

FACT SHEET SERIES – COMPLIANCE WITH NSW WATER MANAGEMENT LAWS

Regulated activities, offences and penalties

November 2015

DPI Water is responsible for managing the state's surface water and groundwater resources. A key part of this responsibility is ensuring compliance with NSW water management laws to enable secure and sustainable sharing of water between users including the environment.

Water theft and harming a water source are serious crimes which can threaten water supplies for legitimate water users and harm the environment.

In order to protect legitimate water users and the environment, DPI Water monitors and enforces compliance with the *Water Management Act 2000* (the Water Management Act) and the *Water Act 1912* (the Water Act).

The Water Act is being progressively repealed and replaced by the Water Management Act, but some provisions are still in force.

Copies of the Acts and associated regulations are available on the NSW Government legislation site at www.legislation.nsw.gov.au

What activities are regulated?

DPI Water regulates various water-related activities to ensure compliance with water management laws. These include but are not limited to:

- taking and using water from:
 - rivers
 - floodplains
 - lakes
 - aquifers
 - estuaries
- capturing and storing rainwater run-off (except from a roof)
- constructing and using water management works including bores, dams, tanks, pumps, levees, pipes, irrigation channels, weirs and causeways
- carrying out a controlled activity¹ in, on or under waterfront land.²

A licence or approval is usually required to undertake these water-related activities.

Find more information about licences and approvals at www.water.nsw.gov.au under 'Water Licensing'.

What are the offences?

Some of the offences and penalties under the Water Management Act are outlined in the following pages.

Summarised are offences related to:

- taking water when not authorised by a licence
- constructing or using works or using water when not authorised by an approval
- metering
- activities in aquifers
- activities in, on or under waterfront land.

Exemptions from offences are specified in the Water Management (General) Regulation 2011 available on the NSW Government legislation site at www.legislation.nsw.gov.au

In addition, an access licence or approval may not be required to take water under basic landholder rights (*see note overleaf*).

Note that other offence provisions and penalties apply to activities regulated by the Water Act.

If you are unsure regarding the rules and your legal requirements under the relevant Act and associated regulations, contact us:

- by phone 1800 353 104
- by email water.enquiries@dpi.nsw.gov.au

¹ A controlled activity includes:

- erecting a building or other structure, excavating or depositing material or carrying out activities that affect water quantity or flows.

² Waterfront land includes:

- the bed and bank/shore/mean high water mark of any river, lake or estuary and all land within 40 metres of the highest bank of the river, lake or estuary.

Offences relating to taking water when not authorised by a licence

It is an offence:

- for any person to take water without obtaining an access licence
- for the holder of an access licence to take water other than authorised by the access licence
- for anyone (other than the holder/s) to breach any term or condition of an access licence
- for the holder of an access licence if any other person breaches any term or condition of the access licence
- to take water other than from a nominated water supply work
- to take water when there is not enough water in the water allocation account for an access licence
- to take more than the combined total of water in the water allocation accounts for all access licences held.

Offences relating to constructing or using works or using water when not authorised by an approval

It is an offence:

- for any person to construct or use a water supply work without a water supply work approval
- for any person to construct or use a flood work without a flood work approval
- for any person to use water without a water use approval
- for the holder of a water supply work approval to construct or use a water supply work other than authorised by the approval
- for the holder of a flood work approval to construct or use a flood work other than authorised by the approval
- for the holder of a water use approval to use water other than authorised by the approval
- for anyone (other than the holder) to breach any term or condition of an approval
- for the holder of an approval if any other person breaches any term or condition of the approval.

Offences relating to metering

It is an offence to:

- interfere with, damage, destroy or disconnect any metering equipment
- take water from a metered work if the meter isn't working properly
- fail to install metering equipment when required
- fail to ensure the proper operation of any installed metering equipment
- fail to keep metering records.

It is the responsibility of the licence or approval holder to check their meter is working properly.

