



Natural Resources Access Regulator

Compliance with water legislation

**Guidelines on reporting alleged breaches of the
Water Management Act 2000 and *Water Act 1912***

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1 Introduction

The purpose of these guidelines is to inform the regulated and wider community on:

- how to report alleged breaches of the *Water Management Act 2000* (WM Act) and *Water Act 1912* (Water Act) to the Natural Resources Access Regulator (NRAR)
- what happens if you report an alleged breach to the NRAR
- how the NRAR will respond to reports of alleged breaches.

1.1 Natural Resources Access Regulator

The Natural Resources Access Regulator (NRAR) is an independent regulator established under the *Natural Resources Access Regulator Act 2017* and reports to a board.

The NRAR has responsibility for ensuring that the regulated community achieves compliance with natural resources management legislation, including the WM Act and Water Act.

The NRAR legislative objectives are to:

- ensure effective, efficient, transparent and accountable compliance and enforcement measures for the natural resources management legislation
- maintain public confidence in the enforcement of the natural resources management legislation.

The NRAR seeks to build community confidence as a trusted, credible, effective, efficient and transparent regulator.

2 Water legislation

2.1 Offence framework

The WM Act and Water Act specify offences for particular breaches of the Acts' requirements.

Key offences include:

- taking water from a river, lake, estuary, floodplain or aquifer without a licence, or when not authorised by a licence
- using water, such as for irrigation, without an approval or when not authorised by an approval
- constructing or using works, such as a water pump or water bore, without an approval or when not authorised by an approval
- carrying out activities on waterfront land, such as constructing a crossing or carrying out excavation work, without an approval or when not authorised by an approval
- interfering with or damaging metering equipment, or taking water when metering equipment is not working

A summary of offences under the WM Act and Water Act is provided at the end of this guideline.

3 Breaches of water legislation

3.1 Alleged breach notification

An alleged breach notification is when a person notifies the NRAR that they believe a breach of the WM Act or Water Act has occurred or is occurring.

3.2 Who can report a breach

An alleged breach notification may be made by:

- **person responsible**

If a person believes they may have committed a breach of the WM Act or Water Act, the person is encouraged to notify NRAR. Self-notification is relevant to the person's culpability.

The conditions of a licence or approval under the WM Act or Water Act may require the holder to report a breach.

- **member of public**

Any person may make an alleged breach notification.

A member of the public may make an alleged breach notification because:

- they have been directly affected by the alleged breach, such as by damage to property or water shortages
- they are motivated to protect the public interest, such as public resources or the integrity of the regulatory system.

A person who makes an alleged breach notification is called the 'informant'.

3.3 How to report a breach

Anyone can make an alleged breach notification via the water compliance hotline by:

- phone 1800 633 362 or
- email nrar.enquiries@industry.nsw.gov.au
- [online form \(link\)](#)

3.4 What information to provide

You should provide as many details about the alleged breach as possible to help NRAR assess the matter and determine appropriate investigation processes.

Details you should try and provide are:

- your name and contact details
- type of activity
- time, date and location of activity
- description of any vehicles or plant involved, including registration numbers and markings
- any photos or recordings of the activity
- any other information that you think may be relevant.

If you provide your contact details in an alleged breach notification:

- you will receive an acknowledgement letter from the NRAR
- you may be contacted by an officer from the NRAR for further information to assist in assessing the priority of the matter or to provide further information to assist the investigation.

3.5 What happens when an alleged breach is reported

The NRAR takes all alleged breach notifications seriously. All alleged breach notifications are managed in accordance with the phases shown in Figure 1 and described below.

3.5.1 Recording

All details provided in the alleged breach notification are recorded in a secure database.

3.5.2 Triage

The NRAR is a risk-based regulator, which means it focuses its efforts on those matters that most seriously impact on a water source, the environment, other water users or the credibility of the regulatory framework for water management in NSW. To do this, all alleged breach notifications are triaged and prioritised within 10 working days of receipt.

The purpose of the triage phase is to assess whether a breach of the WM Act or Water Act may have occurred, and if so to prioritise the breach for investigation, based on its relative seriousness.

If no potential breach is identified or there is insufficient information to complete the triage, the matter may be finalised.

3.5.3 Investigation phase

The purpose of the investigation phase is to gather evidence to:

- determine whether an offence has been committed, and if so
- identify the offender(s) and their culpability
- determine the seriousness of the offence.

