



# Natural Resources Access Regulator Regulatory Framework

*How the Natural Resources Access Regulator delivers  
outcomes-focused and risk-based regulation*

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Natural Resources Access Regulator Regulatory Framework

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**More information**

Natural Resources Access Regulator, Lands and Water Division

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# 1. Introduction

The Natural Resources Access Regulator (NRAR) Board has endorsed the NRAR Regulatory Policy, which establishes regulatory strategies to effectively and efficiently achieve regulatory outcomes for water regulation in New South Wales<sup>1</sup>.

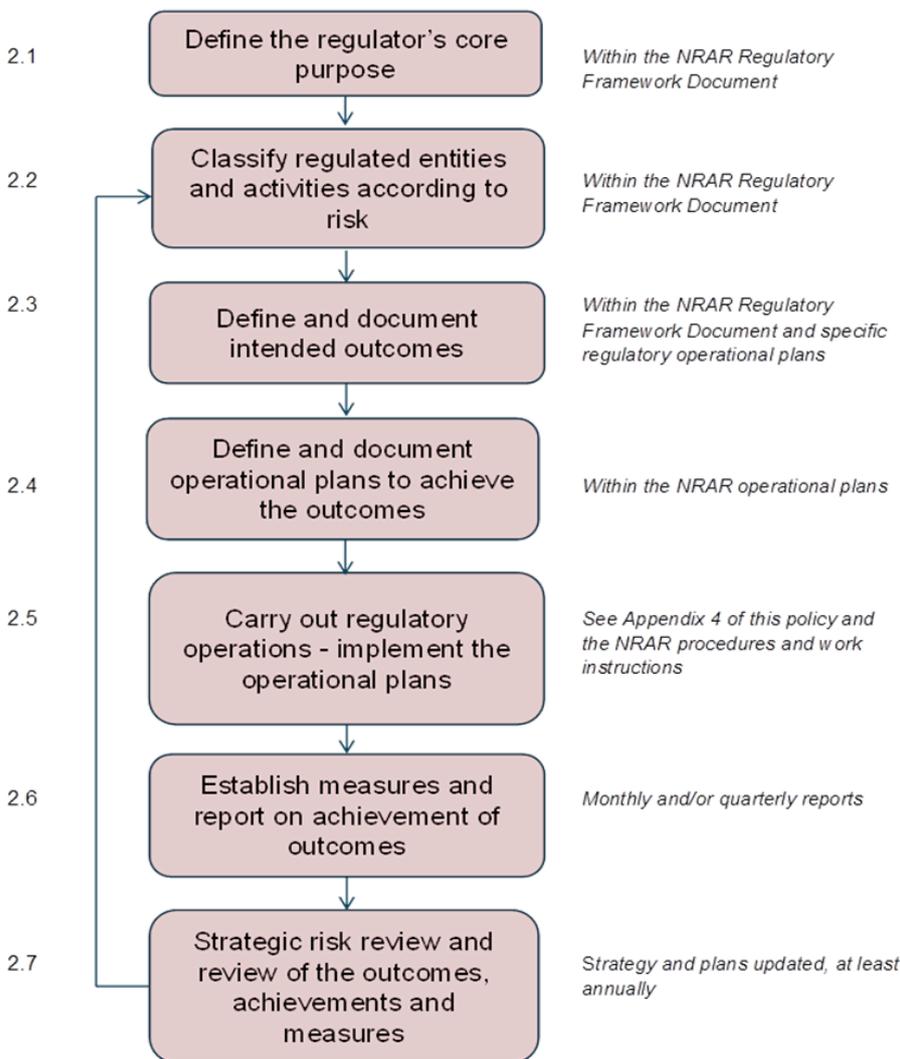
The policy’s objective is to ensure effective, efficient, transparent and accountable compliance and enforcement measures for the natural resources management legislation and to maintain public confidence in the enforcement of that legislation.

The policy adopts an outcomes-focused and risk-based regulatory approach that aligns with the requirements of the NSW Quality Regulatory Services Initiative.

This document describes how the NRAR addresses each of the regulatory framework elements in Section 2 of the NRAR Regulatory Policy (see Figure 1).

The framework also includes: appendices that describe how the NRAR applies a risk-based regulatory approach; a section holder for a future NRAR governance framework; a section holder for a future quality management system; and a description of how the NRAR’s policy, systems and processes satisfy the Murray–Darling Basin Authority’s review requirements for a compliance framework.

**Figure 1. NRAR Regulatory Framework**



<sup>1</sup> NSW Dams Safety Committee has developed a complementary regulatory policy and regulatory framework for administering dams safety regulation.

## 2. The NRAR's regulatory core purpose

The NRAR's regulatory core purpose is derived from the *Natural Resources Access Regulator Act 2017*, 'Principal objectives of the regulator', the *Water Management Act 2000* 'Objects' and 'Water management principles'.

The *Natural Resources Access Regulator Act 2017* states that the principal objectives of the regulator are to ensure effective, efficient, transparent and accountable compliance and enforcement measures for the natural resources management legislation and to maintain public confidence in the enforcement of that legislation.

