



FACT SHEET SERIES – COMPLIANCE WITH NSW WATER MANAGEMENT LAWS

Investigating alleged breaches

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.

While most water users follow the rules, some people carry out illegal water activities. Sometimes these actions are deliberate and sometimes they happen because people do not know the law.

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

DPI Water works to prevent, detect and stop illegal water activities by:

- supporting voluntary compliance through education and providing information so water users and the community are aware of and understand their regulatory obligations
- monitoring compliance with the *Water Management Act 2000* (the Water Management Act) and *Water Act 1912* (the Water Act) and taking appropriate enforcement action when a breach occurs.

What do NSW water management laws regulate?

The Water Management Act and Water Act control the extraction of water, the use of water, the construction of works, such as pumps, bores, dams and weirs, and what activities can be undertaken in or near water sources.

The Water Act is being progressively repealed and replaced by the Water Management Act, but some provisions are still in force.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

The DPI Water Compliance Policy explains how we manage compliance with NSW water management laws. The Policy is available on the DPI Water website at www.nsw.gov.au

How are alleged breaches identified?

DPI Water receives reports of alleged breaches of water management laws from various sources including members of the public, local councils, WaterNSW (formerly State Water Corporation), and other government agencies.

In some instances, alleged breaches are detected by DPI Water as part of its compliance monitoring activities, which include:

- site inspections on properties to evaluate the extent to which a licence or approval holder or other regulated entity is complying with their legal requirements
- the use of remote sensing technology, such as satellite imagery and aerial photography, to detect potential illegal use or storage of water.

How are alleged breaches investigated?

All alleged breaches reported or detected are recorded, undergo a risk assessment and the matter is prioritised.

Further investigation may be conducted following the risk assessment and this may involve a site inspection and collecting information from the landholder and/or licence holder by a DPI Water authorised officer.

During an investigation, authorised officers will gather evidence in order to establish whether an offence has occurred, the identity of the person(s) who may be responsible and any harm resulting from the offence.

This evidence may take the form of videos, photographs, samples, meter readings and physical evidence, witness statements and records of interview.

What powers do investigating authorised officers have?

DPI Water authorised officers (such as water regulation officers, monitoring officers and investigators) have a number of powers under legislation, including the power to:

- enter properties (note that these powers do not apply to any part of premises used only for residential purposes, which can only be entered with the permission of the occupier or under the authority of a search warrant)
- take photos, films, audio, video and other recording as is necessary
- undertake activities at properties (for example, inspect and test equipment, take samples and examine records)
- seize items relevant to their investigation (for example, invoices or equipment).

What can I expect during an investigation and do I need to cooperate?

In most cases, an authorised officer will:

- explain the allegation to you
- explain the process the investigation will follow
- advise you of the outcome of the investigation once completed.

During an investigation, an authorised officer:

- can direct you to provide your name and address. Failing to comply or providing false information could result in a fine or prosecution.
- can direct you to answer questions and record the questions and answers. Failing to answer a question could result in a fine or prosecution. However, compliance officers will provide appropriate warnings when asking questions.
- may require you to assist them with an activity (for example, turn on a pump)
- may require you to supply information and records to which they can obtain lawful access (for example, metering records).

It is an offence to hinder, obstruct, delay or threaten an authorised officer in the exercise of their duties.

What conduct can I expect from an investigating officer?

All authorised officers are required to comply with the NSW Trade & Investment Code of Conduct.

Authorised officers are trained to undertake their compliance role and exercise their powers in a professional manner that is: objective, fair and impartial; consistent with the presumption of

innocence; within their authority; in accordance with the law; and respectful of individuals.

Compliance decisions are made in accordance with public sector guidelines and to the highest ethical and professional standards.

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.

What action can be taken in response to a breach?

If, after full investigation, it is considered a breach has occurred, DPI Water can use a wide range of measures under the Water Management Act to respond to the breach.

An appropriate action will be taken depending on the circumstances and significance of the breach, including imposing penalties, requiring restoration for harm caused and requiring measures to be taken to prevent future non-compliance.

Enforcement measures include warning letters, penalty infringement notices (PINs), civil penalties, stop work orders, remediation notices, licence suspension or cancellation, and prosecution.

Less serious offences can be dealt with by way of a warning or PIN – a PIN requires an offender to pay a fine of \$750 per offence (individuals) or \$1,500 per offence (corporations).

Offences for serious non-compliance can lead to penalties of up to \$1.1 million for an individual and \$2.2 million for a corporation. Daily penalties also apply for each day that the offence continues and individuals can go to prison for up to 2 years for some offences.

More information

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

You can find the 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

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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.

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