Sources of evidence include field investigations, site inspections, written records, records of answers to questions, records of interviews, witness statements, vehicle registrant details and expert evidence.

The duration of an investigation will be dependent on the complexity of the matter.

3.5.4 Evaluation phase

The evidence gathered during an investigation is then evaluated by a separate NRAR officer to determine whether the evidence gathered during the investigation is sufficient to confirm an offence/s and to evaluate the significance of the offence/s. The evaluation will be completed within 20 working days of the completion of an investigation.

3.5.5 Decision phase

NRAR will make a decision about what compliance and enforcement action should be taken in relation to the alleged breach, based on the available evidence from the investigation, the evaluation of that evidence, and having regard to the NRAR Prosecution Guidelines and other relevant policy. NRAR will take enforcement action for breaches of the water legislation where necessary, with the type of response being proportionate to the seriousness of the offence/s. Enforcement options are outlined in section 4.

These decisions are made within 40 working days of the completion of the evaluation.

3.5.6 Finalisation phase

All alleged breach notifications are formally closed once a decision has been reached by NRAR. The reasons for NRAR's decision are recorded in NRAR's case management system. Informants are notified of the outcome within five working days of NRAR's decision.

The NRAR will publish the details of successful prosecutions on the NRAR website. NRAR may also record enforcement actions on a public register.