The *Water Management Act 2000* objects are to provide for the sustainable and integrated management of the water sources of the state for the benefit of both present and future generations and, in particular to:

- apply the principles of ecologically sustainable development
- protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality
- recognise and foster the significant social and economic benefits to the state that result from the sustainable and efficient use of water, including benefits to the environment, benefits to urban communities, agriculture, fisheries, industry and recreation, benefits to culture and heritage, and benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water
- recognise the role of the community as a partner with government in resolving issues relating to the management of water sources
- provide for the orderly, efficient and equitable sharing of water from water sources
- integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna
- encourage the sharing of responsibility for the sustainable and efficient use of water between government and water users
- encourage best practice in the management and use of water.

The NRAR has developed and published a strategic plan that includes NRAR's vision and purpose statements as follows:

**NRAR's vision:** Thriving communities and healthy environments

**NRAR's purpose:** We ensure the fair use of our precious water resource and the safety of our dams.

To complement the NRAR's vision and purpose and to focus the NRAR on its core regulatory accountabilities, the NRAR has established a regulatory core purpose for water regulation.

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### ***NRAR regulatory core purpose***

*The NRAR administers the legislation to protect lawful water users<sup>2</sup> and the environment from harmful water activity.<sup>3</sup>*

*We do this by applying effective, efficient, transparent, ethical and accountable compliance and enforcement measures to maintain public confidence in the administration of the natural resources management safety legislation.*

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<sup>2</sup> Lawful users may be impacted by harmful water activity through inequitable sharing of a limited water resource or through a loss of reputation by being wrongly associated with the harmful activity (they may lose the community's "social licence" to use the water resource).

<sup>3</sup> The NRAR also recognises the significant social and economic benefits to the state that result from the sustainable and efficient use of water.

## 3. Classification of regulated entities and activities and defining and documenting outcomes

The NRAR's risk-based regulatory strategy is to focus NRAR's regulatory resources on regulated entity groupings and on particular activities that have the potential for greatest impact on equitable water sharing or environmental harm.

### 3.1. Regulatory remit—the regulated community and NRAR regulatory operations

#### 3.1.1. Licences and approvals

##### 3.1.1.1. Water access licences and water supply work approvals

The majority of water access licences (WALs) and water supply work approvals are issued by WaterNSW.

The NRAR assesses applications and issues water access licences and water supply work approvals for the following entities:

- government agencies, including other NSW government agencies, local councils and the Commonwealth
- state-owned corporations
- major water utilities, water supply authorities, and local water utilities
- licensed network operators under the *Water Industry Competition Act 2006*
- mining companies
- irrigation corporations
- Aboriginal communities and businesses
- floodplain harvesting
- major developments (state significant developments and state significant infrastructure)
- schools and hospitals.

##### 3.1.1.2. Controlled activities<sup>4</sup>

The NRAR assesses controlled activity applications and issues approvals for all controlled activities carried out in, on or beside rivers, lakes and estuaries.

##### 3.1.1.3. Input into other agency approvals

###### **State significant development/state-significant infrastructure**

- The NRAR provides advice to the NSW Department of Planning and Environment and major project proponents to ensure that development that may impact a water resource is sustainable and consistent with the broader management principles of the state's water resources.

###### **Integrated development**

- Integrated developments require a number of approvals under various environmental Acts. The NRAR assesses proposed developments against the requirements of the *Water Management Act 2000* in a similar way to the process for major developments. The NRAR issues general terms of approval, which are then incorporated into the relevant council's consent conditions. An application for a controlled activity usually follows this process.

#### 3.1.2. Compliance and enforcement

The NRAR has the responsibility for compliance monitoring and enforcement activities associated with:

- water access licences and associated works
- controlled activity approvals.

<sup>4</sup> The term "controlled activity" generally means erecting a building or a work, the removal or deposition of material or vegetation, or the carrying out of any other activity that affects the quantity or flow of water in a water source.

### 3.1.3. Education

The NRAR uses proactive education and communication to ensure the regulated community is:

- informed about the rules
- assisted to work within the rules
- aware of the consequences of breaking the rules
- engaged in reporting breaches and providing feedback.

The NRAR also employs an educative response to non-compliance when the:

- non-compliance is low in severity, i.e. where the actual or potential risk to, and impacts on, lawful water users and the environment are low
- offender has a low level of culpability and demonstrates a willingness and capacity to rectify the situation.

