

Responding to alleged breaches

Frequently asked questions

May 2020 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 unlawful water activities.

To ensure the fair use of our precious water and minimise development impacts on waterfront land, we:

- inform, educate and engage to promote understanding of water laws and users' responsibilities
- issue licences and approvals
- monitor and audit the use of surface and groundwater
- respond to reports of suspicious water activity and investigate suspected high-priority breaches.



What do NSW water management laws regulate?

The *Water Management Act 2000* (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 on waterfront land.

The WM Act is replacing the Water Act. While this transition is largely complete, Water Act licences may be required—in limited circumstances—in areas where water sharing plans do not apply.

How does NRAR identify alleged breaches?

We use a range of proactive and reactive programs to determine compliance with NSW water management laws.

NRAR will plan a range of proactive 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, as well as 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. NRAR also receives reports of suspicious water activities from members of the public and other regulators such as councils.

How does NRAR respond to alleged breaches?

NRAR maintains systems and procedures for logging reports of alleged breaches from the community and other regulators, such as councils. NRAR applies a risk-based assessment of these reports to determine how to respond appropriately. NRAR prioritises 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 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 alleged high-priority 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 actions may NRAR take in response to an alleged breach?

NRAR can take a range of actions in response to an alleged breach of water law. These take a balanced approach to addressing improper conduct and promoting changes in attitudes and behaviours, rather than simply applying a punishment

These compliance actions include, in increasing severity:

- guidance, education, information
- advisory letters
- warnings (written and verbal)
- cautions
- statutory directions such as stop-work orders and remediation directions
- penalty notices set at \$750 for individuals or \$1,500 for a corporation for most offences
- 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

- enforceable undertakings
- 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. 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.

When NRAR issues a direction or penalty notice, agrees to an enforceable undertaking, or prosecutes a person, we publish details on the NRAR public register, available at www.industry.nsw.gov.au/nrar

More information

This fact sheet is one in a series explaining water management, compliance and associated issues. You can find this series and more 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 NRAR on 1800 633 362 or email at nrar.enquiries@nrar.nsw.gov.au.

For more information on the Natural Resources Access Regulator visit industry.nsw.gov.au/nrar



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