



Department of  
Primary Industries  
Office of Water

## Compliance policy

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Compliance policy

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**More information**

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## Introduction

The NSW Office of Water is the lead NSW agency for the management, regulation and reform of surface water and groundwater to drive economic growth, strong communities and healthy environments for NSW.

Its focus is on profitable and sustainable water access and use, improved client service and stakeholder engagement, and a continuous improvement in knowledge for evidence-based water management decisions.

The Office of Water operates within a complex and ever-changing legislative and policy environment involving both Federal and State Governments.

The goal of the Office of Water is to balance the water needs of farmers, towns, industries, the environment and Aboriginal communities in the face of increased competition for water and lower water availability as a result of climate variability. Prolonged droughts and significant flood events exacerbate the difficulties of managing water sources.

The Office of Water's regulatory role is to ensure sustainable and equitable sharing of water by promoting voluntary compliance with legislation, supported by enforcement that targets unlawful and high risk behaviour.

## Office of Water's legislative responsibilities

The Office of Water has legislative responsibility for the *Water Act 1912*, the *Water Management Act 2000* and associated regulations.

The objectives of the *Water Management Act 2000* are to:

- apply the principles of ecologically sustainable development
- protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality
- recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including benefits to the environment, benefits to urban communities, agriculture, fisheries, industry and recreation, benefits to culture and heritage, and benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water
- recognise the role of the community as a partner with government in resolving issues relating to the management of water sources
- provide for the orderly, efficient and equitable sharing of water from water sources
- integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna
- encourage the sharing of responsibility for the sustainable and efficient use of water between Government and water users
- encourage best practice in the management and use of water.

## Purpose and scope of this policy

The Office of Water's compliance policy has been developed to give effect to a key government reform to make it easier for business and individuals to engage with NSW regulators.

The Office of Water takes a risk-based approach to regulation which means it:

- clearly defines its regulatory outcomes
- identifies and assesses risks that affect regulatory outcomes
- links what it does to achieving the desired regulatory outcomes

- measures what it does
- allocates resources according to the level of risk
- tailors its use of enforcement and other regulatory tools based on the severity and behavioural drivers of non-compliance
- uses monitoring and reporting to continually improve what it does.

This compliance policy aligns with the NSW Government's *NSW 2021 Plan*, NSW Department of Primary Industries' *Corporate Plan* and the Office of Water's *Strategic Plan*.

The objectives of this policy are to:

- promote compliance with the objectives of the *Water Act 1912* and the *Water Management Act 2000*
- achieve best practice management and regulation of surface water and groundwater by working collaboratively with water users.
- ensure decisions on enforcement action are transparent to the community
- guide decision-making and action by officers considering the use of a range of enforcement options
- take a risk-based approach to compliance and enforcement activities through adoption of a graduated and proportionate response to legislative non-compliance.

This policy is relevant to the following:

- people and corporations who take water from rivers or aquifers, or harvest water from floodplains
- people and corporations who use water
- people and corporations who construct or use water management works
- people and corporations who exercise basic land holder rights under the *Water Management Act 2000*
- people and corporations who conduct controlled activities on waterfront land
- people and corporations who conduct aquifer interference activities
- people and corporations who construct controlled works on floodplains
- bore drillers.

## Principles underlying this policy

The Office of Water promotes and upholds the NSW Public Sector's core values of service, integrity, trust and accountability which are embedded in all aspects of its compliance and enforcement activities. All officers are required to comply with the NSW Trade & Investment *Code of Conduct* which provides an ethical framework for decisions, actions and behaviour.

Compliance decisions are made in accordance with public sector guidelines and to the highest ethical and professional standards. Officers must implement policies and decisions in an impartial manner that is consistent with this policy and transparent. Officers make decisions and take actions that are objective, fair and appropriate to the circumstances. Decisions are based on a consideration of all the relevant facts and supported with adequate documentation.

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.

## Our approach to compliance

To implement its compliance policy the Office of Water:

- promotes voluntary compliance through community education and engagement
- monitors compliance of water-related activities across NSW
- identifies individual compliance issues
- assesses and prioritises risks that affect regulatory outcomes
- investigates matters of non-compliance
- takes appropriate regulatory action when non-compliance occurs
- measures and reports on performance
- evaluates the compliance approach.

Figure 1 shows the components of the Office of Water's compliance approach. This enables the Office of Water to focus on identified compliance priorities and learn and adapt to continuously improve the appropriateness, efficiency and effectiveness of its compliance program.

