

Authorised Officer Policy

Water Resources Division

Document title	Authorised Officer Policy - Water Resources Division
Contact details	Department of Environment, Parks and Water Security
Approved by	Controller of Water Resources
Date approved	5 November 2020
Document review	Annually
TRM number	LRM2017/0059-0078~0001

Version	Date	Author	Changes made
1.0	5 November 2020	Controller of Water Resources	Approved.

Disclaimer

This policy provides general guidance only. The information in this policy does not constitute legal or other professional advice, and the information should not be relied on as a statement of the law. You should obtain professional advice if you have any specific concerns.

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1 Terms used

Acronyms and abbreviations	Full form
Act	NT Water Act 1992
AO or Authorised Officer	a person appointed by the Controller of Water Resources under section 21 of the Water Act 1992
Code of Conduct	Code of Conduct for Public Sector Employees, Employment Instruction Number 12 ¹
conflict of interest	any relationship, business venture, investment etc. where there is a perceived or actual conflict with conducting regulatory functions in an impartial manner
Controller	the Controller of Water Resources appointed under section 18 of the Water Act 1992
Department or DEPWS	Department of Environment, Parks and Water Security
licence holders	for the purposes of this policy means a person or body corporate granted a licence, permit or consent under sections 36, 41, 45, 49, 57, 60, 60A, 63, 65(2), 67 and 74 of the Act
NT	Northern Territory
NTPS	Northern Territory Public Sector
personal information	information that can be reasonably used to determine the identity of an individual for example; name, address, date of birth, photograph etc.
privacy obligations	the NT Government's obligations regarding the collection, use, sharing, storage and protection of personal information in accordance with the <i>Information Act 2002</i> and as regulated by the Information Commissioner, Northern Territory
Regulations	NT Water Regulations 1992
regulatory functions	activities undertaken to monitor, support, compel and enforce compliance

¹ Available from: https://ocpe.nt.gov.au/__data/assets/pdf_file/0006/379329/ei-12-code-of-conduct.pdf

2 Purpose

This policy sets out guidance for the appointment and conduct of Water Resources Division employees who are Authorised Officers under the Water Act 1992 (**the Act**).

3 Scope

This policy applies to employees of the Water Resources Division who are appointed as Authorised Officers (**AOs**) under section 21 of the Act.

This policy does not apply to AOs who are employed by other Divisions of the department or other organisations. Information about these officers should be obtained from the relevant Division or organisation.

4 Objectives

To provide transparency regarding:

- appointment of Water Resources Division Authorised Officers
- the powers of Authorised Officers
- conduct of Authorised Officers when conducting compliance and enforcement activities.

5 Appointment and identification

AOs are appointed in writing (by signature on an Appointment instrument) by the Controller of Water Resources under section 21 of the Act and issued with an identification card bearing her signature.

5.1 Criteria for appointment

Prior to being appointed, an AO must have:

1. Satisfactorily completed a background police check (also referred to as a criminal history check or national police check). All information received as part of the police check process, is treated confidentially and in accordance with the NTPS privacy scheme.
2. Obtained a Certificate IV in Government Investigations or equivalent qualification.
3. Completed a current (annually updated) and approved departmental Conflict of Interest Declaration and Management Form.

A background police check is conducted online through the NT Police and Emergency Services.

An identification card is issued to all AOs identifying them as authorised under the Act. AOs will also have a (white, sewn-on) badge on their Water Resources Division uniform identifying them as an AO. Identification cards and badges will be registered as security items in PIPs and must be returned when an AO leaves the Division.

A register of Water Resources Division AOs is maintained by the Division. A training register is maintained by the Division to record qualifications. Conflict of Interest Declaration and Management Forms are to be completed by AOs and approved annually and will be maintained on the AO's AGS TRM file.

Probationary employees are not eligible for appointment as an AO.

6 Powers of authorised officers

AOs have powers to do certain things under the Act, as listed in Appendix A. These include powers:

1. directly under the Act or the Water Regulations 1992 (**the Regulations**)
2. delegated to them by the Controller of Water Resources under section 19 of the Act.

The primary role of AOs is to ensure that licence holders and individuals comply with the Act. They do this by inspecting premises, providing guidance on how to comply, requiring actions to remedy potential non-compliance and, where necessary, applying sanctions for non-compliance.

AOs can:

- enter premises to conduct inspections
- conduct investigations into breaches of the Act
- direct licence holders and individuals to take steps to comply with the Act
- issue formal notices to compel compliance
- issue infringements for offences listed in the Schedule to the Regulations².

The Act sets requirements for when these powers can be exercised. An AO **does not** have the power to enter dwellings without prior permission, in any circumstances.

A summary list of the powers of AOs is in Appendix A; however the point of truth is the Act.

The Controller of Water Resources established delegations, including for AOs, through a Delegations instrument. Water Resources Division AOs must ensure they have the current version of the Delegations instrument and the relevant Water Resources Division Administrative Guideline for the exercise of delegated powers.

7 Conduct

Water Resources Division requires its AOs to meet certain standards of behaviour when exercising regulatory functions:

1. AOs must conduct themselves and undertake regulatory functions in an impartial and ethical manner, in accordance with the NTPS Code of Conduct¹.
2. AOs will, at times, be required to collect personal information in the course of their duties. Personal information will be handled in accordance with the privacy scheme in the NT Information Act³ and the department's Management of Confidential Information Policy, derived from the scheme and its Information Privacy Principles.
3. If requested, an AO must produce his/her identification card as confirmation of their authorisation under the Act.
4. When practicable, AOs should explain the powers they are exercising and their reasons for doing so.