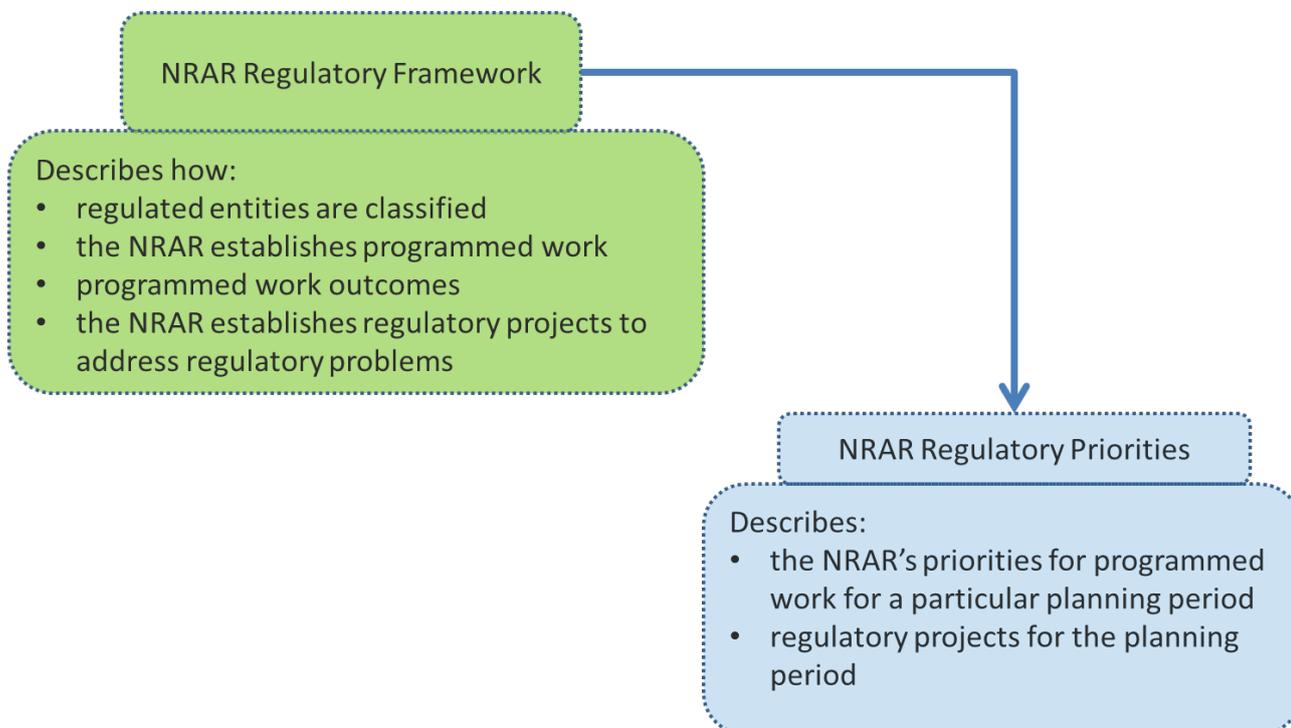
In this context, education is useful to avoid reoffending.

The NRAR carries out education and communication activities within the wider community. This is aimed at raising the community's awareness of how the NRAR operates within the water management legislative framework and to establish if the NRAR is achieving the principal objective of maintaining public confidence in the enforcement of the natural resources management legislation.

## 3.2. Classification—identifying regulatory responses

This classification section and the NRAR Regulatory Priorities document work together to establish the targets for NRAR's operational planning processes. This ensures that the NRAR's resources are used in the most effective and efficient way to achieve the required regulatory outcomes.

**Figure 2. NRAR Regulatory Framework's relation to priorities**



To achieve regulatory outcomes, the NRAR employs both:

- a programmed set of activities
- regulatory projects.

### 3.2.1. Programmed activities

Programmed activities are regulatory lifecycle activities that the NRAR undertakes on an ongoing basis to address enduring regulatory risks and issues. The NRAR ongoing programmed work is fundamental to meeting community expectations.

#### 3.2.1.1. Licensing and approvals

Outcome:

- Ensure that licences and approvals issued by NRAR impose conditions to ensure fair use of water and protect other water users and the environment.

##### 3.2.1.1.1. Water access licences and water supply work approvals

Prioritisation basis:

- The level of effort applied to the assessment of WAL and water supply work approval applications will be tailored<sup>5</sup> to the potential impact that an applicant may have on other users and the environment. This is determined through the size of the water take and eco-hydrological analysis of the location, as well as other factors related to the impact that the proposed activity could have on other users and the environment.

##### 3.2.1.1.2. Controlled activity approvals

Prioritisation basis:

- The level of effort applied to the assessment of controlled activity approval applications will be tailored to the potential impact that the proposed activity may have on other users and the environment. This is determined through factors such as the size of the proposal, its proximity to population centres, an eco-hydrological analysis that determines the ecological sensitivity of the location, as well as other factors related to the impact that the proposed activity could have on other users and the environment.

Rationale:<sup>6</sup>

- An effective assessment, licensing and approval process that controls entry to the regulated community ensures that the requirements are appropriately established to protect other users and the environment from illegal activity.
- An efficient process that tailors the assessment effort according to risk also maintains public confidence in the NRAR's oversight of the regulated community by demonstrating appropriate rigour with minimum wasted effort or expense and with the minimum burden on the regulated community.

##### 3.2.1.1.3. State-significant development and infrastructure and integrated development assessments

Outcome:

- Ensure that advice on proposed state significant development / state significant infrastructure and integrated development approval assessment is consistent with the protection of water users and the environment.