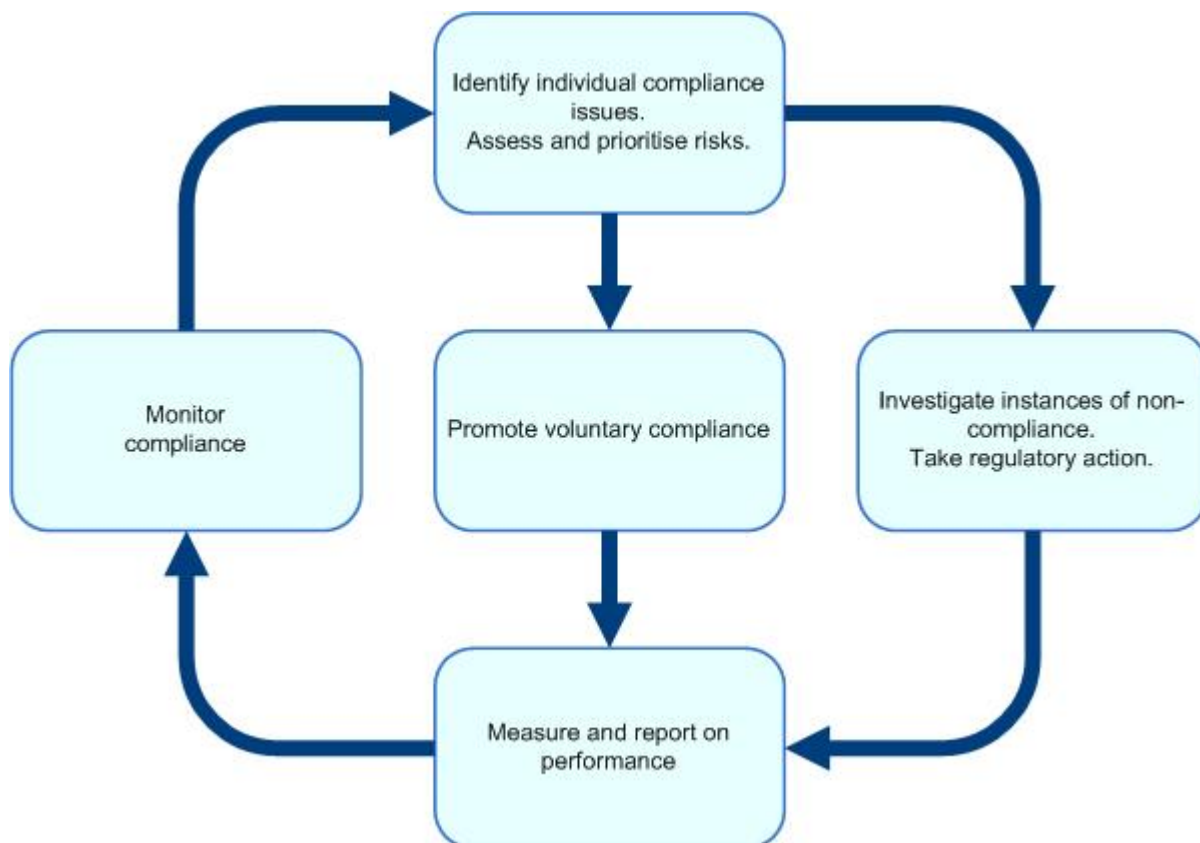


Figure 1. Office of Water's approach to compliance.

## Promoting voluntary compliance

We all have a stake in the management of our water resources and their associated ecosystems. The Office of Water recognises that most people want these resources managed to achieve long term economic, environmental and social outcomes and to ensure fair sharing of water.

The Office of Water encourages voluntary compliance through a range of education activities which aim to build the capacity of the community to play an informed and active role in complying with water management laws.

These education activities include:

- providing information resources and tools to assist water users and landholders to be aware of their rights, to make sure they are aware of the law and to help provide certainty in planning for the future.
- engaging with stakeholders to build capacity, such as through workshops.
- promoting and reinforcing good regulating practice, including:
  - promoting the benefits of complying with water management laws
  - promoting the potential consequences of not complying with water-related legislation.

Information resources include newsletters, media releases, advisory letters and other resources tailored and delivered to specific groups, as well as information and tools accessible through the website, such as real time data reports and other on-line applications.

