

Department of Water and Energy
Water Compliance Policy



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NSW Government
Department of Water & Energy

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NSW Department of Water and Energy
Level 17, 227 Elizabeth Street
GPO Box 3889
Sydney NSW 2001

T 02 8281 7777 **F** 02 8281 7799

information@dwe.nsw.gov.au

www.dwe.nsw.gov.au

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Foreword

Water is an essential and limited resource. While in theory water is renewable, it is possible to extract too much water, threatening the quality of our water supplies and the ability to maintain natural ecosystems that rely on water. Works undertaken in or around water sources can also impact on the quality of our water supplies and the health of our rivers, lakes and waterfront land.

If we do not manage water and water sources wisely today, our urban and rural industries and communities will face serious consequences in the future. The NSW and Commonwealth Governments agree that good water management is critical.

We are aiming to secure fair access to water without compromising the ability of future generations to meet their own needs. Where we seek to ration or restrict access to water, it is with the viability of the environment and the future development of our communities in mind.

The Department of Water and Energy is charged with the responsibility of regulating access to water across New South Wales. A key component of this responsibility is ensuring compliance with water legislation. Compliance with the legislation is essential to ensure equitable sharing of the resource. It becomes even more critical in periods of drought, such as those over recent years.

The Department, on behalf of the Minister, will work with landholders and other water users, providing them with information to help them manage their water resources more effectively, making sure they are aware of the law as it stands and giving them the certainty they need to plan for their future with confidence. The Department will also work with water managers and suppliers such as irrigation corporations and State Water, to ensure the lawful and equitable delivery of water.

In those cases where water users seek to abuse the system and gain advantage at the expense of their neighbours and the community, the Department will take appropriate action to protect our water and water sources to ensure the resource can be fairly shared with both present and future generations.

Ultimately, we all have a stake in the careful management of our precious water resources. Accordingly, the Government has passed legislation to manage and protect water resources in NSW and this policy describes how the Department of Water and Energy will work to ensure compliance with this legislation.

The true measure of success is how effective we are at securing the future of our water resources on behalf of the whole community. This Compliance Policy is an important step towards achieving this vital goal.

1. Introduction

The Department of Water and Energy is a New South Wales Government Department established in April 2007. One of the main roles of the Department is to ensure the secure and sustainable allocation of water between communities, industry, farmers and the environment.

The Department will work collaboratively with the community to protect the interests of legitimate water users. The Department is committed to resolving competing claims for water in ways that sustain the environment and support economic growth.

The Department has regulatory responsibility for the *Water Act 1912* and the *Water Management Act 2000* and associated regulations. The purpose of this Policy is to inform the community about how the Department intends to manage compliance with this legislation and use its authority in a fair and equitable manner.

The NSW water laws aim to conserve and encourage wise use of water resources. The Department will work cooperatively with water users to achieve these broad aims. Compliance will be sought by education and encouragement wherever possible, but, where appropriate, enforcement measures will be used.

This Policy is supported by operational procedures that guide the Department's officers in implementing this Policy.

2. Who does this policy apply to?

This policy will be applied by the Department when dealing with all activities regulated by the *Water Act 1912* and the *Water Management Act 2000*. The policy applies in particular to:

- People and corporations who extract water from rivers, aquifers or harvest water from floodplains;
- People and corporations that use water;
- People and corporations that construct or use water management works;
- People and corporations that tamper with their water meter;
- People and corporations exercising basic land holder rights under the *Water Management Act 2000*;
- People and corporations conducting controlled activities under the *Water Management Act 2000*;
- People and corporations constructing controlled works on floodplains;
- Bore drillers

3. Compliance implementation

The Department implements its compliance role by:

- community education and engagement to promote voluntary compliance;
- monitoring water resource activities across the State to deploy pro-active programmes and to identify potential breaches in a timely manner;
- investigating alleged breaches;
- taking appropriate action when a breach occurs; and
- review and reporting.

3.1 Community education and engagement

Providing education and information to water users and the general community encourages voluntary compliance, as this knowledge enables them to comply.

