

Natural Resources Access Regulator

Regulatory policy



Natural Resources
Access Regulator

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1. Introduction

The Natural Resources Access Regulator (NRAR) is an independent regulator established under the [Natural Resources Access Regulator Act 2017](#). We are responsible for ensuring compliance with natural resources management legislation, which currently includes the *Natural Resources Access Regulator Act 2017*, [Water Management Act 2000](#), [Water Act 1912](#) and associated regulations. This policy supports our [NRAR Strategic Plan](#) goal of outcomes driven by innovation and targeted programs-based work, that enables lawful activity and encourages widespread voluntary compliance.



Our vision

Together, we create thriving environments, communities and economies.

Our purpose

We build public trust and confidence as a regulator by:

Educating, enabling, and encouraging people to actively comply with natural resources laws.

Enforcing the law to provide a deterrent, and to ensure fairness for the compliant; and

Championing improvements to the management of natural resources.

Our principal objectives are to:

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

We publish information on [our website about who we are, what we do and how we ensure compliance](#).

To achieve our legislative objectives, we will:

- promote compliance with the objectives of the *Water Management Act 2000* and the *Water Act 1912*
- achieve best-practice management and regulation of surface water and groundwater
- take a risk-based and outcomes-focused approach to regulation
- guide decision-making and action by officers through the adoption of a graduated and proportionate response to non-compliance
- ensure decisions on enforcement action are transparent to the community
- ensure we adhere to the [NRAR Code of Ethics and Conduct](#) and our [embedding ethics into NRAR's DNA](#) framework.

We seek to build community confidence as a trusted, credible, effective, efficient and transparent regulator. By applying this policy, and its associated policies and strategies, we will better mitigate regulatory risks, deliver greater certainty for the regulated and wider community and contribute to the sustainable use of, and access to, natural resources.

We expect the regulated community to comply with their regulatory requirements and understand that most of the regulated community voluntarily meet their obligations. We will encourage and assist those willing to comply voluntarily using appropriate approaches including education, guidance and advice. However, when instances of non-compliance are detected, we will not hesitate to take enforcement action, including prosecution where appropriate.

1.1 Purpose of this document

This document sets out the policies and principles that determine how NRAR employs regulatory measures to support the natural resources management legislation.

This policy is most relevant to people and corporations who take, use or divert water, or who have a stake or interest in natural resources management, or who conduct controlled activities on waterfront land.

1.2. What supports regulation

What supports regulation

NRAR regulatory policy

The NRAR regulatory policy outlines how we approach regulation, compliance and enforcement and it depicts the regulatory lifecycle. The policy sets expectations on what the community can expect on how we enforce natural resources management laws. This policy guides our decision-making, including when acting against those who break the law.

Policies and guidelines

We publish policies and guidelines that define our role, outline what is expected from the regulated community, support the regulatory policy and outline standards for NRAR's compliance program:

- [NRAR Enforceable Undertakings Guideline](#)
- [NRAR Prosecution Guidelines](#)
- [NRAR Quality Policy Statement](#)
- [NRAR Code of Ethics and Conduct](#)
- [Embedding ethics in NRAR's DNA – NRAR Ethics Framework](#)
- [NRAR guidelines on how to comply with water take and management rules – NRAR website](#)

NRAR regulatory priorities

NRAR regulatory priorities are central to NRAR's strategy to encourage voluntary compliance and demonstrate how we work. NRAR identifies 'annual' and 'enduring' priorities and uses the latest data, information and technology to identify compliance focus areas. We employ a whole-of-agency approach to act on our priorities and are committed to reviewing our priority areas to ensure we are focused on the issues of importance.

Operational and regulatory project plans

NRAR plans annual compliance and enforcement programs. The plans outline how we will address our regulatory priorities, including the mix of the most appropriate regulatory tools and responses. We publish the results of our efforts on the [reports and registers page on the NRAR website](#).

