



Water Management Act 2000

December 2008

New compliance powers questions and answers

Changes to the State's water compliance powers were approved by the NSW Parliament in October 2008 as part of a suite of amendments to improve the *Water Management Act 2000* (WMA2000) in response to drought and climate change.

The changes come into effect on 1 January 2009. New offences and penalties will apply and there are improved powers for monitoring and enforcing compliance with NSW water laws.

The new rules mainly apply to NSW water licence holders, bore water users and landholders who live along a NSW water way. People who live within a town boundary and rely solely on town water generally will not be affected.

In NSW, the Department of Water and Energy (DWE) is responsible for monitoring and enforcing compliance with the WMA2000. Most of the rules haven't changed and existing information on the DWE website relating to water access, licensing and trade still applies.

This information explains what changes have been made in relation to water compliance offences, penalties and investigatory and enforcement powers.

Why are new water compliance powers needed?

Drought and climate change have increased competition for water, an increasingly scarce and highly valued natural resource. To better prevent and police water theft and other illegal activities that might damage a water source or impact water supplies, DWE requires tougher penalties, new offences and improved investigatory and enforcement powers.

Increased penalties will help deter would-be offenders and the new offences and powers will ensure authorised officers can more effectively detect and stop illegal activities, such as building a levee without a licence or pumping more water than allowed. This will ensure more secure, sustainable water resources for the long term.

What are the new offences?

In addition to the offences that are contained in the current WMA2000 and *Water Act 1912*, the Amendment Act includes new offence provisions that deal with intentional, negligent and reckless conduct. These offences attract the highest penalties under WMA2000 and can broadly be described in three categories: taking water when not authorised by a licence; metering; and harming an aquifer or waterfront land.

Taking water when not authorised by a licence

It is now an offence to intentionally or negligently:

- take water without obtaining an access licence
- take water when not authorised by an access licence
- take water when you do not have enough water in your account.

Metering

It is now an offence to:

- interfere with metering equipment
- take water from a metered work if the meter isn't working properly
- fail to properly install or maintain metering equipment
- fail to keep metering records.



If you intentionally, negligently or recklessly commit these offences, you may face a higher penalty.

If you order water from State Water and then realise that your meter is not working properly, you should call your local DWE licensing officer as soon as possible to get written approval to use that pump before taking the water. This will help you avoid a potential breach of the new water metering rules.

Harming an aquifer or waterfront land

It is now an offence to harm an aquifer or waterfront land. This relates to an act or omission that adversely affects the capacity of an aquifer or waterfront land to hold or carry water. For example, if an aquifer is pierced during a drilling operation. If you intentionally or negligently harm an aquifer you will face a tougher penalty.

Who can be held liable for an offence?

Anyone who causes or permits an offence under the WMA2000 is now liable and could face penalties. Occupiers and co-licence and co-approval holders can be held accountable for offences on their property or breaches in connection with their licence and approval. DWE encourages all property owners and licence and approval holders to monitor water-related activities carried out on their land or in connection with their licence to ensure compliance with NSW water laws.

What are the new penalties?

The maximum penalties for offences under the WMA2000 have been increased and are a strong deterrent to would-be offenders.

Tier 1 Offences

- the maximum penalty for individuals has increased from \$132,000 to \$1.1 million
- the maximum penalty for corporations has increased from \$275,000 to \$2.2 million
- Individuals can now go to prison for up to two years.

Tier 2 Offences

- the maximum penalty for individuals has increased from \$132,000 to \$247,500
- the maximum penalty for corporations has increased from \$275,000 to \$1.1 million.

Tier 3 Offences

- Tier 3 penalty is \$110,000.

Courts also have new powers to make orders against people convicted of water offences, including powers to order an offender to publicise an offence or pay for an environmental project.

Who is a DWE authorised officer?

An officer appointed by the Minister to exercise authorised officer powers.

What new powers do DWE authorised officers have?

The Amendment Act contains provisions that allow DWE authorised officers to properly, comprehensively and efficiently investigate potential breaches of NSW water laws, such as water theft.

These improved investigative powers are necessary because water theft is, and must be seen as, equally serious as other forms of crime.