Prioritisation basis:

- The level of effort applied to the assessment of proposed developments will be tailored to the potential impact that the proposal may have on other users and the environment. This is determined through factors such as the size of the proposal, its proximity to population centres, an eco-hydrological analysis of the location, as well as other factors related to the impact that the proposed activity could have on other users and the environment.

<sup>5</sup> The NRAR will be developing the tailoring process for licences and approvals in 2019.

<sup>6</sup> The "rationale" describes how NRAR activities contribute to the overall outcome. The NSW QRSI describes this as a "contribution story". Program logic techniques can be used to more formally map activities to outcomes and will be incorporated in this Framework in 2019.

**Rationale:**

- An effective assessment process ensures that the requirements are appropriately established to protect other users and the environment from illegal activity. An efficient process that tailors the effort according to risk also maintains public confidence in the NRAR's oversight of the regulated community by demonstrating appropriate rigour with minimum wasted effort or expense and with the minimum burden on the regulated community.

**3.2.1.2. Monitoring and auditing****3.2.1.2.1. Water access licences and water supply work approvals—proactive****Outcome:**

- Reduce illegal water take by WAL holders through the use of programmed risk-based audits and inspections to detect and deter non-compliance.

**Prioritisation basis:**

- Surface water and groundwater sources and regions are classified into segments for compliance monitoring through a risk-based prioritisation approach using eco-hydrological analysis that identifies those areas (valleys, floodplains, water sources or river systems) where the impact of illegal water use is highest on other water users and the environment. Other factors such as location, size of water access and water sharing characteristics are also taken into account.
- The NRAR Regulatory Priorities document describes the water sources and regions that will be targeted for proactive compliance monitoring.
- Analysis tools are used to further target the NRAR resources within the selected water source or region. These tools include analysis of licence holder compliance history, water accounting records, remote sensing techniques and spatial analysis.
- Any detected non-compliance is addressed according to audit and inspection procedures; more complex or serious cases may be referred for specialist investigation.

**3.2.1.2.2. Controlled activities—proactive****Outcome:**

- Reduce harm to other water users and the environment by controlled activities, through the use of programmed risk-based audits and inspections to detect and deter non-compliance.

**Prioritisation basis**

- Water systems are classified into segments for compliance monitoring through a risk-based prioritisation approach using eco-hydrological analysis that identifies those water sources or river systems where the impact of illegal controlled activity is highest on other water users and the environment. Other factors such as major land use change may also be taken into account.
- The NRAR Regulatory Priorities document describes the water sources and river systems that that will be targeted for proactive compliance monitoring.
- Analysis tools are used to further target the NRAR resources within the selected water source or region. These tools include analysis of approval holder compliance history, remote detection techniques and spatial analysis.
- Any detected non-compliance is addressed according to audit and inspection procedures; more complex or serious cases may be referred for specialist investigation.

**Rationale:**

- Audits and inspections have been shown to be effective in detecting non-compliance. The continued presence of NRAR compliance and monitoring officers in the field carrying out audit and inspection activities provides an opportunity to reinforce the need for compliance<sup>7</sup>. The regular presence of NRAR compliance monitoring staff in the field also provides a general deterrent against illegal and harmful activity. The combination of detection, rule reinforcement and general deterrence will lead to better

<sup>7</sup> This is also known as the NRAR “boots on the ground” approach, which deters non-compliance and also maintains confidence that the NRAR is active in the community.

compliance with the requirements and an overall reduction in harm to other water users and the environment and an overall reduction in illegal water extraction

### 3.2.1.2.3. Reactive response

Outcomes:

- Reduce illegal water take and reduce harm to other users and the environment by detecting and deterring non-compliance through investigating reports of alleged breaches.
- Maintain confidence in NRAR's administration of the legislation by ensuring that all reports of alleged breaches are actioned.

Prioritisation basis:

- Alleged breaches are prioritised according to the potential impact of the alleged breach on other users and the environment. Initial prioritisation is through a triage process and audit, inspection, or investigation resources are assigned according to factors related to the potential consequence of the alleged breach and NRAR's compliance priorities described in the NRAR Regulatory Priorities document.

Rationale:

- Each report of potential non-compliance (an alleged breach) is an important source of information for NRAR, as each report could lead to the detection of significant harm to lawful water users and the environment. Patterns of alleged breach categories (eg. by industry location, or risk levels of alleged breaches) provide the NRAR with valuable information to identify emerging compliance issues and target compliance and education effort.
- It is important that the NRAR responds to each report of potential non-compliance, as the reporting community needs to be assured that the NRAR values this input from the community. This will contribute to the NRAR maintaining community confidence in its administration of the water management legislation.

### 3.2.1.3. Investigation and enforcement

Outcomes:

- Reduce illegal water take and harm to other users and the environment through a proportionate response to non-compliance with water management legislation.
- Maintain community confidence in the regulatory oversight provided by the NRAR.