Find information about what to do if metering equipment is not operating properly at www.water.nsw.gov.au under Water licensing > Metering

Offences relating to activities in aquifers

It is an offence to:

- harm an aquifer. This relates to an act or omission that adversely affects the capacity of an aquifer to hold or carry water.
- for any person to carry out an aquifer interference activity without an aquifer interference approval*
- for the holder of an aquifer interference approval to carry out an aquifer interference activity other than authorised by the approval*
- for anyone (other than the holder) to breach any term or condition of an aquifer interference approval*
- for the holder of aquifer activity approval if any other person breaches any term or condition of the approval.*

** these offence provisions are yet to commence, and you will need to obtain a licence under Part 5 of the Water Act 1912 for most of these activities.*

The Aquifer Interference Policy explains the regulatory requirements for aquifer interference activities. Find information about the Policy at www.water.nsw.gov.au under Water management > Law and policy > Key policies > Aquifer interference

Under basic landholder rights:

- An owner or occupier of a landholding can take water from a river, estuary or lake which fronts their land or from an aquifer which is underlying their land for domestic consumption and stock watering without holding an access licence.
- While owners and occupiers of landholdings do not need a water access licence to take water under a domestic and stock right, they need to obtain a water supply work approval to construct a dam or a water bore.
- In most areas of New South Wales, an owner or occupier of a landholding does not require an access licence, water supply work approval or water use approval to construct and use a dam to capture and store rainwater run-off and to use water captured and stored by the dam in accordance with the harvestable rights order. Harvestable rights orders contain important restrictions on the size and location of harvestable rights dams, which must be complied with.
- Native title holders do not require an access licence or water use approval to take and use water in the exercise of native title rights. However, they need to obtain a water supply work approval to construct a dam or water bore.
- For more information see the section on basic water rights under 'Water Licensing' at www.water.nsw.gov.au

Offences relating to activities in, on or under waterfront land

It is an offence:

- for any person to carry out a controlled activity without a controlled activity approval
- for the holder of a controlled activity approval to carry out a controlled activity other than authorised by the approval
- for anyone (other than the holder) to breach any term or condition of a controlled activity approval
- for the holder of a controlled activity approval if any other person breaches any term or condition of the approval
- harm waterfront land. This relates to an act or omission that adversely affects the capacity of waterfront land to hold or carry water.

Examples of activities that may require approval include constructing river crossings, retaining walls or access ramps and stairs; works to address bank erosion; and extracting sand and gravel.

Find more information at www.water.nsw.gov.au under Water Licensing > Approvals

Other examples of offences under the Water Management Act

It is an offence to:

- drill a bore when not authorised by a driller's licence
- not comply with a direction
- threaten, hinder, obstruct or delay an authorised officer in the exercise of powers
- provide false or misleading information in connection with a requirement or an application.

There are also a number of other offences under the Water Management Act. If you are unsure regarding the rules and your legal requirements, contact us:

- by phone 1800 353 104
- by email water.enquiries@dpi.nsw.gov.au

Who can be held liable for an offence?

Anyone who causes or permits an offence under the Water Management Act is liable and could face substantial penalties.

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

DPI Water 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 or approval to ensure compliance with NSW water management laws.

What are the penalties?

There are substantial maximum penalties for offences under the Water Management Act.

Offence provisions that deal with intentional, negligent and reckless conduct are identified as 'Tier 1' offences and attract the highest penalties under the Water Management Act.

Tier 1 Offences

- the maximum penalty for individuals is \$1.1 million
- the maximum penalty for corporations is \$2.2 million
- Individuals can go to prison for up to two years.

Tier 2 Offences

- the maximum penalty for individuals is \$247,500
- the maximum penalty for corporations is \$1.1 million.

Tier 3 Offences

- the maximum penalty is \$110,000.

There are also daily penalties for continuing offences.

Courts have 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.

Penalty Infringement Notices

Offences can also be dealt with by way of a penalty infringement notice which is a set amount of \$750 per offence for individuals and \$1500 per offence for corporations.

What is the timeframe for compliance action?

Under the Water Management Act, DPI Water has up to three years from the date an offence was first committed or brought to the attention of an authorised officer to commence proceedings in a Court. This allows time to thoroughly investigate and, if appropriate, commence a prosecution.

More information

This fact sheet is one in a series explaining water management compliance and associated issues.

You can find this fact sheet series and more information about licensing and compliance on the DPI Water website at www.water.nsw.gov.au under Water Licensing.

For enquiries you can contact us:

- by phone 1800 353 104
- by email water.enquiries@dpi.nsw.gov.au

© State of New South Wales through the Department of Industry, Skills and Regional Development 2015. You may copy, distribute and otherwise freely deal with this publication for any purpose, provided that you attribute the NSW Department of Primary Industries as the owner.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (November 2015). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

Published by the Department of Primary Industries, a division of NSW Department of Industry, Skills and Regional Development.

2012-0171-a