² <https://legislation.nt.gov.au/Legislation/WATER-REGULATIONS-1992>

³ <https://infocomm.nt.gov.au/privacy/overview>

5. Work health and safety is a priority for the Water Resources Division. AOs must conduct regulatory functions in accordance with work health and safety policies and procedures, and in a manner that does not compromise the health and safety of themselves or others. When conducting inspections, AOs must comply with work health and safety requirements of the premises they are inspecting and should never enter premises where there is a perceived risk to themselves.

7.1 Conflicts of interest

Conflicts of interest will be managed in accordance with the relevant departmental Conflict of Interest policy and as outlined below.

AOs are required to declare all perceived or actual conflicts of interest that may impact their ability to undertake their duties in an impartial manner. A conflict of interest may include, but is not limited to:

- a personal or professional relationship with a licence holder or individual
- a financial interest or investment that may be affected by the outcome of regulatory functions, or
- paid or voluntary membership of a club or organisation that is the subject of regulatory functions.

Where there may be a conflict of interest, the AO will report the possible conflict to his/her Manager and, if it is agreed there is a perceived or actual conflict, it will be resolved either by:

- removing the AO from the specific regulation function
- having an independent officer oversee the regulatory function
- the AO relinquishing the private interest or membership that gives rise to the conflict

in any case, the conflict identified and action taken will be submitted to the delegate for approval on the appropriate form. See section 5.1, Criteria for appointment.

8 Feedback or complaints

Water Resources Division expects its AOs to exercise their powers with a high degree of professionalism and impartiality and does not tolerate improper conduct.

Members of the public can submit feedback or complaints about the conduct of AOs.

If you have a positive experience with an AO, you may wish to tell us about it.

If not, examples of complaints might include:

- the use of inappropriate or offensive language
- an aggressive or rude demeanour
- damaging property when inspecting a premises
- misuse of their statutory powers
- discrimination or harassment, or
- behaviour reflecting badly on the NT Public Sector.

All AO feedback and complaints should be submitted in writing either to waterresources@nt.gov.au or to:

Director Water Licensing and Regulation
Water Resources Division
PO Box 496
PALMERSTON NT 0831

For feedback, please provide the date and name of the AO.

Complaint investigations will be conducted handled in accordance with the relevant departmental policy. For a complaint, please provide the date, time and location of the incident and, if possible, the name of the AO and any other person present at the incident. Provide enough information for us to understand the complaint. Water Resources Division will review your complaint and advise you of the outcome of your complaint.

You may provide your complaint anonymously; however, anonymous complaints are difficult to investigate and Water Resources Division will be unable to provide you with the outcome of any investigation.

If you do not believe your complaint was handled appropriately, you can request a review by a senior departmental manager. Alternatively, you can raise the matter with the Office of the Ombudsman NT.

9 Related documents

Water Act 1992⁴

Water Regulations 1992⁵ – and Schedule

Fines and Penalties (Recovery) Act 2001⁶

Information Act 2002⁷

NTPS Code of Conduct¹

⁴ <https://legislation.nt.gov.au/en/Legislation/WATER-ACT-1992>

⁵ <https://legislation.nt.gov.au/Legislation/WATER-REGULATIONS-1992>

⁶ <https://legislation.nt.gov.au/Legislation/FINES-AND-PENALTIES-RECOVERY-ACT-2001>

⁷ <https://legislation.nt.gov.au/Legislation/INFORMATION-ACT-2002>

Appendix A – Powers

Section of Act / Regs	Brief description	General description of power
20	Power to enter land and take action	<p>To enter land (without permission in some circumstances) and conduct compliance activities in exercise of the rights of the Territory under section 9(2) of the Water Act.</p> <p>In most circumstances a written notice of intention to enter land, is to be provided to the occupier / licence holder 14 days prior to entry.</p> <p>To take action, construct, maintain, repair or remove works.</p> <p>To take people onto land with them, e.g. contractors, tradesman, assistants and others.</p> <p>To take samples, material, machinery and photographs whilst on the land conducting compliance activities.</p> <p>Does not grant power to enter dwellings without prior permission, in any circumstances.</p>
20(5) (delegated power)	Power to issue notice	<p>To issue a notice in writing requiring the owner or occupier to take action or cease action considered necessary for the investigation, use, control, protection or management of water, or the administration of the rights of the Territory in respect of water.</p> <p>Failure to comply with a notice under this section may result in the AO entering premises and taking action to rectify the breach. If this occurs the AO may seek to recover costs from the land owner or occupier.</p>
52 (delegated power)	Obligation to produce drilling licence	Requires a person working as a driller or in connection with a bore, to produce within a reasonable time the person's drilling licence, or evidence that they are acting under the supervision of the holder of a drilling licence
53 (delegated power)	Power to require drilling information and samples	<p>By written notice, require a holder of a drilling licence to provide information and samples such as:</p> <ul style="list-style-type: none"> name of bore owner, name of the bore, sketch and description of bore location, dates work was carried out, drilling method used, details of the bore construction, samples of strata, samples of water etc. <p>Specify a time, by which the samples and information must be produced.</p> <p>Failure to comply with a notice issued under this section is an offence under the Act.</p>
84(a)	Power to recover unpaid moneys	Where a fee or charge imposed under the Act remains unpaid for 30 days after the due date, an authorised officer may issue proceedings in a court to recover the amount and costs incurred in recovering the amount.

Section of Act / Regs	Brief description	General description of power
reg 88(1) delegated power	Powers of Controller	By notice served on a person, require that person to keep and maintain records, install and maintain equipment, provide information, take or dispose of water samples, or submit water samples for analysis. Failure to comply with a notice issued under this section is an offence under the Act.
reg 20	Infringement notices	Issue an infringement notice where a person has committed an infringement notice offence, as defined in regulation 19(1) and listed in the Schedule to the Regulations.