

# Compliance and enforcement policy

Water Resources Division

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## 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.

# Contents

<b>1</b>	<b>Terms used .....</b>	<b>4</b>
<b>2</b>	<b>Purpose .....</b>	<b>5</b>
<b>3</b>	<b>Objectives.....</b>	<b>5</b>
<b>4</b>	<b>Scope .....</b>	<b>5</b>
<b>5</b>	<b>Compliance and enforcement priorities .....</b>	<b>5</b>
<b>6</b>	<b>Policy Statements .....</b>	<b>6</b>
6.1	How we do our job.....	6
6.2	What we expect from you .....	6
6.3	Compliance monitoring and investigations .....	6
6.4	Powers to compel compliance .....	7
6.5	Enforcement powers.....	7
6.6	Choice of response.....	8
<b>7</b>	<b>Related documents.....</b>	<b>9</b>

# 1 Terms used

Some terms used relate specifically to this policy; it is indicated in the definition when that is the case.

Abbreviation or term used	Full form or definition
Act	NT Water Act 1992
authorised officer	means a person appointed under section 21 of the Water Act 1992
breach	a contravention of the Act or condition of a licence, permit or consent granted under the Act
compliance	to operate in accordance with the Act and any terms or conditions specified in a licence, permit or consent granted under the Act
Controller	the Controller of Water Resources appointed under section 18 of the Water Act 1992
enforcement powers	powers designed to deter breaches of the Act or licences, permits or consents granted under the Act.
infringement	for the purposes of this policy means a fine imposed for a contravention of the Act, or licence, permit or consent granted under the Act. Infringeable offences and their associated penalties are listed in Schedule 1 of the Water Regulations.
licence holder	for the purposes of this policy means any 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.
non-compliance	means a contravention of a condition of a licence, permit or consent granted under the Act
offence	means a contravention of the Act
NT or Territory	Northern Territory
person	is a natural person or a body corporate
Regulations	NT Water Regulations 1992
regulatory functions	means activities undertaken to monitor, support, compel and enforce compliance
regulatory officer	any officer undertaking regulatory activities within the scope of this policy including assessments, inspections, reporting, audits, analysis and site visits. Not all regulatory officers are authorised officers.
water legislation	Act and Regulations

## 2 Purpose

This policy supports the Water Resources Division's regulatory functions under the water legislation (Act and Regulations).

The overarching purpose of the policy is to ensure regulatory action achieves the protection, fair allocation, and management of water resources for the benefit of all Territorians.

The policy provides guidance on the principles, processes and actions to monitor and enforce compliance with the Act.

This policy commences from 26 November 2020.

## 3 Objectives

To provide:

- transparency on how regulatory functions under the Act and Regulations are undertaken
- a consistent and fair approach in undertaking regulatory action under the water legislation.

This policy does not remove or fetter the Controller of Water Resources' or an Authorised Officer's discretion when deciding what, if any, action to take for alleged breaches of the water legislation.

This policy complements the department's Customer Service Charter in providing an outline of expectations for Water Resources Division regulatory actions.

## 4 Scope

This policy applies to compliance and enforcement action in relation to breaches, or potential breach of the water legislation.

This policy does not relate to pollution matters under section 16 of the Act or waste discharge licences granted under sections 63 and 74 of the Act. The Environment Regulation Division is responsible for regulatory functions regarding pollution matters and waste discharge licences, in accordance with its own policies.

The policy is intended to be read by licence holders under the Act, the Water Resources Division's staff, authorised officers, regulatory officers and the general public.

## 5 Compliance and enforcement priorities

Water Resources Division will prioritise its regulatory resources based on its current Compliance and Enforcement Priorities as agreed by the Controller. These priorities will be publicly available and updated from time to time to reflect current issues.

## 6 Policy Statements

### 6.1 How we do our job

All compliance and enforcement activities will be undertaken in a transparent, timely, fair, and respectful manner in accordance with natural justice principles. In addition, the following principles will be applied when conducting regulatory action:

1. Regulatory and authorised officers will take reasonable steps to identify and notify owners and occupiers of compliance activities being undertaken on their land. In instances where this is not possible, or attempts to notify have been unsuccessful, Authorised officers have the power to enter a premise to undertake compliance activities. Authorised officers will not enter any dwelling without prior consent from the owner or occupier of the dwelling or the authority of a court.
2. Water Resources Division will provide advice and opportunity to remedy non-compliance and will work collaboratively to prevent future non-compliance.
3. Where voluntary compliance has not been achieved, an authorised officer or the Controller may use powers to compel compliance. Enforcement action will be risk-based and proportionate to the offence.
4. Clear reasons will be provided for compliance or enforcement decisions.
5. All compliance activities undertaken will be documented and any person the subject of a compliance activity, may request a copy of this documentation.

