

Complying with water management laws

Fact sheet

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.

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.

Regulated activities, offences and penalties

Unlawful water take and harming a water source are serious offences that can threaten water supplies for authorised water users and harm the environment.

NRAR monitors and enforces compliance with the *Water Management Act 2000* (WM Act) and the *Water Act 1912* (the Water Act). The WM Act replaces the Water Act and applies to all areas where a Water Sharing Plan applies. While this transition is largely complete, licences may be required under the Water Act—in limited circumstances—in areas where water sharing plans do not apply.

Unlawful activities and offences

The main offences under the WM Act and the Water Act broadly relate to the take and use of water, works affecting waterfront land or aquifers, water metering and bore drilling. Other offences relate to enforcement actions, evidence gathering and false or misleading information.

More details about these offences can be found in the *Compliance with water legislation* guidelines at www.industry.nsw.gov.au/nrar

Exemptions from some licence and approval requirements apply for some low-impact activities under certain conditions. This includes basic landholder rights, such as taking water for domestic use or to water stock, and constructing small dams on minor streams, known as harvestable-rights dams.

Summary of key offences

Some of the key offences and penalties under the WM Act are outlined below.

Water-take licence and approval offences include:

- taking water, including groundwater, without holding a water access licence
- using water without a water use approval
- using water supply works, such as pumps, bores and dams, without a water management work approval
- failing to comply with the terms and conditions of a licence or approval
- taking water or using works while a licence or approval is suspended
- taking water when there is not enough water in the water allocation account for an access licence.



Offences relating to flood works and works affecting waterfront land or aquifers include:

- constructing flood works on floodplains, such as levee banks, without a flood work approval
- carrying out works on waterfront land (within 40 metres of the banks of a watercourse) without a controlled activity approval
- harming an aquifer or waterfront land by affecting its capacity to hold or carry water
- failing to comply with the terms and conditions of an approval.

Metering and record-keeping offences include:

- damaging or destroying a water meter or not operating a meter properly
- failing to install a meter when required
- taking water when a meter is not working or failing to report a malfunctioning meter
- not using water-take log books when required.

Other key offences include:

- drilling a bore when not authorised by a driller's licence
- not complying with a direction, including a stop-work order or an order to remove unlawful works
- not complying with a notice to provide information or records during an investigation
- providing false or misleading information in relation to an application or a requirement.

There are similar offence provisions that apply to activities regulated by the Water Act.

Parties that can be held liable for an offence

Anyone who causes or permits an offence under the WM Act or Water Act or arranges for another person to commit an offence is liable for the offence. If a landholder engages a contractor who commits an offence, both the landholder and contractor are liable for any offence.

Property occupiers and co-holders of licences and approvals can be held accountable for offences on their property or breaches of their licence or approval.

Penalties

There are substantial maximum penalties for offences under the WM Act. Offence provisions that deal with intentional, negligent and reckless conduct are identified as *Tier 1* offences and attract the highest possible penalties under the WM Act.

Tier 1 offences

The maximum penalty for individuals is \$1.1 million and/or prison terms of two years and, in the case of a continuing offence, a further penalty of \$132,000 for each day the offence continues.

The maximum penalty for corporations is \$5.005 million and, in the case of a continuing offence, a further penalty of \$264,000 for each day the offence continues.

Tier 2 offences

The maximum penalty for individuals is \$500,500 and, in the case of a continuing offence, a further penalty of \$66,000 for each day the offence continues.

The maximum penalty for corporations is \$2.002 million and, in the case of a continuing offence, a further penalty of \$132,000 for each day the offence continues.

Penalty notices

Offences can also be dealt with by way of a penalty notice. These are a set amount for most offences of \$750 for individuals and \$1,500 for corporations.

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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