

Responding to alleged breaches

Frequently asked questions

July 2019 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.

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 that 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 the activities that 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The Water Act is being progressively repealed and replaced by the WM Act, but some provisions are still in force.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.

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.

NRAR monitors and inspects reactively in response to reports of alleged breaches of water laws, incidents or other intelligence received.

How does NRAR respond to alleged breaches?

NRAR maintains systems and procedures for logging reports of alleged breaches from the community and regulated entities. NRAR applies a risk-based assessment to these reports to determine how to respond appropriately. NRAR gives priority to situations that have the potential to cause serious harm and patterns of similar incidents that may suggest ongoing or broader issues.

NRAR employs a suite of tools to respond to the assessed risk of an alleged breach of water law. These tools may include one, or a combination of the following:



- monitoring and auditing programs that are developed using intelligence gathered
- education and information campaigns
- incident management
- investigations and enforcement
- amending conditions in licences issued by NRAR.

NRAR may investigate reports of breaches following the risk assessment. This may involve an NRAR-authorized officer inspecting a site and collecting information from the landholder and/or licence holder. 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 gives NRAR-authorized officers various regulatory powers to gather evidence for a variety of purposes related to administering the Act.

NRAR may gather evidence without exercising regulatory powers—for example, NRAR may use 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 recordings 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 authorised officer?

Authorised officers undergo appropriate internal or external training in 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

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officers in corrupt or unlawful behaviour will be reported immediately and will be investigated by the appropriate authority.

How does NRAR respond to a breach?

NRAR has a range of responses to non-compliance when a breach of water law is confirmed. These take a balanced approach to addressing improper conduct and promoting changes in attitudes and behaviours, rather than simply applying a punishment. These compliance responses include, in increasing severity:

- guidance, education, information
- advisory letters
- warnings (written and verbal)
- cautions
- corrective action requests
- statutory directions such as stop-work orders and remediation notices
- enforceable undertakings
- penalty infringement notices (PIN) set at \$750 for individuals or \$1,500 for a corporation, per offence
- licence action (including suspension, variation or cancellation)
- civil action, such as:
 - debiting a water licence holder's account by up to five times the amount of water taken
 - imposing a penalty of up to five times the value of the water taken
 - injunctions for breaches of directions issued by NRAR
- prosecution. Serious non-compliance can lead to penalties of up to \$1.1 million for an individual and \$5.005 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.

NRAR will employ strong regulatory responses when required. In particular, if urgent action is needed to

address any ongoing and significant harm (potential or actual) to a water source, the environment or public safety, NRAR may issue stop-work orders or remediation directions before completing any investigation.

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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