Along with reviews and updates of these information resources, we also review ways to make it easier for the community to get access to this information. This includes seeking feedback on this from our customers and other members of the community, such as through social research and providing feedback forms at workshops.

The Office of Water also collaborates with many other organisations which can facilitate access to information and support education activities, including Local Land Services, local government and Aboriginal communities.

## Monitoring compliance

Monitoring compliance with water legislation is an essential component of the Office of Water's regulatory role. Information gained during monitoring assists the Office of Water to:

- determine the level of compliance and trends in compliance across the regulated community
- improve the risk assessment process
- develop compliance programs focused on the greatest risk to regulatory outcomes
- detect instances of non-compliance in a timely manner
- identify where action may be required to avoid or mitigate environmental harm or to protect the rights of legitimate users
- identify when, whether, and what type of, education responses or enforcement action may be required
- assess and review the effectiveness of its operations and programs
- identify opportunities for improvement.

The Office of Water's compliance monitoring program includes the use of remote surveillance techniques such as aerial photography and satellite images, land and river surveys, audits of water access licences and approvals, review of licences / approvals, and inspections.

The Office of Water analyses this information, as well as information from other sources and data from research to identify emerging issues, define any associated problems, and develop and implement effective, well targeted compliance responses.

For further information refer to the fact sheet *Monitoring compliance*.

## Assessing and prioritising risks

All instances of non-compliance with water legislation are prioritised for investigation using a risk management approach in line with the Australian/New Zealand Joint Standard on Risk Management (AS/NZ ISO 31000:2009), and internal risk management procedures.

A risk assessment and prioritisation process is used to:

- assess instances of non-compliance
- prioritise activities and entities according to their level of risk of non-compliance and impacts
- efficiently allocate compliance resources to deal with the highest priority activities, or matters where regulatory action is likely to be most effective
- identify trends or groups of compliance issues that may require a planned response
- improve business and community support and guidance for compliance on important issues.

An initial desktop assessment of each instance of non-compliance considers:

- the level of impact on water users and the environment
- the effect on the integrity of the regulatory system.

A higher-level priority is assigned where the risk of non-compliance and the effect on regulatory outcomes is the greatest. A lower-level priority is assigned where the risk of non-compliance and its impacts are low.

The allocation of resources according to an activity's level of risk of non-compliance is designed to address the compliance issue and increase the level of compliance with legislation.

While the Office of Water will focus its resources in accordance with these compliance priorities, it will also continue to conduct some compliance activity in areas of lower risk to test how robust the risk analysis process is and deter non-compliance on all matters.

## Investigating instances of non-compliance

The Office of Water follows up all reports of non-compliance. Officers investigate instances of non-compliance which have been assigned a high priority as they present the greatest risk to water sources, other water users and the environment (regulatory outcomes), or may influence others to consider non-compliant activities, or may be matters of high public interest.

During an investigation officers gather evidence of the non-compliance in order to establish whether an offence has been committed, the seriousness of the offence, and to determine the identity of the person(s) who may be responsible.

Officers conduct site inspections and collect information/evidence from any person with knowledge of the offence including landholder/s and licence / approval holder/s. Evidence may include videos, photographs, samples, meter readings, physical evidence, witness statements and records of interview.

For further information refer to the fact sheet *Investigating alleged breaches*.

Officers authorised under the *Water Management Act 2000* have a range of powers available to them to assist in the evidence gathering process. This includes the power to enter non residential premises, the power to require answers and the power to seize evidence.

For further information refer to the fact sheet *Compliance powers*.



## Taking regulatory action

When an investigation of a matter determines non-compliance, the Office of Water takes appropriate regulatory action to prevent or correct that non-compliance. The Office of Water may also take action such as remediation orders and stop work orders, even in cases where an offence has not yet occurred, in order to protect water sources and ensure an offence is not committed.

The purpose for taking a regulatory action against a person is to:

- reduce the likelihood of non-compliance occurring. The Office of Water may require a person to implement measures to reduce the likelihood of non-compliance occurring or restrain existing non-compliances, or it may take enforcement action to deter future non compliance.
- reduce the consequences of non-compliance. The Office of Water may require a person to undertake measures to minimise harm as a result of non-compliance, and prevent any further harm occurring as a result of non-compliance.

A range of approaches and regulatory tools are used to respond to non-compliance. These include advisory letters and audits, as well as regulatory measures including: warning letters (official cautions), licence/approval variations, stop work orders, remedial directions, penalty infringement notices, licence suspension, licence cancellation and prosecutions.