Prioritisation basis:

- Enforcement resources are prioritised according to the potential impact of the alleged breach on other users and the environment, and the likely culpability of the alleged offender.

Rationale:

- A proportionate response to non-compliance, including a commitment to carry out prosecutions where warranted, has been shown to provide a specific and general deterrence against future non-compliance.
- The NRAR will publish the results of prosecutions, which will help to maintain community confidence through the recognition that the NRAR is willing to firmly address the small percentage of people who break the rules.
- A proportionate, transparent response ensures that those complying with the law, and the community, remain confident that the rules are being applied fairly.

### 3.2.1.4. Education

#### 3.2.1.4.1. Water access licences and controlled activities

Outcome:

- Increase compliance with the legislation by informing the regulated community about the rules, guiding them to work within the rules and raising awareness about the consequences of breaking the rules.

Prioritisation basis:

- Programmed education activities are targeted at WAL and approval holders in water sources and regions that are identified by eco-hydrological analysis as being of higher impact, in a similar way to compliance monitoring, above. Education resources are also applied in other areas where research and experience determines that behaviours can be best influenced by an education approach.

Rationale:

- Education activities motivate the regulated community to voluntarily comply with the rules by focusing WAL and approval holders on the need for compliance, promoting the benefits of complying with the rules and by making it easier to understand and follow the rules.
- Education also aids in deterrence by highlighting the consequences of breaking the rules and to help the community to recognise and report suspicious activities.

#### **3.2.1.4.2. State-significant development/state-significant infrastructure and integrated development**

Outcome:

- Achieve more efficient advice processes by informing the community about the rules, assisting them to work within the rules and raising awareness about the consequences of breaking the rules.

Prioritisation basis:

- Education activities are aimed at providing as much information as possible to stakeholders on the types and scale of development that requires NRAR attention, so that the NRAR effort is not unnecessarily spent on matters that have a low potential for impact on other water users and the environment.

Rationale:

- Education activities will lead to better quality submissions and fewer unnecessary submissions. This will lead to more efficient and effective processes, will allow the NRAR to apply assessment resources to developments that have greater potential to impact water users and the environment, and will allow more effort to be applied in other NRAR priority areas.

### **3.2.2. Regulatory projects**

Regulatory projects address regulatory problems or events that require a particular application or mix of regulatory responses that may not be routinely addressed through the NRAR's programmed activities.

Regulatory projects:

- are established to address emerging regulatory problems identified through intelligence activities and through information gained during compliance monitoring and other programmed activities
- address regulatory problems (or issues) that cut across NRAR programmed activities or regulated community boundaries, or address particular events
- are prioritised according to the potential impact of the risk or problem on lawful water users and the environment
- are established through project planning that includes problem definition, articulating regulatory outcomes for the project, allocating specific project resourcing, developing specific operational procedures, stakeholder engagement and reporting and evaluation requirements.

Examples of regulatory projects include: monitoring environmental water release events; monitoring compliance with new licences associated with the floodplain harvesting project; monitoring compliance with the conditions of licences held by mines; and new crop types that may introduce new risks to water use.

## 4. Defining and documenting operational plans to achieve the outcomes

Operational plans are documented to allocate resources to programmed work to achieve the regulatory outcomes. The operational plans are used to set priorities and plan workloads within the NRAR operational teams at a local level.

Regulatory project plans are also documented that describe resourcing and operational details for the project.

Operational plans are reviewed every six months to take into account changes in priorities that arise from unforeseen strategic priority changes and information gained through intelligence and compliance monitoring activities.

Operational plans are also documented for regulatory projects.

## 5. Carrying out regulatory operations—implementing the operational plans

The NRAR is organised to deliver regulatory activities and outcomes in accordance with the governance framework described in Appendix 2.

NRAR maintains a suite of processes and procedures that are referenced in the governance framework.

Staff training and capability development are carried out in accordance with an annual training plan prepared and delivered by NRAR's Capability and Coordination branch.

## 6. Establishing measures and reporting on achievement of outcomes

The NRAR reports a range of activity measures on the NRAR public website. The initial measures are in accordance with those established for the National Framework for Compliance and Enforcement Systems reporting format.

Additional measures, aimed at reporting how the NRAR is achieving regulatory outcomes, will be developed in 2019.

## 7. Strategic review, risk assessment and planning

NRAR has established a strategic plan which is reviewed as part of the NRAR annual strategic and business planning process.

The NRAR annual review includes:

- a process to identify future regulatory risks and emerging regulatory problems
- a process to identify future regulatory opportunities, such as emerging technologies
- a review of NRAR regulatory priorities
- a review of NRAR operational plans.

The NRAR initiates regulatory projects throughout the year in response to emerging regulatory problems. Each regulatory project requires a project plan with an associated regulatory outcome and process for review.

Similarly, operational plans may be amended throughout the year to take into account changing circumstances and emerging risks.

# Appendix 1 NRAR risk-based regulation

## Application of risk principles

This regulatory risk framework describes the NRAR's approach to regulatory risk and identifies the key areas within the NRAR regulatory framework and regulatory lifecycle where the NRAR applies risk principles to achieve effective and efficient regulation.