The Department will promote compliance by:

- removing barriers to compliance (eg lack of knowledge regarding legislative requirements and how to comply with them) and promoting the principles of the legislation;
- overcoming factors that encourage non-compliance (eg lack of public support for, or the misunderstanding of, water legislation objectives); and
- raising awareness of the benefits of complying with the legislation and the potential consequences of not complying.

The Department will, in conjunction with other government departments, peak bodies, the community, industry groups, Catchment Management Authorities and Local Councils, seek to facilitate community access to information about water resource requirements. This will maximise the benefits and outcomes of activities promoting compliance.

3.2. Monitoring

Monitoring compliance with water legislation is an essential part of the Department's regulatory role. Monitoring helps the Department to:

- determine the level of compliance and trends for regulated activities;
- detect possible breaches and identify where action may be required to avoid or mitigate environmental harm or to protect the rights of legitimate users;
- identify whether, and what type of, education campaigns or enforcement action may be required; and
- assess the effectiveness of its operations and programmes and also to identify opportunities for improvement.

The Department undertakes three types of monitoring activities:

1. Detection

Detection activities include aerial, ground and river survey, aerial photography and the use of satellite images.

2. Audit and Review of Licences

A large number of licences, approvals, permits and authorities (licences) are granted under relevant water legislation in order to equitably share water resources. In most instances, these licences provide benefit to the holder and contain conditions designed to protect the environment and the resource base that other water users rely upon. The Department conducts audits and reviews to verify compliance with these licences and to improve the quality and effectiveness of its licences.

3. Reports of Alleged Breaches

The Department receives reports of alleged breaches from external sources including members of the public, State Water, local councils and other government departments. All alleged breaches detected or reported are recorded, assessed and considered for action in accordance with this Policy.

The process for managing breaches is described below and summarised in a flow chart in Appendix 1.

3.3. Investigating alleged breaches

All alleged breaches of water legislation are prioritised for investigation using a risk management approach in line with the Australian Standard for Risk Management. This provides for the most efficient allocation of the Department's resources.

For all alleged breaches recorded, initial desktop assessment and prioritisation (into low, medium and high risk) is conducted. This assessment includes:

- a review of the Department's records for applications, licences, previous compliance investigations and any other documentation relating to the land as well as the people that may be involved. Relevant material such as recent and historic aerial photography, satellite imagery, maps, plans and previous reports may also be examined; and
- an assessment of the likely environmental harm, impacts on other resource users and the effect on the integrity of a consent and/or the regulatory system.

Further investigation may be warranted following the outcome of the desktop assessment and this may involve a site inspection and collecting information from the landholder and/or licence holder. Before undertaking a site inspection, wherever possible, officers will contact the landholder to arrange access to the property.

During an investigation, compliance officers will gather evidence of the incident in order to establish whether an offence has occurred and the identity of the person(s) who may be responsible. This evidence may take the form of videos, photographs, samples, meter readings and physical evidence, witness statements and records of interview.

The Department's compliance officers will undertake their investigations in a professional manner that is:

- objective, fair and impartial;
- consistent with the presumption of innocence;
- within their delegated authority;
- in accordance with the law; and
- respectful of individuals.

3.4. Taking appropriate action

If, after full investigation, it is considered that a breach has occurred, the Department will take appropriate action depending on the significance of the breach.

In determining the significance the Department will consider:

- The public interest, such as
 - if action would be perceived as counter-productive by bringing the law into disrepute (eg where consent for the activity would have been granted if an application had been made, or where a change in the law is imminent which would make the activity permissible);
 - the level of public concern; and
 - the need for general and/or specific deterrence.
- The impact on other water users.
- The degree of environmental harm or potential harm resulting from the breach.
- The severity of the breach.
- The integrity of the consent and/or the regulatory system, such as;
 - avoiding a poor precedent being set; and
 - an unreasonable or extreme interpretation in relation to a condition of consent.
- Any aggravating factors, such as
 - the level to which an individual is culpable;
 - whether an individual has a history of prior breaches where the Department has taken action; and
 - whether the breach is ongoing.
- Any mitigating factors, such as
 - whether the individual had acted in accordance with Departmental advice;
 - whether the individual is not culpable; and
 - whether the individual is willing to co-operate and the extent to which they have already done so.