Figure 2<sup>1</sup> illustrates the Office of Water's options for responding to instances of non-compliance.

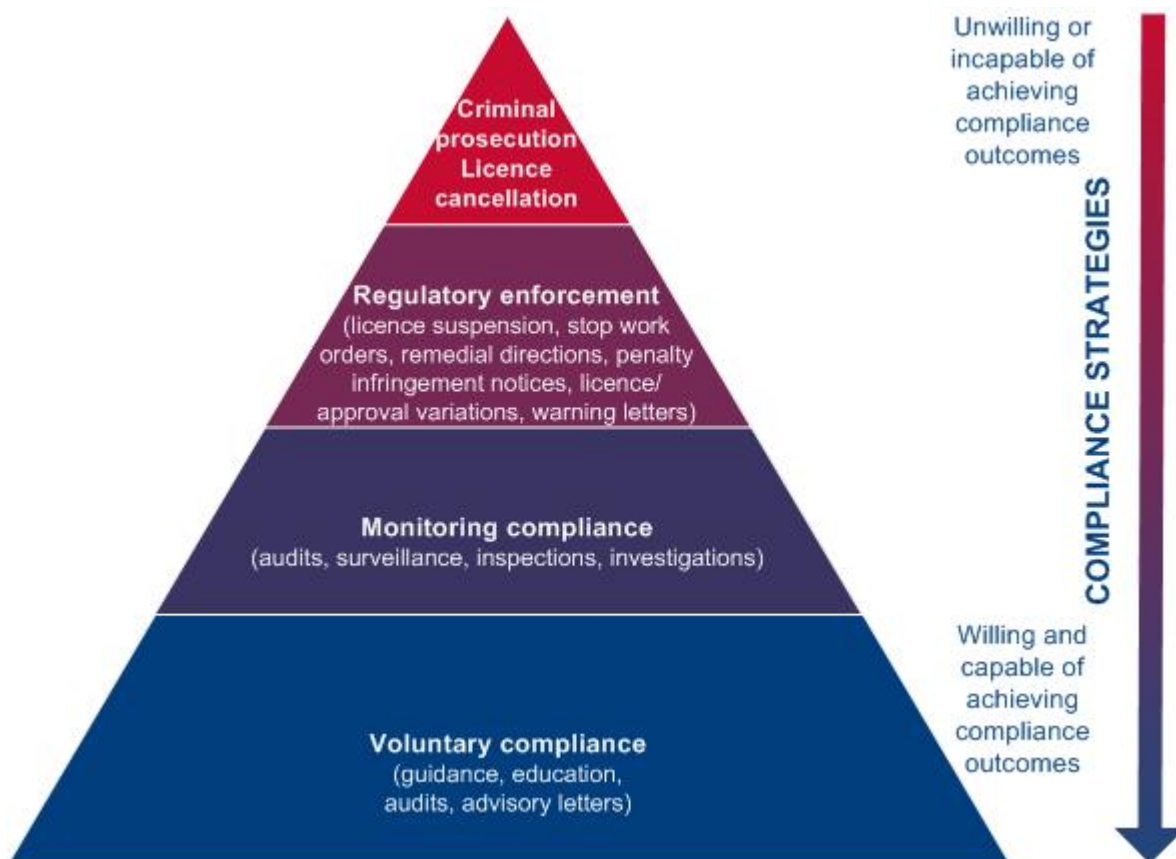


Figure 2. Office of Water's options for responding to instances of non-compliance

<sup>1</sup> Adapted from the Ayers and Braithwaite compliance model. Ian Ayers and John Braithwaite (1992) "Responsive Regulation: Transcending the deregulation debate". New York: Oxford University Press.

Most members of the community are willing and capable of doing what is required to comply with NSW water management legislation. In these cases either no regulatory action is necessary or non-regulatory compliance actions are all that is needed to assist individuals achieve the desired outcomes.

However, some members of our community, a minority of the population, are unwilling or not able to do what is required to achieve compliance with the relevant legislation. In these cases regulatory actions are needed to direct individuals to achieve compliance with the law. In most cases compliance and regulatory outcomes may be achieved with regulatory measures such as warning letters and stop work orders. However, civil and criminal actions are also used when necessary.

The goal of compliance strategies is to move a greater proportion of the regulated population into the position of being willing and capable of doing what is required to achieve compliance outcomes without the need for regulatory action.