2. Our approach to compliance and enforcement

2.1. What enforcement options are available

A mix of regulatory responses allows for a balanced approach to non-compliance to stop improper conduct and promote changes in attitudes and behaviours, rather than simply applying a punishment. We can respond to non-compliance in a range of ways, which include:

- advisory letters
- warnings or official cautions
- corrective requests
- statutory directions such as stop work orders and remediation notices
- penalty notices
- mandatory compliance audits
- enforceable undertakings
- civil penalties and proceedings, such as:
 - o debiting a water licence holder's account by up to 5 times the amount of water taken
 - o imposing a charge of up to 5 times the value of the water taken
 - o seeking a remedy before the Court for the conduct
- criminal proceedings
- licence action (including suspension, variation or cancellation)

2.2. How we determine the appropriate response

NRAR investigates alleged non-compliance to assess and collect evidence to act against unlawful activity. We employ a graduated, proportionate approach, and base our decisions on factors which include: the degree of harm, the culpability of the offender, the public interest and the attitude to compliance:

Degree of harm

- the seriousness of the non-compliance, based on its actual or potential impacts on other water users, the community and the environment

Culpability of the offender

- compliance history of the person, in general and with respect to the specific incident
- evidence of motivation for the non-compliance, including undertaking unlawful activity for financial gain
- whether the behaviour is deliberate, reckless or involving consistent carelessness
- whether the person has made false or misleading statements about the non-compliance
- any mitigating or aggravating circumstances

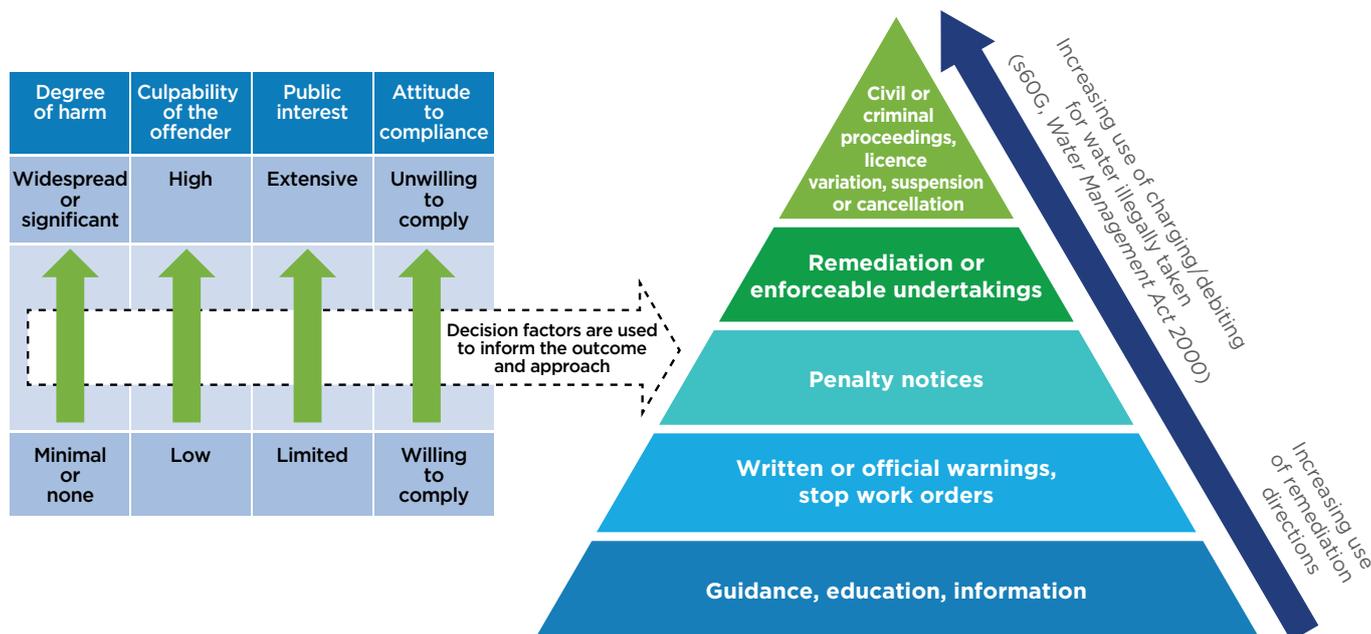
Public interest

- timeframe over which the offence was committed
- public interest and community expectation about the action taken
- whether a decision not to act would undermine public confidence
- whether action is necessary to provide specific or general deterrence
- whether action is necessary to clarify a grey area in the law

Attitude to compliance

- voluntary remedial action taken to address the non-compliance, mitigate the harm and any mechanisms put in place to prevent a recurrence
- cooperation demonstrated by the person involved
- the person's willingness to comply with requirements
- the person's ability to comply with requirements.