NRAR's risk-based regulatory approach applies risk principles to:

- prioritise regulatory activities and focus the NRAR's operational efforts
- guide regulatory decisions.

A risk-based approach to regulation:

- focuses NRAR resources where the consequences of non-compliance are greatest and where the likelihood of non-compliance is highest
- deploys NRAR's finite resources to the greatest effect
- applies the available regulatory tools to regulated community segments, or activities, based on the required outcomes
- promotes flexible and innovative responses to non-compliance
- reduces the compliance burden by tailoring regulatory intervention to match the assessed risks
- results in individuals and businesses not being inconvenienced by unnecessary regulatory activities.

## Risk considerations in the regulatory framework and lifecycle

All regulatory planning processes and regulatory decisions require a consideration of the risks involved and the outcomes that are to be achieved.

However, there are a number of key parts of the regulatory framework and the regulatory lifecycle which have a higher potential to impact on NRAR regulatory outcomes. The NRAR applies regulatory risk principles to these key areas to form the basis of the NRAR risk-based regulatory approach.

Risk management generally involves an assessment of the consequence and likelihood of an adverse event. A regulatory risk approach initially places an emphasis on the consequence aspects of potential non-compliance within the regulated community. The NRAR regulatory core purpose statement focuses the NRAR on minimising the consequence/impact of harmful water activity on lawful water users and the environment.

**Table A 1 Key parts of the regulatory framework and regulatory lifecycle where risk principles are applied**

Area	Brief description
Classifying entities and activities	The NRAR prioritises resources and applies resources to segments or activities based on the impact on the community and the environment of non-compliance within the segment and then the likelihood of non-compliance within that segment or activity
Licensing and approvals	The NRAR allocates resources to licensing activities and selects the level to which assessment is carried out, based on the potential impact of the approval, licence or licence type on the community and the environment
Proactive compliance monitoring	The NRAR carries out audits and inspections in accordance with plans that are produced by a risk-based planning process
Reactive response	The NRAR prioritises alleged breach notices for investigation, based on risk principles
Dealing with non-compliance	The NRAR response to non-compliance is based on actual or potential impacts on the community and the environment (as well as culpability aspects)

## Regulatory framework—risk considerations

### Classify regulated entities and activities according to risk

Classifying the regulated community into segments or activities to ensure regulatory effort is focused on the most important, or highest potential consequence, areas within water regulation.

Risk-based activity:

- The NRAR carries out segmentation of regulated entities or activities according to the consequences of non-compliance (impact, or harm). The segments are determined by factors such as:
  - environmental sensitivity to water use (using eco-hydrological analysis)
  - location
  - size of water access
  - water sharing characteristics.
- Programmed activities or regulatory projects are established to address each segment's, or activity's, characteristics, for example:
  - a relatively stable, high consequence segment might require programmed audits and inspections, the production and distribution of information/education material and an allocation of resources for responses to non-compliance
  - a particular regulatory problem might require a targeted set of audits or investigations, or a targeted information/education campaign through the establishment of a regulatory project
  - a lower consequence segment may have infrequent compliance monitoring, with regulatory outcomes achieved through education approaches alone
  - the NRAR plans regulatory activities and allocates compliance monitoring, education/information and enforcement resources to the programmed work and regulatory projects to achieve the required regulatory outcomes.
- Likelihood analyses, such as remote sensing, history of licence-holder compliance, water allocation analysis and intelligence methods are used to further target NRAR resources.

Result/output:

- Regulatory priorities are published at a minimum every two years and are usually more frequently updated as circumstances change. Operational plans are prepared annually as part of the NRAR corporate planning cycle and project operational plans are developed as needed. The plans are reviewed regularly in response to ongoing analysis of outcomes and to address changes in priorities that arise from unforeseen events and new information gained through compliance monitoring and NRAR information gathering activities.

Associated policy, process and procedure:

- NRAR Regulatory Policy
- NRAR Regulatory Priorities
- Operational plans
- Regulatory Project Plans.

## Regulatory lifecycle—risk considerations

### Licensing and approvals

The majority of NSW water access licences are issued by WaterNSW. The NRAR generally issues licences to larger users and state entities. The NRAR also issues approvals for controlled activities (for the erection of a building or the carrying out of a work, the removal or deposition of material or vegetation from land, or the carrying out of any other activity that affects the quantity or flow of water in a water source).

Risk-based activity:

- The NRAR assesses applications for licences and approvals against the legislative requirements.
- The level of assessment that the NRAR applies will vary according to the scope and nature of operations covered by the application.
- The NRAR will make risk-based resource allocation decisions to determine the level of regulatory effort that should be applied to each application.
- Applications that have relatively lower potential impact on other water users and the environment are allocated lower assessment resources.

Result/output:

- licences and approvals.

Associated policy, process and procedure:

- Licensing Manual
- Controlled Activities Procedures Manual.

### Monitoring and auditing compliance—proactive monitoring

Carry out planned audit and investigation activities.

