-off (except from a roof)
- constructing and using water management works including bores, dams, tanks, pumps, levees, pipes, irrigation channels, weirs and causeways
- carrying out a controlled activity in, on or under waterfront land.

A licence or approval is usually required to undertake these activities. Some exemptions from requirements for a licence and/or approval apply, such as when activities are for the purpose of basic landholder rights to water.

### Basic landholder rights

Owners and occupiers can take water under landholder rights without a water licence or approval in certain circumstances. Exemptions for landholders from licensing and approval requirements may also apply for domestic and stock rights, harvestable rights and native title rights.



Further information on basic landholder rights, harvestable rights and native title rights can be found at [www.industry.nsw.gov.au/water/licensing-trade](http://www.industry.nsw.gov.au/water/licensing-trade).

## The offences

Some of the key offences and penalties under the WM Act are outlined below. These offence provisions also apply to activities regulated by the Water Act.

### Taking water when not authorised by a licence

It is an offence:

- for any person to take water without obtaining an access licence
- for the holder of an access licence to take water other than as authorised by the access licence
- for any person to breach any term or condition of an access licence
- for the holder of an access licence if another person associated with the holder breaches any term or condition of an access licence
- to take water other than from a water supply work that is nominated in the access licence
- to take water when there is not enough water in the water allocation account for an access licence.

### Constructing or using works or using water when not authorised by an approval

It is an offence for:

- any person to construct or use a water supply work without a water supply work approval
- any person to construct or use a flood work without a flood work approval
- any person to use water without a water use approval
- the holder of a water supply work approval to construct or use a water supply work other than as authorised by the approval
- the holder of a flood work approval to construct or use a flood work other than as authorised by the approval
- the holder of a water use approval to use water other than as authorised by the approval
- for the holder of an access licence if another person

associated with the holder breaches any term or condition of an approval

- any person to breach any term or condition of an approval.

### Offences relating to metering

It is an offence to:

- interfere with, damage, destroy or disconnect any metering equipment
- take water from a metered work if the meter isn't working properly
- fail to install metering equipment when required
- failure to report metering equipment not working
- fail to ensure the proper operation of any installed metering equipment
- failure to comply with a requirement for metering,
- fail to keep metering records, and
- making false statements or providing misleading information in connection with metering records.

It is the responsibility of the licence or approval holder to check their meter is working properly.

### Offences relating to activities in aquifers

It is an offence for anyone to harm an aquifer. This relates to an act or omission that adversely affects the capacity of an aquifer to hold or carry water.

A licence under Part 5 of the Water Act may be required for certain aquifer interference activities.

### Offences relating to activities in, on or under waterfront land

For the purposes of the WM Act, waterfront land includes the bed of any river, lake or estuary and all land within 40 metres inland of the shore/highest bank/mean high water mark of the relevant water body.

The carrying out of a work or activity, such as the erection of a building, the removal or deposition of material, or carrying out of any other activity that affects the quantity or flow of water in, on or under waterfront land is known as a controlled activity, for which a controlled activity approval is required. Examples of activities that may require a controlled activity approval include constructing river crossings, retaining walls or access ramps and stairs; works to address bank erosion and extracting sand or gravel.

For further information on the Natural Resources Access Regulator visit [industry.nsw.gov.au/nrar](http://industry.nsw.gov.au/nrar)



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It is an offence for:

- any person to carry out a controlled activity without a controlled activity approval
- the holder of a controlled activity approval to carry out a controlled activity other than authorised by the approval
- any person to breach any term or condition of a controlled activity approval
- the holder of a controlled activity approval to allow another person to breach any term or condition of the approval
- any person to harm waterfront land (this relates to an act or omission that adversely affects the capacity of waterfront land to hold or carry water).

## Other offences under the *Water Management Act 2000*

There are a number of other offences in the WM Act, including:

- drilling a bore when not authorised by a driller's licence
- not complying with a direction
- threatening, hindering, obstructing or delaying an authorised officer in the exercise of powers
- providing false or misleading information in connection with a requirement or an application.

## Who can be held liable for an offence?

Anyone who causes or permits an offence under the WM Act is liable and could face substantial penalties.

Property occupiers and co-holders of licences and approvals can be held accountable for offences on their property or breaches in connection with their access licence or approval.

The NRAR encourages all property owners and licence and approval holders to monitor water-related activities carried out on their land or in connection with their licence or approval to ensure compliance with NSW water management laws.

## What are the penalties?

There are substantial maximum penalties for offences under the WM Act.

Offence provisions that deal with intentional, negligent and reckless conduct are identified as 'Tier 1' offences and attract the highest penalties under the WM Act.

### Tier 1 Offences

The maximum penalty for individuals is \$1.1 million and/or prison terms of two years and, in the case of a continuing offence, a further penalty of \$132,000 for each day the offence continues.

The maximum penalty for corporations is \$5.005 million and, in the case of a continuing offence, a further penalty of \$264,000 for each day the offence continues.

### Tier 2 Offences

The maximum penalty for individuals is \$500 500 and, in the case of a continuing offence, a further penalty of \$66,000 for each day the offence continues.

The maximum penalty for corporations is \$2.002 million and, in the case of a continuing offence, a further penalty of \$132,000 for each day the offence continues.

### Penalty infringement notices

Offences can also be dealt with by way of a penalty infringement notice which is a set amount of \$750 per offence for individuals and \$1,500 per offence for corporations.

## What is the timeframe for compliance action?

Under the WM Act, the NRAR has three years from the date an offence was first committed or brought to the attention of an authorised officer to commence proceedings in a court. This allows time to thoroughly investigate and, if appropriate, commence a prosecution.

## Further information

This fact sheet is one in a series explaining water management, compliance and associated issues. You can find this series and further information about licensing, approvals and compliance on the NRAR website at [www.industry.nsw.gov.au/nrar](http://www.industry.nsw.gov.au/nrar).

Copies of the Acts and associated Regulations are available on the NSW Government legislation site at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

For enquiries call the NRAR on 1800 633 362 or email [nrar.enquiries@industry.nsw.gov.au](mailto:nrar.enquiries@industry.nsw.gov.au)



For further information on the Natural Resources Access Regulator visit [industry.nsw.gov.au/nrar](http://industry.nsw.gov.au/nrar)

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