The factors which guide our decision-making are considered in combination to identify what action we will take. The greater the impact to any or all factors, the more severe the response and enforcement action will be. Our approach is depicted below, with the increasing impact of the non-compliance resulting in more severe responses moving up the enforcement pyramid.



2.2.1. Severe responses to non-compliance

Severe enforcement responses aim to deter non-compliance and maintain public confidence in the enforcement of the natural resources management legislation. Enforcement decisions are based on evidence, which will be admissible and sufficient to establish that an offence has been committed.

One of the most serious actions, prosecution, is undertaken to achieve compliance, ensure specific and general deterrence and to act in the public interest. Prosecution is a strategic response we may choose based on the circumstances and supporting evidence. [NRAR's Prosecution Guidelines](#) detail the approach we take when considering and undertaking prosecution action.

When taking severe action, we also consider if a licence holder is no longer willing or able to comply with the regulatory requirements or has been prosecuted and convicted for offences and continues to be non-compliant. NRAR may, in those circumstances, decide to vary, suspend, amend licence conditions, or cancel the licence. The main reason for this action is to protect persons, property or the environment, and we reserve this action as a last resort.

We do not have discretion on whether to enforce the law. A non-compliance is a breach of the law and is treated as such, each non-compliance requires a decision and we do not hesitate to take strong enforcement action when required. Where alleged non-compliances are suspected we employ a risk-based approach and may use discretion on how to respond. We will focus more effort on non-compliances that cause greater harm and have a higher likelihood of reoccurring.

2.2.2. Maturing how we respond to unlawful activity

We are committed to increasing our use of the following responses as the impact to the decision factors and the severity of the non-compliance increases:

- [Directions](#) to reduce, prevent or remediate harm to public health, public safety or the environment.
- [Enforceable undertakings](#), as an alternative to prosecution/other civil remedies in accordance with [NRAR's enforceable undertakings guideline](#).
- [Section 60G](#) of the *Water Management Act 2000*, which allows the Minister to charge or debit up to 5 times the value of the water taken through civil proceedings.
- Licence action, including suspension, variation or cancellation of licences.

We will seek to use directions and section 60G to act as a specific deterrence for future non-compliance and to ensure that harms caused by unlawful activities are appropriately remediated. Depending on the severity of the unlawful activity actions may also be taken in combination, for example section 60G combined with remediation action (directions). Multiple offences may result in additional penalty notices, licence actions and prosecution.

2.3. Review and appeal rights

When taking an enforcement action, we provide the reasons for our decisions and information on review and appeal rights. In most cases, internal and external review processes for decisions exist. These review processes, including legislated appeal rights, are used to continually improve our compliance and enforcement approach. If you have been subject to enforcement action, the options for review are found in the documentation provided to you or you can contact NRAR directly for more information.

3. Our approach to regulation

NRAR has policies and frameworks to ensure a risk-based and outcomes-focused approach to regulation. Being a risk-based regulator means we approach investigations on a case-by-case basis and consider the harm caused to the environment and other water users, the offender’s culpability and compliance history, their attitude to compliance and the public interest.

We aim to ensure the fair and equitable use of our precious water resource and to deliver on the principal objectives of the [Natural Resources Access Regulator Act 2017](#). We are committed to working with our NSW water regulator partners, [Water NSW](#) and [Department of Planning, Industry and Environment Water](#), to optimise natural resources management in NSW.