Risk-based activity:

- The NRAR allocates compliance monitoring resources according to the consequences of non-compliance.
- The likelihood of non-compliance is then used as the basis for screening mechanisms to determine where resources are best applied within the programmed activity priority areas, or regulatory project
- Compliance officers plan individual audits and inspections according to risk principles.

Result/output:

- NRAR Regulatory Priorities document
- regional and team audit plans
- individual inspection, investigation and audit plans
- inspection, audit and investigation reports.

Associated policy, process and procedure:

- operational planning process
- Managing a Compliance Audit Program
- compliance audit procedures.

## Reactive response

Respond to reports of alleged legislative breaches received through the compliance hot-line, NRAR email address and through other contacts with the regulated and wider community.

Risk-based activity:

- The NRAR analyses each alleged breach notice and determines if further audit, inspection or investigation is warranted, based on the merits of the report (type of information, indication of a possible breach).
- The NRAR allocates compliance monitoring and investigation resources according to a risk assessment based on a number of consequence factors related to actual or potential impacts on the community and the environment.
- Each alleged breach notice is entered into the NRAR's compliance investigation reporting and management system (CIRaM).
- Team leaders allocate compliance monitoring and investigation resources to the potential breaches according to the results of the risk assessment.

Result/output:

- Alleged breaches are tracked through the CIRaM system as Alleged Breach Notices
- Inspection or investigation reports are produced.

Associated policy, process and procedure:

- compliance hot-line processes and procedures
- compliance audit procedures
- investigation procedures
- Managing a Compliance Audit
- Interviewing Witnesses and Suspects
- Authorised Officer Handbook.

## Dealing with non-compliance—deciding what action to take

Respond to the detection of a legislative non-compliance.

Risk-based activity:

- Once a legislative breach is detected, the NRAR employs a graduated and proportionate approach to non-compliance, based on the severity of the 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.
- Procedures are documented to guide staff in selecting and executing the correct process.
- An enforcement committee meets regularly to ensure consistent enforcement decision-making.

Result/output:

- Responses to non-compliance, in increasing severity, include:
  - advisory letters
  - warnings (written and verbal)
  - corrective requests
  - statutory directions such as stop work orders and remediation notices
  - penalty infringement notices
  - civil action, such as:
    - debiting a water licence holder's account by up to 5 times the amount of water taken, or
    - imposing a penalty of up to 5 times the value of the water taken
  - licence action (including suspension, variation or cancellation)
  - prosecution
  - enforcement committee minutes.

Associated policy, process and procedure:

- Managing Alleged Breaches
- Investigation Guidelines
- Taking a Compliance Action
- Penalty Notices
- Court Procedures and Giving Evidence
- Protocol for Engaging the Crown Solicitor's Office
- Prosecution Guidelines
- Enforcement Committee Terms of Reference.

## Appendix 2 The NRAR Governance Framework

This appendix will be developed in 2019 and will describe the NRAR Governance framework.

## Appendix 3    The NRAR Quality Management System

This appendix will be developed in 2019 and will describe the NRAR Quality Management System (QMS). While the NRAR has the majority of the elements of a QMS in operation, the appendix will formally describe how the NRAR QMS functions.

# Appendix 4 Murray–Darling Basin Compliance Compact

## Priority action 2.1—compliance framework

In 2017 and 2018, reviews into the integrity of water regulation in NSW highlighted concerns with, among other things, the transparency of regulatory decision-making associated with water licences and approvals.

The Murray-Darling Basin Authority and the relevant states agreed to address the recommendations of the reviews in a single document—the Murray–Darling Basin Compliance Compact.

The Compliance Compact is a collaborative, joint commitment by the Commonwealth Government and Basin states that aims to restore public confidence in water resource management in the Basin. The Compliance Compact provides a comprehensive response to the reviews into compliance and the integrity of Basin water management, including the Murray–Darling Basin Water Compliance Review (November 2017) and the interim and final reports of the independent investigation into NSW water management and compliance by Ken Matthews AO (September and November 2017).

The Compliance Compact sets priorities for action and commits the Commonwealth Government and Basin states to work plans that will be reported on regularly and publicly.

One of the Compliance Compact's priority actions—action 2.1—states:

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*2.1 Each Basin State and the MDBA will publish a revised compliance framework addressing the requirements of recommendation 6 of the MDB Compliance Review.*

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The following revised framework demonstrates how the NRAR addresses recommendation 6 [(a) (I)] of the Murray–Darling Basin Water Compliance Review (November 2017).

### **Recommendation 6 a) a risk-based strategy for guiding compliance monitoring effort**

The NRAR has published a Regulatory Policy that encompasses a risk-based strategy for guiding compliance monitoring effort. The NRAR's Regulatory Framework and Regulatory Priorities documents further guide risk-based prioritisation of education, licensing, compliance monitoring and enforcement effort and guide risk-based decision-making.

### **Recommendation 6 b) annual audit priorities**

The NRAR publishes its annual audit priorities within a Regulatory Priorities document published on the NRAR website.