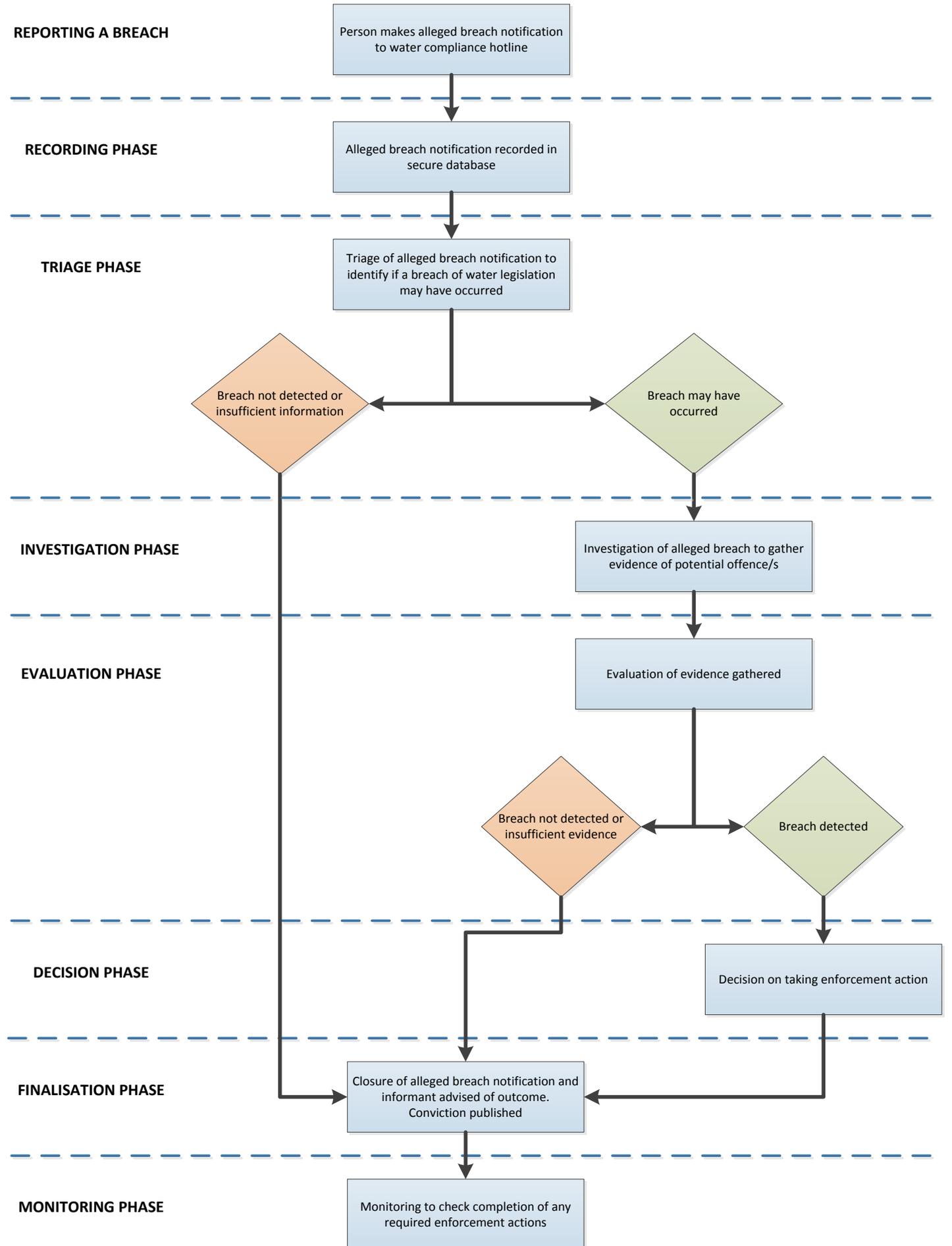
3.5.7 Monitoring

Where NRAR resolves a breach through a direction or order, NRAR will monitor that a person completes any required actions in the manner and within the timeframe specified in the direction or order.

Failure to comply with a direction or order is an offence under the WM Act.¹

¹ *Water Management Act 2000*, s 327–329.

Figure 1. What happens when an alleged breach is reported



3.6 When and what you will hear from NRAR during an investigation

An informant will be advised of the following information during the course of an investigation:

- when an investigation is initiated:
 - general information as to what is proposed to be done about the alleged breach notification
 - the likely timeframes for the actions proposed
 - the nature of the informant's likely involvement in the actions to be taken
 - what information will be provided to the informant and at what stages during the course of the investigation
 - the name and contact details of a person within the agency who will be responsible for responding to the alleged breach notification
- during an investigation:
 - the progress so far in general terms
 - the reasons for any delay
 - when it is anticipated the investigation will be completed
- When an investigation is complete:
 - the general outcome of the investigation
 - the reasons for the outcome.

The NRAR is not able to disclose information to informants if that disclosure may:

- jeopardise an investigation
- expose a person to harm or intimidation
- release personal information which could identify another person.

3.7 Witnesses

If an alleged breach notification is investigated, the investigating officer may contact the informant about making a witness statement.

If the matter proceeds to court, this witness statement may form part of NRAR's evidence submitted to the court, and the person making the statement may be called to appear as a witness in the court proceedings.

An informant may decline to make a witness statement.

3.8 The options if you are not satisfied

There is no appeal process available to the informant under the WM Act or Water Act.

If an informant is not satisfied with the outcome of an investigation, the following options are available:

- make a complaint to the NRAR
- make a complaint to the NSW Ombudsman
- civil proceedings.

3.8.1 Complaint to NRAR

The informant may make a complaint directly to the NRAR about the NRAR's response to their alleged breach notification.

Details about how to make a complaint are provided on the NRAR's website.

3.8.2 Complaint to NSW Ombudsman

The informant may make a complaint to the NSW Ombudsman about the NRAR's response to their alleged breach notification.

The NSW Ombudsman investigates complaints from members of the public about the administrative processes of NSW Government agencies, including NRAR, to ensure they fulfil their functions properly.

3.8.3 Civil proceedings

The informant may bring civil enforcement proceedings to the Land and Environment Court to remedy or restrain a breach of the WM Act or Regulations.

3.9 Your privacy

The NRAR handles all information in accordance with the *Privacy and Personal Information Protection Act 1998*.

You are encouraged to provide your name and contact details when you make an alleged breach notification but you are not required to do so.

If you do not provide your name and contact details, and there is not sufficient information for the NRAR to investigate your allegation, then your alleged breach notification may be closed.

4 Enforcement

4.1 How water legislation is enforced

The WM Act provides powers that NRAR can use to take enforcement action for breaches of the WM Act or Water Act.² These enforcement powers include:

- orders to direct a person to take an action, such as removing an unauthorised work or remediating damage done³
- payment of penalty notice⁴
- suspension or cancellation of licence or approval⁵
- debit of water user's water allocation account⁶
- enforceable undertakings⁷
- prosecution⁸

In addition, any person may bring proceedings in the Land and Environment Court to remedy or restrain a breach of the WM Act.⁸

² *Water Management Act 2000*, s. 232(2).

³ *Water Management Act 2000*, s. 327–329.

⁴ *Water Management Act 2000*, s. 365.

⁵ *Water Management Act 2000*, s. 78–78A, 109.