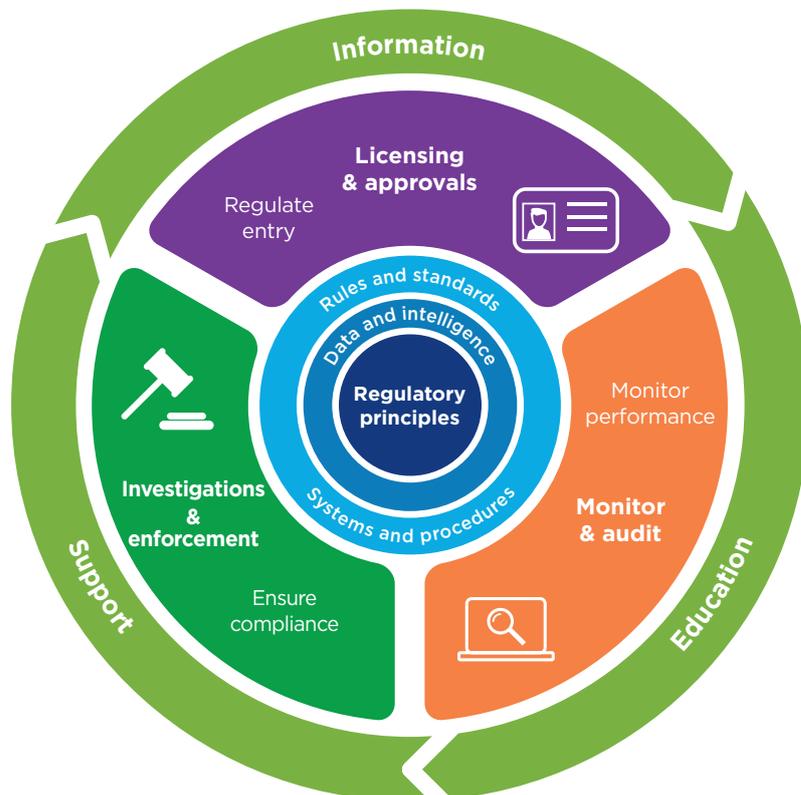
3.1. The regulatory lifecycle

The regulatory lifecycle depicts the activities we perform to achieve our objectives. We use the regulatory lifecycle to represent how we support the regulation of water in NSW. The regulatory lifecycle includes:

- licensing and approvals
- monitoring and audit
- investigations and enforcement.

The stages of the lifecycle are underpinned and supported by our:

- regulatory principles
- data and intelligence
- systems and procedures
- rules and standards
- information, education and support.

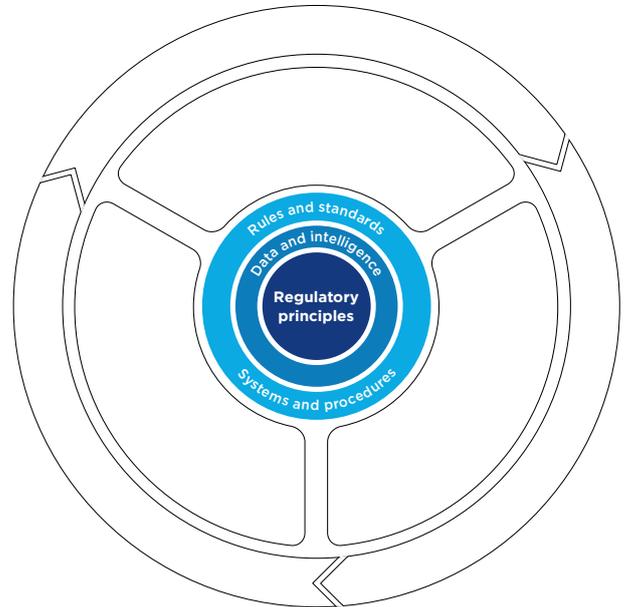


3.1.1. Regulatory principles, systems and data and intelligence

The regulatory principles guide how we perform our functions, exercise our powers and engage with the NSW community.

We apply the principles to complement the NSW Public Sector’s core values of integrity, trust, service and accountability and the [NRAR Code of Ethics and Conduct](#). Our regulatory principles are:

- committing to regulatory best practice
- taking a risk-based and strategic approach to regulation and decision-making
- taking an outcomes-focused approach to regulation
- accepting accountability
- 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.



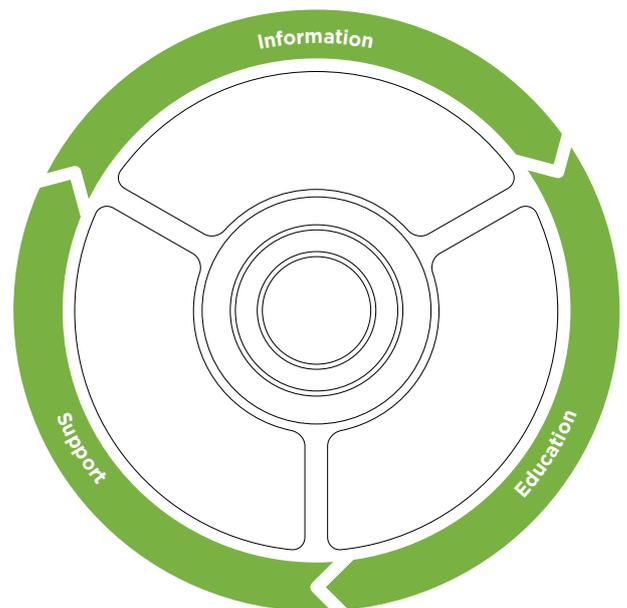
NRAR uses systems and processes to analyse regulated entities, patterns of non-compliance and harm to the environment and other water users. The analysis helps determine an appropriate strategy, regulatory response, and informs our operational planning. This analysis establishes our [Regulatory Priorities](#) which we act on to prevent harm and to target areas with high levels of non-compliance.