### **Recommendation 6 c) an escalation pathway to apply once non-compliance is detected**

The NRAR has established an escalation pathway for alleged breach notices and detected non-compliance.

This includes a triage process to determine higher priority cases for investigation, a breach investigation process, and a recommendation process to an executive enforcement committee for decision on what enforcement action to take.

The following factsheets are published on the NRAR website: "Compliance with water legislation", containing a summary of the process; "Complying with water management laws"; and "Investigating alleged breaches – frequently asked questions".

Prosecution Guidelines are published on the NRAR website and internal NRAR procedures have also been published to guide the process.

### **Recommendation 6 d) a mandatory protocol for entitlement holders to follow in the event of meter failure**

The NSW Government has released the NSW non-urban water metering framework, which commenced on 1 December 2018. This framework includes new requirements in the *Water Management (General) Regulation 2018* for water users to follow in the event of a faulty meter. These new requirements come into effect on 1 April 2019. In the interim, the current regulatory requirements apply.

### **Recommendation 6 e) a statement of the penalties and sanctions regime, and any improvements required**

In 2018, NSW reviewed and amended the Water Management Act 2000 to include, amongst other things, a wider range of penalties. The Fact Sheet: “Compliance with water legislation” was published on the NRAR website in May 2018. The Fact Sheet contains a statement of the penalties and sanctions regime under the NSW Water Management Act 2000. The Fact Sheet was updated in August 2018 to reflect the legislative changes.

### **Recommendation 6 f) annual reporting of data on compliance activities by location including the timeliness with which allegations are addressed**

The NRAR Regulatory Policy includes the policy for reporting on compliance activities.

The NRAR published, on its website, regulatory activity for the first 100 and first 200 days since the establishment of the NRAR. Additional statistics will be added on a standard report format based on the National Framework for Compliance and Enforcement Systems reporting format, which includes timeliness aspects.

### **Recommendation 6 g) provisions to ensure compliance staff are adequately trained**

The NRAR has undergone a major recruitment program since establishment and has recruited a significant number of compliance and investigation specialists. The establishment of the NRAR has resulted in the regulator increasing staff numbers from approximately 70 staff to approximately 150 staff. Training for specialist staff includes a comprehensive induction training program in which ethics forms an essential element. The NRAR has also established an annual training program for compliance and investigation staff.

### **Recommendation 6 h) a program of community awareness and education including a program to ensure that water plans, licences and management rules are expressed as simply as possible and guides for these instruments are published**

The Department of Industry—Water will commence the development of a program of community awareness and education, including work to ensure that water plans, licences and management rules are expressed as simply as possible. Community consultation has commenced on water sharing plans that are being drafted to be simpler and easier to understand.

The NRAR has established an education and information section within its Capability and Coordination branch. An NRAR education strategy has been developed and is being used to guide NRAR’s priorities for a community awareness and education program.

### **Recommendation 6 i) a program to ensure information about entitlements, allocations, licence conditions, meter readings, account balances and so on are easily accessible to the public in real-time**

Working under the New South Wales Government Water Reform Action Plan, The NSW Water Renewal Taskforce, in partnership with key stakeholders and responsible agencies, is pursuing the development of a single register of integrated water management information that will be supported by a ‘one-stop-shop’ single user portal to access, interrogate, query and analyse data that has previously been captured on numerous datasets.

As agreed under the Murray–Darling Basin Compliance Compact the NSW government will publish a work program to improve the transparency of information about water take under entitlements to be implemented no later than 2025, by 30 June 2019.

**Recommendation 6 j) a program to ensure meters are identified by a unique reference number, and entitlement and pump details are publically accessible**

Entitlements and surface pump details are currently available on the NSW Water Register at [waterregister.watarnsw.com.au/water-register-frame](http://waterregister.watarnsw.com.au/water-register-frame).

The NSW Government has released the NSW non-urban water metering framework, which commenced on 1 December 2018. The new framework will improve the standard and coverage of non-urban water meters in NSW. The framework will be rolled out over the next 5 years and a program will ensure meters are identified by a unique reference number is part of this roll out.

**Recommendation 6 k) a commitment to effectiveness and efficiency, including the adoption of new technologies**

The NRAR Regulatory Policy published in February 2018 has made a commitment to achieving regulator efficiency and effectiveness.

The NRAR structure includes a branch dedicated to regulatory innovation, which will be seeking new technologies for regulatory oversight. NSW has established a number of technology pilot projects in water monitoring, metering and measuring technology.

**Recommendation 6 l) adequate resourcing based on a cost recovery pathway, with compliance budgets protected from the normal exigencies of government budgets**

The NRAR was established as an independent regulator, with an independent board, to ensure that adequate compliance resources are applied to compliance and enforcement.

The NSW Government has provided additional resourcing to increase the enforcement and compliance capability of the NRAR. NRAR is well on the way to tripling the number of compliance and investigations staff. NRAR will deliver its own pricing submission to the NSW IPART for the next determination period and is putting appropriate cost reporting structures in place to inform this process.