DWE authorised officers now have the power to:

- Require people who are suspected of committing an offence to provide their name and address. Failure to provide correct information could result in an arrest.
- Require people to answer questions for the purposes of administering the Act, such as investigating suspected illegal activities. Failing to answer a question could result in a fine or charge. However, authorised officers will provide appropriate warnings when asking questions.
- Record questions and answers.

- Undertake activities at properties, for example inspect and test equipment.
- Seize items relevant to their investigation, for example invoices or equipment.
- Require people to assist them, for example turn on a pump or bore.
- Require people to supply information and records that are in their possession or to which they can obtain lawful access e.g. metering records.
- Issue penalty infringement notices, which enable an offender to pay a fine of \$750 (individual) or \$1,500 (corporation) rather than go to court.

The new powers will improve the ability of authorised officers to investigate suspected offences and are consistent with compliance powers in other NSW legislation, such as the Protection of the Environment Operations Act 1997.

DWE is training its officers to ensure that the new powers are used in a responsible manner.

Can a DWE authorised officer enter my property?

Yes, DWE authorised officers have powers to enter properties. However, these powers do not apply to residential premises, which can only be entered with the permission of the occupier or under the authority of a search warrant. These powers are necessary to enable officers to administer NSW water laws and investigate reports of suspected illegal activities.

DWE requires its authorised officers to carry evidence of their authorisation. This can take the form of a photo ID or written authorisation. You can ask to see this.

What new powers does the Minister or his delegate have to direct me to cease an activity, remove or dismantle equipment, or remediate a water source?

The Minister now has more clearly defined powers to direct people to take action to prevent, minimise or repair damage to a water source. For example, the power to direct people to:

- stop certain activities
- bring works into compliance with licence conditions or NSW water laws
- remediate waterfront land or the water source and protect it from harm
- prepare reports
- install and maintain metering equipment
- take action to protect public/environmental health.

For example, the Minister or his delegate can issue a stop work or remediation order. If the order is not complied with within the specified timeframe, the NSW Government has the power to undertake the required work and then bill the person who failed to comply with the order. It is an offence not to comply.

Previously, orders could only be issued to a limited group of people. However, under the new powers the Minister or his delegate can issue an order to any person who has care, control or management of land, an activity, or work.

Can the Department impose water restrictions?

Many licence holders would be familiar with a section 323 order issued under the WMA2000, which directs that the taking of water is prohibited or restricted. Under the new rules, section 323 has been replaced with section 324. The ability to impose water restrictions continues. The amendments make it clear that the Minister may impose directions to protect aquifers and in particular manage groundwater 'hotspots'.

How has the timeframe for compliance action changed?

DWE now has up to three years from the date an offence was first commissioned or brought to the attention of an authorised officer to commence proceedings in a Court. Previously the deadline to take court action was up to twelve months. This allows DWE more time to thoroughly investigate and, if appropriate, take compliance action against offenders.

Have there been changes to how orders made under the WMA2000 must be published?

Yes, the new rules aim to streamline publication requirements in the WMA2000 to provide better clarity, consistency and transparency in regards to how orders, notices and proclamations are published. Amendments include:

- They will be published in an appropriate newspaper (defined as a newspaper that circulates throughout the area affected, or as many newspapers circulating within the various parts of the area affected).
- A temporary water restriction order (formerly s323 – now s324) must be published in the Government Gazette and a notice published in an appropriate newspaper. It no longer has to be broadcast by television or radio to take effect. However, a notice of the order can be broadcast if the matter is urgent, in addition to publishing in the Government Gazette and a newspaper.
- For some orders, including temporary water restrictions orders (formerly s323 – now s324) published in the Government Gazette, a notice of the order can be published in an appropriate newspaper instead of the full order.

I want to read the complete Amendment Act – how can I access it?

The complete *Water Management Act 2000* and *Water Management Amendment Act 2008* is publicly available on the NSW Government's NSW legislation website.

Who can I talk to for more information?

For further information, please email your questions and contact details to information@dwe.nsw.gov.au. The most appropriate DWE staff member will then contact you as soon as possible to respond to your enquiry.

I have noticed something that I think is illegal – what should I do?

Make a confidential report of the suspected illegal activity to DWE, please call **1800 633 362** or send an email to: watercompliance@dwe.nsw.gov.au

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