

Compliance powers

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 illegal water activities.

NRAR seeks to ensure effective, efficient, transparent and accountable compliance with natural resources management legislation and, in doing so, maintain public confidence in the enforcement of this legislation.

Why are compliance powers needed?

Water compliance powers help NRAR ensure water is shared between all lawful water users and the environment. These powers protect the long-term security and sustainability of our water resources.

The NRAR Regulatory Policy explains how we manage compliance with NSW water management laws. The policy is available on the NRAR website at www.industry.nsw.gov.au/nrar

Who are NRAR-authorised officers?

An NRAR-authorised officer is appointed by the NRAR Board, on behalf of the minister, to exercise enforcement and compliance powers under the *Water Management Act 2000* (the WM Act) and the *Water Act 1912* (the Water Act). The powers of authorised officers can be exercised to:

- assess whether there has been a breach of relevant water management legislation or any licence, approval, notice or requirement issued or made under the WM Act or the Water Act
- obtain potential evidence to investigate any alleged breach.

NRAR's authorised officers actively monitor water extraction and use to ensure water is taken and used lawfully. NRAR's broad compliance powers, in association with clear offences and tough penalties, help prevent unlawful water take and other illegal activities.

What powers do authorised officers have?

The WM Act gives NRAR-authorised officers regulatory powers to gather evidence for a variety of purposes related to administering the WM Act and the Water Act.

NRAR may gather evidence without exercising regulatory powers—for example, NRAR may use satellite imagery. However, if a lawful occupier does not give permission, regulatory powers under the WM Act enable authorised officers to:

- enter a person's private property without a search warrant (other than a residence) and do things on a property—for example, inspect and test equipment, take samples and examine records
- require a person to provide evidence, such as verbal answers, written information or records
- take photos, films, audio, video and other recordings as necessary
- seize items relevant to their investigation—for example, invoices or equipment.



When can an NRAR-authorised officer enter my property?

Authorised officers must show their authorised officer identification card on request.

Persons accompanying authorised officers

An authorised officer may be accompanied by another person who is not an authorised officer, if the officer considers that the other person can help them.

Police officers may also accompany an authorised officer when they enter premises. Authorised officers and the police can use reasonable force to enter a property if considered necessary by the authorised officer.

Farms subject to a biosecurity management plan

NRAR recognises that some farms have a biosecurity management plan to protect biosecurity and mitigate the risk of pests and diseases on the property.

Authorised officers have the power to enter a property that has a biosecurity management plan in place. A landholder may not refuse an authorised officer entry onto their land because a biosecurity management plan is in place. Authorised officers will take reasonable actions to minimise biosecurity risks during inspection.

What work health and safety rules apply to site inspections?

The *Work Health and Safety Act 2011* imposes a shared duty on both NRAR and the landholder/business operator to control risk. NRAR has work health and safety procedures to manage foreseeable risks involved in its work practices. Our procedures require NRAR officers on a site inspection to:

- introduce themselves to the landholder where possible and discuss what activities will be undertaken, to identify any known hazards. The landholder will be asked to identify potential hazards to staff
- undertake an appropriate risk assessment according to NRAR's work health and safety policies and procedures if no landholder is present and only proceed if it is safe to do so.

Should an NRAR employee be injured on site they will be covered for any loss or treatment through the Department of Planning, Industry and Environment's workers compensation policies.

However, if the insurers attribute the cause of injury to negligence on behalf of the landholder/business, they may pursue recovery of costs through the landholder's public liability insurance.

What can be expected during an investigation?

If an authorised officer suspects that there has been a breach of water laws and a person may have some involvement in the alleged breach, the authorised officer will:

- explain the allegation to the person
- explain the process the investigation will follow
- ask the person to provide their name and address
- advise them of the outcome of the investigation once completed.

An authorised officer may also require the person to:

- assist them with an activity—for example, turn on a pump
- provide information and records to which they have lawful access—for example, metering records
- ask them to answer questions and record the questions and answers.

If the authorised officer forms the reasonable belief that a person has committed an offence that is the subject of the questioning, they will issue a caution. This is advice to the person that they do not have to say or do anything unless they wish to do so but anything they say or do will be recorded and may later be used in evidence.

If a person decides not to answer any questions, the authorised officer may direct the person to answer. The officer will provide more advice that the person may object to answering a question on the grounds that it might incriminate them.

If the person objects, they must still answer the question, but the answer is not admissible into evidence against them personally. An exception to this is for the offence of



knowingly answering a question falsely or in a way that is misleading in a material aspect.

An authorised officer may also issue a notice to a person to provide information or records relevant to an investigation, and to attend a place and time to answer questions.

Failing to answer a question when directed or providing false information is an offence. It is also an offence for a person to hinder, obstruct, delay or threaten an authorised officer in the exercise of their duties.

How long does an investigation take?

Under the WM Act, NRAR has three years to commence proceedings in court from the date an offence was first brought to the attention of an authorised officer. This allows time for a thorough investigation and, if appropriate, to commence a prosecution.

What conduct can I expect from an authorised officer?

Authorised officers undergo appropriate training in the exercise of their powers. All authorised officers are required to comply with the regulatory principles details in the NRAR Regulatory Policy, specifically:

- committing to regulatory best practice
- taking an outcomes-focused approach to investigation
- accepting accountability and providing transparency
- acting in a timely way
- balancing the need for consistency with the need for flexibility
- demonstrating proportionality and exercising discretion in regulatory decision making
- acting within the law.

Compliance decisions are made in accordance with public sector guidelines and to the highest ethical and professional standards.

The NRAR Code of Ethics and Conduct applies to all authorised officers. This is available at www.industry.nsw.gov.au/nrar

Any approaches to bribe, influence or engage authorised officers in corrupt or unlawful behaviour will be reported

immediately and will be investigated by the appropriate authority.

What can I be directed to do?

The WM Act confers powers on certain NRAR manager and directors, as delegates of the minister, to direct people to do certain things, including to:

- stop certain unlawful activities and remove unlawful works
- remediate waterfront land or a water source—for example a river or lake, and protect it from harm
- install and maintain metering equipment.

What is NRAR's role with temporary water restrictions?

The minister can issue orders under section 324 of the WM Act to impose temporary water restrictions on specific rivers and aquifers. These restrictions apply to all water users, including licence holders. The restrictions may restrict water take to times when the flow in a river is above a specific level, known as a *cease to pump* requirement.

NRAR-authorized officers monitor compliance with temporary water restrictions. This includes the use of satellite imagery as well as site inspections.

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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