⁶ *Water Management Act 2000*, s. 60G.

Water Management Act 2000, s. 336E.

⁸ *Water Management Act 2000*, s. 364.

⁸ *Water Management Act 2000*, s. 336

4.1.1 Guilt and liability

A person is guilty of an offence under the WM Act or Water Act and liable for the specified penalty if they:

- cause or permit the offence, or
- assist another person to commit the offence, or
- attempt to commit the offence, or
- agree with other persons to commit the offence.⁹

4.1.2 Tiers of offences

Offences under the WM Act are classified in tiers depending on the level of culpability of the person who committed the offence.

4.1.2.1 Tier 1 offences

For Tier 1 offences, the person committed the offence intentionally, or due to negligence or recklessness. This is the most serious kind of offence and has the highest penalties.

4.1.2.2 Tier 2 and 3 offences

Tier 2 and 3 offences are strict liability offences, and there is no requirement to prove the person committed the offence intentionally, or due to negligence or recklessness. The offence may have been committed accidentally or inadvertently.

These offences have lower penalties than Tier 1 offences.

4.1.3 Penalties

4.1.3.1 Penalties under the *Water Management Act 2000*

Penalties for offences under the WM Act are based on whether the offence is tier 1, 2 or 3, and whether the offence was committed by a person or corporation.¹⁰

A tier 1 offence has a maximum penalty of:

- For a corporation: \$5.005 million; and a further \$264,000 each day the offence continues
- For a person: two years' imprisonment, or \$1 million, or both; and a further \$132,000 each day the offence continues.

A tier 2 offence has a maximum penalty of:

- For a corporation: \$2.002 million; and a further \$132,000 each day the offence continues
- For a person: \$500,500; and a further \$66,000 each day the offence continues.

A tier 3 offence has a maximum penalty of \$11,000.

4.1.3.2 Penalties under the *Water Act 1912*

Penalties for offences under the Water Act are specified for each offence under that Act.

The maximum penalty for an offence under the Water Act is \$22,000.

⁹ *Water Management Act 2000*, s347.

¹⁰ *Water Management Act 2000*, s363B.

5 Summary of offences under the WM Act

Table 1. Summary of offences under the WM Act

Summary of offence	Offence provision
Access licences	
Taking water without an access licence	Section 60A(1)—tier 1 Section 60A(2)—tier 2
Taking water with an access licence—but not in accordance with the access licence Includes taking water while an access licence is suspended.	Section 60A(3)—tier 1 Section 60A(4)—tier 2
Taking water with an access licence—but not in accordance with the terms or conditions of the access licence	Section 60B(1) and (2)—tier 2
Taking water with an access licence—but when there is there is no water allocation or insufficient water allocation	Section 60C(1), (5), (7)—tier 1 Section 60C(2), (6), (8)—tier 2
Taking water with an access licence—but not from a nominated water supply work or extraction point	Section 60D—tier 2
Fraud relating to an access licence certificate, the Access Register, or a document issued by the Minister	Section 87C—tier 2
Water use approvals	
Using water without a water use approval	Section 91A(1)—tier 2
Using water with a water use approval—but not in accordance with the approval Includes using water while the approval is suspended	Section 91A(2)—tier 2
Using water with a water use approval—but not in accordance with the terms or conditions of the approval	Section 91G(1), (2)—tier 2
Water supply work approvals	
Constructing or using a water supply work without a water supply work approval	Section 91B(1)—tier 2
Constructing or using a water supply work with a water supply work approval—but not in accordance with the water supply work approval Includes constructing or using the work while the water supply work approval is suspended	Section 91B(2)—tier 2
Constructing or using a water supply work with a water supply work approval—but not in accordance with the terms or conditions of the approval	Section 91G(1), (2)—tier 2