3.1.2. Information, education and support

NRAR seeks to maximise voluntary compliance through information, education and support. We actively engage with the community and regulated entities as an important way to influence compliance behaviours.

We are committed to providing [information, resources and tools](#) to help water users understand their obligations. As part of our regulatory programs, we undertake activities that aim to build capability and understanding of water users to assist them to meet their obligations and avoid inadvertent non-compliance. Wherever possible, NRAR will work in partnership with peak bodies and stakeholder groups to gain support for, and achieve, compliance.

[Our educational efforts are guided by our engagement strategy](#). We will seek ways to make it easier for the community to access information and we will collaborate with others to support education activities, including relevant state government agencies, local government and Aboriginal communities.



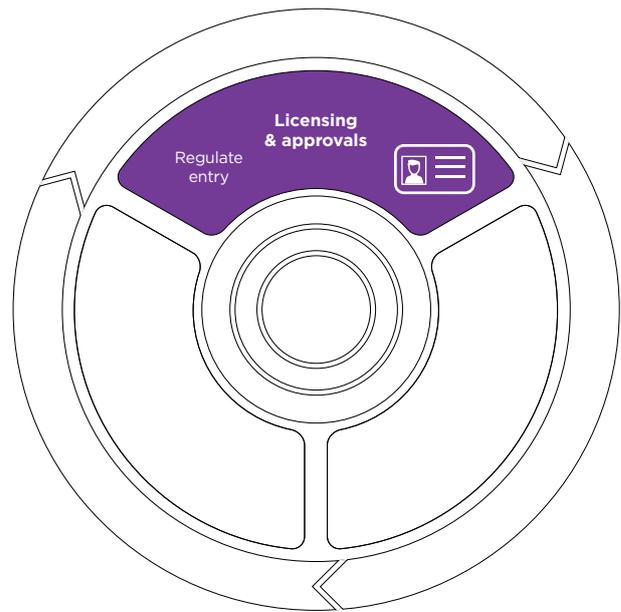
3.1.3. Licensing and approvals

[Licences and approvals](#) are required under the *Water Management Act* to ensure that activities undertaken by regulated entities do not pose a risk to other stakeholders, the community or environment. Activities which are considered lower risk are managed through a simplified licensing framework.

NRAR is responsible for issuing licences to a small number of larger water users such as state significant developments (including mining operations), major and local water utilities, irrigation corporations and government entities. Most of the licensing to access water is done by [WaterNSW](#). NRAR is responsible for assessing and issuing approvals for controlled activities conducted in, on or beside rivers, lakes and estuaries.

Licences and approvals are important as they provide the conditions which must be complied with by licence holders. NRAR is the agency responsible for monitoring compliance with the conditions on licences and approvals and acting when non-compliance occurs.

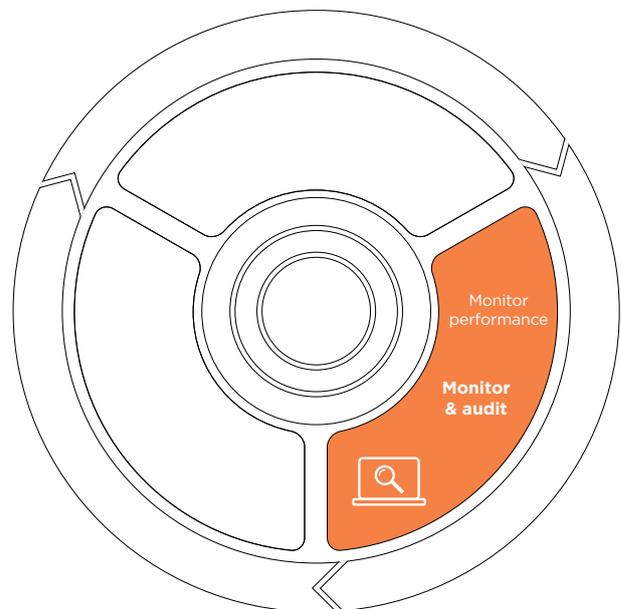
To help the community and industry we provide guidance via [which agency do I lodge my application with](#), so those who need to can get the right information and the right licence or approval if they are required to do so.



