

Enforcement powers

Frequently asked questions

Fact sheet

The Natural Resources Access Regulator (NRAR) is an independent regulator established under the *NSW Natural Resources Access Regulator Act 2017*.

We ensure the lawful use of water so communities and the environment get their fair share.

NRAR is equally committed to making it easy to follow the water management rules as we are to enforcing them when they are broken.

We create resources explaining water management, compliance and associated issues to make it easier for water users to follow the rules.



Why are enforcement powers needed?

Our water enforcement powers allow us to investigate alleged unlawful water take and other illegal activities that may harm a water source.

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

Who are NRAR authorised officers?

An NRAR authorised officer is appointed by the NRAR Board, on behalf of the minister, to exercise enforcement and enforcement powers under the *Water Management Act 2000* (the WM Act) and the *Water Act 1912* (the Water Act).

NRAR's authorised officers actively monitor water extraction and use to ensure water is taken and used lawfully. The role of authorised officers includes:

- assessing 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
- obtaining potential evidence to investigate any alleged breach
- taking enforcement action when appropriate.

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. These regulatory powers enable authorised officers to:

- enter a person's private property without a search warrant (other than a residence) and gather evidence – 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.

NRAR also gathers evidence without exercising regulatory powers – for example, we may use satellite imagery.

What to expect 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
- authorised officers must show their authorised officer identification card on request.

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.

It is an offence to hinder, obstruct, delay or threaten an authorised officer as they carry out their duties.

If the authorised officer forms the reasonable belief that a person has committed an offence, 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 person may object to answering a question on the grounds that it might incriminate them but must still answer the question.

Answers given under objection are not admissible into evidence against the person providing the answer, unless the answer given is false or misleading.

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.

An authorised officer may also be accompanied by another person, 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.





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 detailed 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
- exercising appropriate discretion in regulatory decision making
- acting within the law.

Enforcement decisions are made to the highest ethical and professional standards, in accordance with public sector guidelines and the NRAR Code of Ethics and Conduct.

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.

These policies are available at nrar.nsw.gov.au/policies-and-guidelines

How long does an investigation take?

NRAR aims to investigate matters as efficiently as possible, however, the length of an investigation is determined by a number of factors, including the level of complexity.

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 can I be directed to do?

The WM Act gives powers to 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 if my farm has a biosecurity 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 cannot refuse an authorised officer entry onto their land because a biosecurity management plan is in place, 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 training and procedures to manage foreseeable risks involved in its work practices.

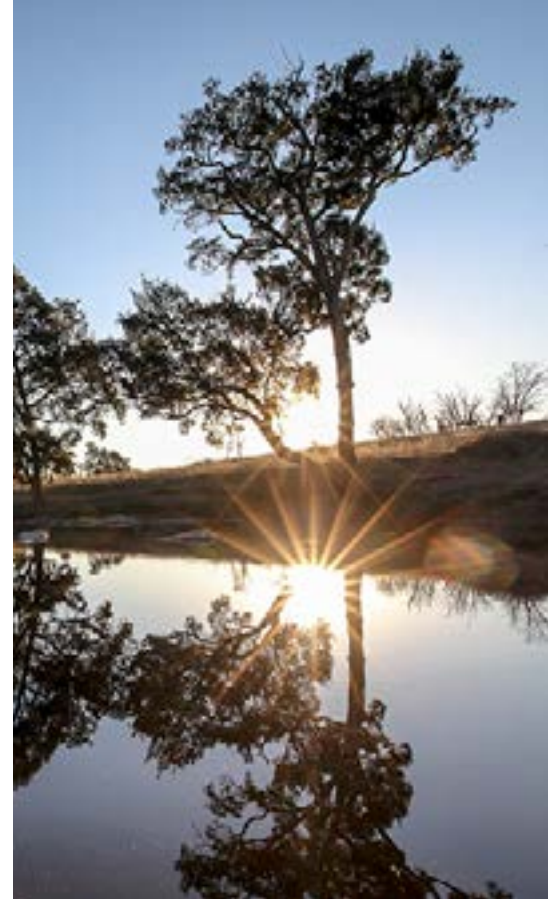
Should an NRAR employee be injured on site they will be covered for any loss or treatment through the Department of Planning and Environment's workers compensation policies.

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

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



More information

To contact NRAR, you can write to us at nrar.enquiries@nrar.nsw.gov.au

Copies of the Acts and associated Regulations are available at legislation.nsw.gov.au

Find more information about how to comply with the water laws, what penalties apply, and how we respond when the rules are broken on the NRAR website at nrar.nsw.gov.au or scan the QR code below.

