


Investigating alleged breaches

Frequently asked questions

May 2018 Natural Resources Access Regulator



The Natural Resources Access Regulator (NRAR) is an independent regulator established under the NSW *Natural Resources Access Regulator Act 2017*. The current regulatory focus of NRAR is water regulation, a key part of which is to prevent, detect and stop illegal water activities.

The NRAR seeks to ensure effective, efficient, transparent and accountable compliance and enforcement measures through the natural resources management legislation and, in doing so, maintain public confidence in the enforcement of natural resources management legislation.



What do NSW water management laws regulate?

The *Water Management Act 2000* (the WM Act) and the *Water Act 1912* (the Water Act) control the extraction and use of water, the construction of works (such as pumps, bores, dams and weirs) and what activities can be undertaken in or near water sources. The *Water Act* is being progressively repealed and replaced by the WM Act, but some provisions are still in force.

How are alleged breaches identified?

Compliance with NSW water management laws is determined through a range of proactive and reactive programs.

The NRAR will plan a range of proactive, planned monitoring and inspection programs to determine the level of compliance within the regulated community. Proactive monitoring may include:

- the use of remote surveillance techniques such as aerial photography and satellite images, land and river surveys
- inspections/audits determined on the basis of a risk rating
- follow-up audits or more frequent auditing of identified poor performers or high-risk activities/businesses
- programs targeting a particular regulated community.

Reactive monitoring and inspections are undertaken in response to reports, incidents or other intelligence received by the NRAR.

How are alleged breaches investigated?

The NRAR maintains systems and procedures for logging reports from the community and regulated entities. Information from the reports is prioritised according to risk-based principles and investigated accordingly. Priority is given to situations that have the potential to cause serious harm and patterns of similar incidents that may suggest ongoing or broader issues.

Further investigation may be conducted following the risk assessment and this may involve a site inspection and information collection from the landholder and/or licence holder by an NRAR-authorized officer. Information collected by authorised officers may take the form of videos, photographs, samples, meter readings and physical evidence, witness statements and records of interview.



What powers do authorised officers have?

The WM Act provides authorised officers with various regulatory powers to gather evidence for a variety of purposes related to administering the Act.

Gathering evidence may be undertaken without exercising regulatory powers—for example, the use of satellite imagery. However, if a lawful occupier does not give permission, regulatory powers are necessary to:

- enter a person's private property and do things on a property (for example, inspect and test equipment, take samples and examine records)
- require a person to provide evidence (such as verbal answers, written information or records)
- take photos, films, audio, video and other recording as is necessary
- seize items relevant to their investigation (for example, invoices or equipment).

What can I expect during an investigation?

In most cases, an authorised officer will:

- explain the allegation to you
- explain the process the investigation will follow
- advise you of the outcome of the investigation once completed.

During an investigation, an authorised officer:

- can direct you to provide your name and address. Failing to comply or providing false information could result in a fine or prosecution.
- can direct you to answer questions and record the questions and answers. Failing to answer a question could result in a fine or prosecution; however compliance officers will provide appropriate warnings when asking questions.
- may require you to assist them with an activity (for example, turn on a pump)
- may require you to provide information and records to

which you have lawful access (for example, metering records).

It is an offence to hinder, obstruct, delay or threaten an authorised officer in the exercise of their duties.

What conduct can I expect from an investigating officer?

Authorised officers undergo appropriate internal or external training in relation to the exercise of their powers. All authorised officers are required to comply with the regulatory principles detailed in the NRAR Regulatory Policy, specifically:

- committing to regulatory best-practice
- taking an outcomes-focused approach to legislation
- accepting accountability and providing transparency
- acting in a timely way
- balancing the need for consistency with the need for flexibility
- demonstrating proportionality and exercising discretion in regulatory decision-making
- acting within the law.

Compliance decisions are made in accordance with public sector guidelines and to the highest ethical and professional standards.

Any approaches to bribe, influence or engage authorised officers in corrupt or unlawful behaviour will be reported immediately and will be investigated by the appropriate authority.

What action can be taken in response to a breach?

A graduated and proportionate approach to non-compliance is employed, based on the severity of the breach or non-compliance (its impact on the environment and potential harm to people or property) and the regulated entity's culpability, cooperation and approach to the non-compliance. Non-compliance is a breach of the law and must be treated as such—every instance of non-compliance that is detected requires a decision on what response to take. The NRAR will not hesitate to take



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strong enforcement action when required.

Increasing in response to the severity of a breach, enforcement actions may include:

- guidance and education, such as advisory letters information and training measures
- written or official warnings, stop-work orders or remediation directions
- penalty infringement notices, set at \$750 for individuals or \$1,500 for a corporation, per offence
- civil prosecution, licence variation or suspension/cancellation of licence or approval. Offences for serious non-compliance can lead to penalties of up to \$1.1 million for an individual and \$2.2 million for a corporation. Daily penalties also apply for each day that the offence continues and individuals can face up to two years' imprisonment for some offences.

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.
- Copies of the Acts and associated Regulations are available on the NSW Government legislation site at www.legislation.nsw.gov.au.
- For enquiries call the NRAR on 1800 633 362 or email at nrar.enquiries@nrar.nsw.gov.au.



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