3.1.4. Monitoring and audit

Monitoring compliance is an essential part of our role. We undertake [proactive, planned monitoring and inspection programs](#) and have expanded our monitoring function to include a [routine monitoring program](#). We undertake monitoring to better understand rates of compliance and act as a deterrent to non-compliance. Our inspections may be announced or unannounced and will support industry to move into compliance as well as identify potential breaches. We prioritise our monitoring efforts based on:

- NRAR published regulatory priorities, and programs or regulatory projects targeting a particular problem
- the likelihood and consequence of harm from a particular activity, industry or in a particular region



- reports of potential non-compliance from industry, the community or other agencies
- intelligence from remote surveillance techniques and technology, such as aerial photography and satellite imagery analysis
- follow-ups from investigations and more frequent inspections of poor performers.

An integral part of maintaining community confidence is demonstrating that processes, systems and rules that govern natural resources management are working to deliver on the intended outcomes. We are committed to collecting information to help inform and improve water management and are dedicated to further developing our audit capability to provide confidence to the community that the frameworks for water management are effective.

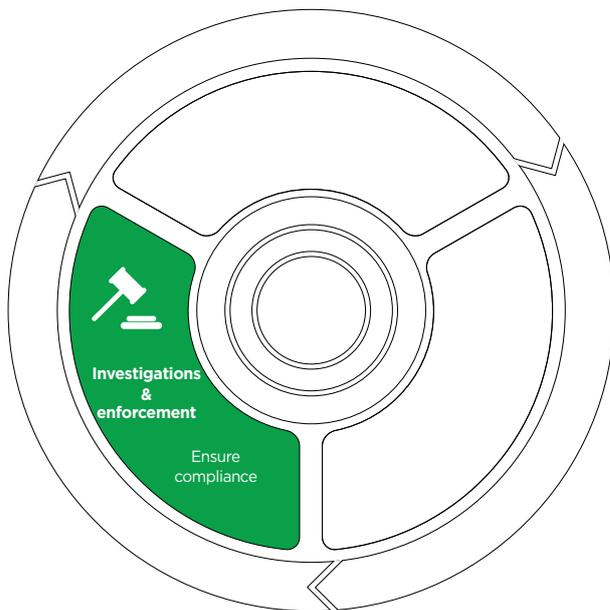
NRAR’s monitoring and audit efforts assist to:

- detect, and serve as a deterrent to, non-compliance and causes of harm
- determine the level and trends of compliance within industries and regions
- assess and review the effectiveness of regulatory projects, education and information programs
- monitor the compliance of activities which do not require a licence, and to take enforcement action if required
- inform the frameworks and policies to improve how we manage our natural resources.

3.1.5. Investigations and enforcement

NRAR responds to external reports of potential non-compliance as well as issues identified by our monitoring and auditing activities. We recognise the value and importance of reports from industry and the community and take any report of potential unlawful activity seriously.

Before we respond, we assess the information provided and prioritise our investigations on risk. We give priority to situations that have the potential to cause significant harm to the environment and other water users, and to patterns of similar incidents that may suggest ongoing or broader issues. We respond to breaches using different tools based on the assessment of risk and publish information on how we may respond in the [responding to alleged breaches Frequently Asked Questions \(FAQs\)](#).



NRAR-authorized officers have delegated enforcement and compliance powers under the *Water Management Act 2000*, which include the power to require information and records, the power to require answers and powers of entry. We have prepared [compliance powers FAQs](#) to help explain the powers of NRAR-authorized officer, so water users know what to expect during an investigation.

NRAR does not act on behalf of individuals and will not undertake investigations or actions to achieve a remedy for a dispute. People may pursue civil outcomes for individual grievances in the courts.

4. Performance of the compliance program

NRAR is committed to maintaining public confidence in the enforcement of natural resources management laws and will measure, track and communicate our regulatory outcomes. We conduct [community benchmarking surveys](#) with the public, stakeholder groups and water users to better understand our regulated community, its needs and understand high-level community views on the enforcement of water laws. We will continue to develop measures which are meaningful and build public confidence in how natural resources legislation is being enforced.