Summary of offence	Offence provision
<p>Drainage work approvals</p> <p><i>Note. Requirements for drainage work approvals under the WM Act have not yet commenced. Drainage works are required to be authorised by a Part 2 licence under the Water Act.</i></p>	
Constructing or using a drainage work without a drainage work approval	Section 91C(1)—tier 2
<p>Constructing or using a drainage work with a drainage work approval—but not in accordance with the drainage work approval</p> <p>Includes constructing or using the work while the drainage work approval is suspended</p>	Section 91C(2)—tier 2
Constructing or using a drainage work with a drainage work approval—but not in accordance with the terms or conditions of the approval	Section 91G(1), (2)—tier 2
<p>Flood work approvals</p>	
Constructing or using a flood work without a flood work approval	Section 91D(1)—tier 2
<p>Constructing or using a flood work with a flood work approval—but not in accordance with the flood work approval</p> <p>Includes constructing or using the work while the flood work approval is suspended</p>	Section 91D(2)—tier 2
Constructing or using a flood work with a flood work approval but not in accordance with the terms or conditions of the approval	Section 91G(1), (2)—tier 2
<p>Controlled activity approvals</p>	
Carrying out a controlled activity without a controlled activity approval	Section 91E(1)—tier 2
<p>Carrying out a controlled activity with a controlled activity approval—but not in accordance with the controlled activity approval</p> <p>Includes carrying out a controlled activity while the controlled activity approval is suspended</p>	Section 91E(2)—tier 2
Carrying out a controlled activity with a controlled activity approval—but not in accordance with the terms or conditions of the approval	Section 91G(1), (2)—tier 2

Summary of offence	Offence provision
<p>Aquifer interference approvals</p> <p><i>Note. Requirements for aquifer interference approvals under the WM Act have not yet commenced. Aquifer interference activities are required to be authorised by a Part 5 licence under the Water Act.</i></p>	
Carrying out an aquifer interference activity without an aquifer interference approval	Section 91F(1)—tier 2
<p>Carrying out an aquifer interference with an aquifer interference approval—but not in accordance with the aquifer interference approval</p> <p>Includes carrying out an aquifer interference while the aquifer interference approval is suspended</p>	Section 91F(2)—tier 2
Carrying out an aquifer interference with an aquifer interference approval—but not in accordance with the terms or conditions of the approval	Section 91G(1), (2)—tier 2
<p>Metering equipment</p>	
Failure to install or use metering equipment in accordance with the conditions of an access licence or approval, or a direction	Section 91H(1)—tier 2
Failure to ensure the proper operation of metering equipment	Section 91H(2)—tier 2
Failure to comply with a standard or requirement for metering equipment	Section 91H(3) - tier 2
Taking water using a metered work while its metering equipment is not operating properly or is not operating	<p>Section 91I(1)—tier 1</p> <p>Section 91I(2)—tier 2</p>
Failure to report metering equipment not working	Section 91IA – tier 2
<p>Failure to keep metering records when required to do so</p> <p>Making false statements or providing false or misleading information in connection with metering records which they are required to keep on a material particular</p>	<p>Section 91J(1) – tier 2</p> <p>Section 91J(2) – tier 2</p>
Meter tampering	<p>Section 91K(1)—tier 1</p> <p>Section 91K(2)—tier 2</p>
<p>Offences relating to enforcement actions</p>	
Failure of a person to comply with a direction under Part 1 of Chapter 7 of the WM Act	Section 336C(1)—tier 2
Failure of a person to comply with a requirement made to that person under Part 2 of Chapter 7 of the WM Act	Section 340A(1)—tier 2
Failure of a person to comply with a Court order under Part 3A of Chapter 7 of the WM Act	Section 353H—tier 2

Summary of offence	Offence provision
Offences relating to evidence gathering	
Providing false or misleading information	Section 340A(2)—tier 2
Threatening, hindering, obstructing or delaying an authorised officer	Section 340A(3)—tier 2
Threatening, hindering, obstructing or delaying a person exercising certain functions of irrigation corporations	Section 120(4)—tier 2
Impersonating an authorised officer	Section 340A(4)—tier 2
Public works and joint private works	
Taking water from works relating to the Minister, Ministerial Corporation, a water supply authority, or a private infrastructure operator	Section 343(1)—tier 2
Destroying, damaging or interfering with certain works relating to the Minister, Ministerial Corporation, a water supply authority, or a private infrastructure operator	Section 342(1)(a)—tier 2
Destroying, damaging or interfering with reference markers which have been fixed for the purposes of the WM Act	Section 342(1)(b)—tier 2
Depositing something in a work relating to the Minister, Ministerial Corporation, a water supply authority, or a private infrastructure operator	Section 342(2)—tier 2
Exposure of a water supply authority's underground pipes or works without two days' written notice to the water supply authority	Section 318A—tier 2
Undertaking unlicensed plumbing work	Section 318B—tier 2
Other offences	
Making a statement in an application under the WM Act or regulations which the person knows is false or misleading	Section 344—tier 2
Causing harm to aquifers or waterfront land	Section 345(1)—tier 1 Section 345(2)—tier 2
Drilling a bore but not in accordance with a bore driller's licence held by the person	Section 346—tier 2

6 Summary of offences under the *Water Act 1912*

This is a summary of the offences under the Water Act.