The applicability of, and weight to be given to, each of the above factors will depend on the circumstances of each particular case. Officers will make their determination on the level of significance with reference to internal policies, peer review as well as supervisor support. Officers will only operate within their delegated authority.

After consideration of all appropriate factors, alleged breaches are classified as being of low, medium and high significance. This classification guides the action to be taken.

The Department has available a wide range of measures it can use in response to breaches such as warning letters, penalty notices, directions and prosecution. A table of compliance options available under each Act is set out in Appendix 2.

In events determined to be of low significance, the following actions may be taken:

- finalise the case (only where the degree of harm or impact on other water users is low to very low, there are no aggravating circumstances, the public interest does not compel further action and some mitigating circumstances exist);
- send an advisory letter to the alleged offender to assist that person to meet their duty of care in the future;
- send a warning letter to the alleged offender to encourage that person to meet their duty of care in the future; and
- negotiate a corrective request.

In cases determined to be of medium significance, the Department may use one or more of the following responses:

- issue a Stop Work Order;
- negotiate a corrective request;
- issue a direction, eg requiring remediation of the harm arising from the breach, or preventing construction or use of an unlawful work. Notice recipients will be given an opportunity to comment on the intended contents of a proposed direction.
- issue a Penalty Notice in relation to the breach;
- debit a water allocation account;
- order payment of a civil penalty; and
- suspend any relevant licence, approval, permit or authority.

In cases determined to be of high significance, the Department may use one or more of the following responses:

- issue a Stop Work Order;
- issue a direction;
- issue a Penalty Notice. Penalty Notices will not be used in relation to the more serious breaches where prosecution is a more appropriate course;
- debit a water allocation account;
- order payment of a civil penalty;
- commence civil proceedings in the Land and Environment Court;
- commence criminal proceedings in the Land and Environment Court or in a Local Court; and
- cancel or suspend any relevant licence, approval, permit or authority.

In all prosecutions in which the Department is involved, the burden of proof to secure a conviction rests with the Department. The standard of proof required to enable a court to find that an offence has been proved, is proof 'beyond reasonable doubt', as to the elements of the offence.

The Department will also administer any enforcement actions it takes including ensuring compliance with directions and orders. If a person does not comply with a direction the Minister can authorise a third party to enter land and carry out the works.