4.1. Information we publish

We publish information on where we focus effort as well as what outcomes have been achieved from our compliance activities. We maintain publicly available [reports and registers](#) which offer insights into why we prioritise certain activities and contain information on enforcement actions under the *Water Management Act 2000*. The reports and registers aim to keep water users and the community up to date on our activities and achievements.

We publish [guidance and factsheets to help water users](#), our compliance approach to issues of importance (such as [environmental flows](#) and [metering regulations](#)) and provide information on how to [comply with water management laws](#) to support voluntary compliance.

You can stay up to date with the latest information on the [NRAR news page](#).

5. Appendix

5.1. How the regulatory principles guide our approach

Committing to regulatory best practice

We are committed to building the trust of the NSW community and fostering mutual respect between NRAR and the regulated community.

We seek to understand the expectations of the community through engagement on key issues. We strive to meet those expectations through the application of our regulatory policy, which sets out our core purpose and our risk-based regulatory approach.

We will ensure that we have the skills, systems, processes and equipment to implement our regulatory approach efficiently and effectively.

We will periodically review our regulatory approach, systems and activities, based on whether we have achieved our outcomes, feedback from the community, and whether our approach achieves regulatory best practice.

Taking a risk-based and strategic approach to regulation and decision-making

We will employ a risk-based and intelligence-led approach to regulation to ensure we apply our finite resources to their greatest effect. We will focus proactively where the consequences of non-compliance are greatest and where the likelihood of non-compliance is highest.

Taking a risk-based approach to administering regulation will also result in individuals and businesses not being inconvenienced by unnecessary regulatory activities.

Taking an outcomes-focused approach to regulation

We will clearly define regulatory outcomes to guide the application of education, licensing, compliance monitoring and enforcement activities to achieve our regulatory core purpose.

We will invest in the development of NRAR staff to ensure we have the skills and knowledge of the desired regulatory outcomes to choose an appropriate and proportionate response to non-compliance.

We will apply innovative approaches to achieve our regulatory core purpose and to solve regulatory problems.

We will regularly report on progress towards the achievement of regulatory outcomes.

Accepting accountability

We are accountable for our compliance and enforcement activities, which means we are answerable for our decisions, including when we act, the type of action we take, or when we decide not to act.

Our decision-making will be done within effective processes of corporate governance to maintain objectivity, independence and integrity.

We will employ processes that provide procedural fairness and natural justice.

We will make decisions based on evidence and will ensure that we keep appropriate records of our regulatory activities so that decisions can be readily accessed and scrutinised.

Providing transparency

We will publish our policies and priorities and provide information that explains what the community and regulated entities should expect from a regulatory process.

We will promote awareness of our regulatory activities. Where legislation allows, the results of enforcement actions may be made public to deter future non-compliance as well as to build the credibility of, and confidence in, our regulatory approach and processes. We will use plain language and be clear and concise in our communications.

When we detect non-compliance, we will be clear about what is needed, when it is required and the consequences of continuing non-compliance.

Acting in a timely way

We will exercise our functions and conduct our activities in a timely way to minimise harmful impacts, maximise deterrence, minimise disruption and provide certainty to the regulated and wider community.

We commit to timely compliance and enforcement action to maintain the principle of fairness to those involved.

Balancing the need for consistency with the need for flexibility

We aim for high levels of consistency in the decision-making process, based on the use of clear policies and processes that consider the specific circumstances of a situation, to produce sensible, predictable and fair results.

Demonstrating proportionality and exercising discretion in regulatory decision-making

We expect people and organisations to comply with regulatory requirements. We commit to taking regulatory action that is proportionate to the circumstances of the regulatory breach. The more serious the offence, the more serious will be the response, and we will not hesitate to take strong enforcement action when required.

We strive to achieve fairness in regulatory outcomes while ensuring we act in the public interest.

Acting within the law

We will always act within the legal remit of our statutory power when undertaking enforcement activity and will not require the regulated community to observe requirements that are not authorised by law.

5.2. Helpful links and information

Information to help support water users

[Guidance and factsheets to help water users](#)

[Guidelines on how to comply with water take and management rules](#)

[Compliance powers FAQs](#)

[Responding to alleged breaches FAQs](#)

About NRAR

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[NRAR Code of Ethics and Conduct](#)

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