Table 2. Summary of offences under the Water Act

Action	Offence provision
Part 2 Licences	
Using a work authorised by a licence when the licence is suspended	Section 17B(1)(a)
Using a work authorised by a licence when the licence is revoked or cancelled, or has expired	Section 17B(1)(b)
Contravention of a term, limitation or condition of a licence	Section 17B(1)(c)
Failure to comply with a notice that the licence has been modified, restricted or suspended	Section 17B(1)(d)
Taking water before a work authorised by the licence has been wholly constructed	Section 17B(1)(e)
Part 2 Permits	
Using a work authorised by a permit when the permit is suspended	Section 18R(1)(a)
Using a work authorised by a permit when the permit is withdrawn or expired	Section 18R(1)(b)
Contravention of a limitation or condition of a permit	Section 18R(1)(c)
Part 2 Authorities for joint water supply schemes	
Using a work authorised by an authority when the authority is suspended	Section 20HA(1)(a)
Using a work authorised by an authority when the authority is revoked or cancelled, or has expired	Section 20HA(1)(b)
Contravention of a term, limitation or condition of an authority	Section 20HA(1)(c)
Failure to comply with a notice that the authority has been modified, restricted or suspended	Section 20HA(1)(d)
Part 2 Group licences	
Using a work authorised by a group licence when the group licence is suspended	Section 20SA(1)(a)
Using a work authorised by a group licence when the group licence is revoked or cancelled, or has expired	Section 20SA(1)(b)
Contravention of a term, limitation or condition of a group licence	Section 20SA(1)(c)
Failure to comply with a notice that the group licence has been modified, restricted or suspended	Section 20SA(1)(d)

Action	Offence provision
Part 2 generally	
Pollution of a river or lake	Section 21A
Constructing, erecting or using a work without a licence, permit, authority or group licence	Section 21B(1)(a)
Failure to comply with a direction to remove a work situation on the person's land	Section 21B(1)(b)
Failure to comply with a direction to carry out a work to permit the flow of water or prevent the use of a work	Section 21B(1)(c)
Authorisations under Part 5 generally	
Sinking of a bore, well or excavation, or its enlargement, deepening or alteration, without a licence	Section 112(1)
Alteration of a licensed bore, well or excavation	Section 117I(a)
Taking or using water from an unlicensed bore, well or excavation	Section 117I(b)
Taking or using water from a licensed bore, well or excavation while the licence is suspended	Section 117I(c)
Taking or using water from a licensed bore, well or excavation—but not in accordance with the conditions of the licence or the provisions of Part 5 of the Water Act	Section 117I(d)
Interference with or obstruction of sub-surface water	Section 121A(1)
Failure to comply with an order to remove an artificial obstruction which obstructs the flow of sub-surface water	Section 121A(2)(a)
Failure to comply with an order to carry out works to permit the flow of sub-surface water	Section 121A(2)(b)
Failure to comply with an order to render an unlicensed bore, well or excavation ineffective	Section 121A(2)(c)
Water management authorities	
Using a water management work without a water management licence	Section 195(1)
Contravention of conditions of water management licence	Section 198(1)(a)
Failure to comply with direction for remedial work	Section 198(1)(b)
Metering equipment	
Damaging a water meter or other measurement device	Section 20AC(2)(a)(i) Section 117D(1)(a)(i)
Preventing a water meter from recording the quantity of water taken	Section 20AC(2)(a)(ii) Section 117D(1)(a)(ii)

Action	Offence provision
Interfering with a water meter or other measurement device without the consent of the Ministerial Corporation	Section 20AC(2)(a)(iii) Section 117D(1)(a)(iii)
Enforcement action	
Obstructing or hindering a person performing their duties under Part 2 of the Water Act	Section 23

Version control and change history

Version	Approved date	Approved by	Notes
1	May 2018	Chief Regulatory Officer	N/A
2	July 2018	Chief Regulatory Officer	Updated to include amendments under the Water Management Amendment Act 2018 Reference to publishing convictions and putting enforcement action on a public register