### **Determining the significance of non-compliance**

The type of regulatory action taken depends on the seriousness of the environmental harm or impacts, the culpability of the offender, the history of prior offending, and aggravating circumstances and the legislation. Some offences under the *Water Management Act 2000* are strict liability offences.

To determine the significance of non-compliance consideration is given to the following:

- The public interest, such as:
  - if action would be perceived as counter-productive by bringing the law into disrepute
  - the level of public concern
  - the need for general and/or specific deterrence.
- The impact on other water users.
- The degree of environmental harm or potential harm resulting from non-compliance.
- The severity of non-compliance.
- The integrity of the consent and/or the regulatory system, such as:
  - avoiding a poor precedent being set
  - 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 non-compliance where the agency has taken action
  - whether non-compliance is ongoing.
- Any mitigating factors, such as:
  - whether the individual had acted in accordance with agency advice
  - whether the individual is not culpable
  - 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 depends on the circumstances of each particular case. Officers determine the level of significance with reference to internal policies, peer review as well as supervisor support. Officers operate within their delegated authority.

## Enforcement options

The type of regulatory action taken depends on the significance of non-compliance. See Figure 2 for further information.

The Office of Water has available a wide range of measures it can use in response to non-compliance, such as:

- advisory letters
- warning letters
- penalty infringement notices
- statutory directions such as stop work orders and remediation notices
- civil penalties:
  - debiting a licence holder's account by up to 5 times the amount of water taken, or
  - imposing a penalty of up to 5 times the value of the water taken
- prosecution.

An appropriate penalty is one that is proportionate and within the range of penalties imposed on other individuals for similar instances of non-compliance. A penalty will generally be higher where:

- there is a greater degree of control over the causes of the non-compliance; and/or,
- the extent of the harm is significant.

## Measuring and reporting on performance

The Office of Water measures the performance of its compliance functions so it can:

- report on that performance
- learn from its past performance and continually improve the effectiveness and efficiency of its future approach to compliance
- identify emerging compliance issues.

In particular, the Office of Water measures:

- the number and type of reported or detected non-compliances
- regulatory outputs, such as the number of prosecutions, notices and penalty infringement notices
- the resulting compliance outcomes, such as the number of non-compliance types and levels of compliance for each type of non-compliance at a state-wide and/or regional / catchment level
- indicators specific to the objectives of priority compliance programs.

This approach enables the Office of Water to evaluate the overall effectiveness of its compliance function and individual compliance programs to change behaviours to meet standards set by legislation and regulations. It also enables the Office of Water to understand and explain changes in regulatory outputs and detect and respond to emerging risks.

The Office of Water will report on its compliance performance annually in the Annual Report.

## Evaluating the Office of Water compliance approach

The Office of Water is committed to continuously improving its compliance approach to ensure the agency remains credible, fair, targeted, effective, efficient, collaborative and adaptive to changing circumstances. Continuous improvement will be achieved through evaluation and adaptation of the components of the Office of Water's compliance approach.

In particular the Office of Water will:

- develop its compliance monitoring approaches, adopting new and additional technologies and approaches where practical and cost-effective
- periodically review compliance priorities using the risk analysis framework
- periodically review its risk analysis framework based on science, policy and the availability of information on levels of compliance
- undertake an internal debriefing for all major investigations to improve the appropriateness, effectiveness and efficiency of evidence gathering and regulatory decision-making processes and procedures
- evaluate the appropriateness, effectiveness and efficiency of all individual compliance programs in improving compliance levels
- develop relationships with, and learn from, the experiences of other regulators
- ensure compliance staff are kept well informed and remain well trained in Office of Water's current compliance approaches.

Any changes to the Office of Water's compliance approach will be notified publicly.

## Related policies

This policy is informed by policies of Trade & Investment and the Department of Primary Industries, particularly policies relating to:

Code of Conduct TI-A-123

Work health and Safety TI-A-140

Complaints Handling Policy TI-A-134

Records Management Policy TI-A-153

Fraud and Corruption Prevention Policy TI-A-146

Privacy Management Plan TI-G-155

Further information on these policies can be found on the Trade & Investment website at [www.trade.nsw.gov.au/policies](http://www.trade.nsw.gov.au/policies)

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<sup>i</sup> Nothing in this policy prevents the Office of Water from taking appropriate enforcement action in line with the *Water Management Act 2000* or the *Water Act 1912*.