3.5. Review and reporting

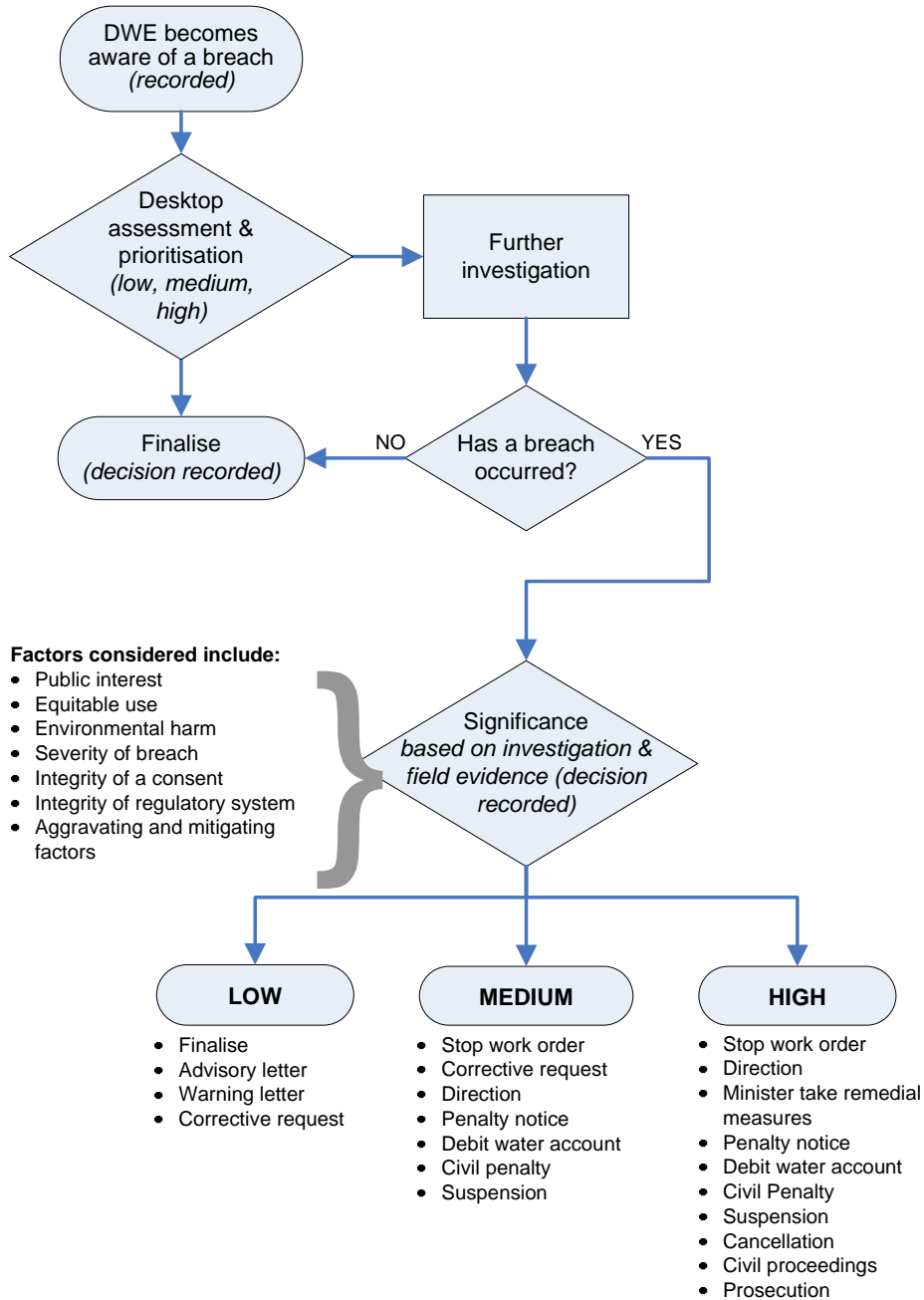
The Department is committed to implementing this Policy in a transparent and accountable manner. The Department will review its implementation of this Policy and its compliance programme annually and will report on it in each Annual Report.

Over time the Department will review the Policy to take into account operational experiences and amendments to legislation. In the event that amendments to the Policy are required as a result of review findings, the Policy will be updated on the Department's web site and copies will be available through Departmental offices.

4. Ethical conduct

The Department has a Code of Conduct and Ethics and that all officers are required to comply with. Compliance decisions will be made in accordance with Public Sector guidelines and to the highest ethical and professional standards. Any approaches to bribe, influence or engage officers in corrupt or unlawful behaviour will be reported immediately and will be investigated by the appropriate authority.

Appendix 1: Managing breaches of water legislation administered by the Department of Water and Energy



Appendix 2: Available compliance responses

The primary compliance actions available to the Department of Water and Energy under the *Water Act 1912* and the *Water Management Act 2000*.

Compliance action	<i>Water Act 1912</i>	<i>Water Management Act 2000</i>
Advisory letter	✓	✓
Warning letter	✓	✓
Corrective request	✓	✓
Stop work order	✓	✓
Direction	✓	✓
Minister authorising a third party to undertake measures specified in a direction		✓
Debiting a water account		✓
Civil penalty		✓
Penalty notice		✓
Suspension of a licence / approval / permit / authority	✓	✓
Cancellation of a licence / approval / permit / authority	✓	✓
Civil proceedings for injunction or restraining order	✓	✓
Prosecution	✓	✓