### 6.2 What we expect from you

Water Resources Division's officers will treat you with courtesy and respect and we expect the same in return - abusive, aggressive or threatening behaviour towards Water Resources Division officers will not be tolerated.

The Water Resources Division expects you to take responsibility for compliance with the Act and Regulations and the protection of the Territory's water resources.

We expect licence holders to notify Water Resources Division of any non-compliance at the earliest opportunity, and encourage reporting of suspected offences under the Act.

### 6.3 Compliance monitoring and investigations

Compliance monitoring refers to a range of tools used to determine compliance with legislation, regulations, licences and permits.

Monitoring activities may be proactive or reactive and can include: assessments, reporting, data analysis, audits, site visits, and inspections.

Monitoring activities will be prioritised in accordance with the Water Resources Division's Compliance and Enforcement Priorities.

Targeted monitoring campaigns are determined by the Controller and the Water Resources Division, based on risk, strategic objectives and available information. These campaigns may focus compliance monitoring across a particular industry or class of persons, where improved compliance is needed or the Territory's water resources are most at risk.

In some circumstances, regulatory officers may undertake investigations. Investigations may be initiated by a number of factors such as information obtained through compliance monitoring, community reports or previous compliance issues. Investigations will seek to determine if a breach has occurred, the impact and harm caused by a breach and to collect evidence.

Not all investigations will proceed to compliance and/or enforcement action; some may revert to monitoring activities or may conclude that no breach has occurred.

Regulatory officers may cease and resume investigations as they deem appropriate to support the Water Resource Division's Compliance and Enforcement Priorities.

## 6.4 Powers to compel compliance

Compliance monitoring activities are supported by legislated powers which require compliance.

The Water Resources Division seeks to achieve voluntary compliance and will take reasonable steps to support individuals and licence holder to comply with their obligations. However, if an investigation has determined that there is a breach of the water legislation and voluntary compliance has not been achieved, regulatory officers will consider options available for using compulsory compliance powers.

These powers are directions notices and remediation notices.

These notices will state the actions that the person must take to achieve compliance.

Compliance with the requirements of a notice is not an admission of guilt. However, failure to comply with a notice is an offence and may proceed to enforcement action.

If a person does not comply with the requirements of a remediation notice, the Controller may undertake the action required by the remediation notice. Any reasonable expenses incurred by the Controller in undertaking the action will be payable as a debt to the Territory.

## 6.5 Enforcement powers

Compliance powers are supported by enforcement powers to deter non-compliance with the water legislation.

The Water Resources Division prioritises achieving compliance over punishing non-compliance and will take reasonable steps to support compliance. However, where an investigation has determined that there is a breach of the water legislation, the regulatory officer will consider options for using enforcement powers.

Enforcement powers include: official warnings, issuing infringement notices, suspension or revocation of licences, and prosecutions.

An official warning is an administrative resolution of the matter that results in no penalty or admission of guilt.

Payment of an infringement notice is not an admission of guilt and no conviction is recorded against an individual or organisation.

Prosecution for an offence may result in a conviction.

## 6.6 Choice of response

In determining the appropriate compliance and enforcement action, the following matters may be considered:

- the action most likely to achieve compliance
- previous enforcement actions for similar offences
- the risk of harm to water resources as a consequence of the conduct
- the extent to which a breach was foreseeable and preventable
- the proportionality of the penalty to the offence
- the availability of resources and opportunity to resolve a breach
- the attitude toward compliance of the offender
- the reasonable prospect of a successful outcome of the enforcement action
- the public interest in pursuing enforcement action
- the impact of the enforcement action (will it encourage compliance by the individual or the general community), and
- any other information to support making an informed decision.

In responding to a non-compliance or offence, more than one compliance and enforcement power may be exercised. For example, a direction under s70 of the Act may be issued along with an infringement notice in relation to the same conduct.

The position on an enforcement action may change if the proposed enforcement action is no longer appropriate.

Figure 1, below, shows how the enforcement response escalates based on the risk to the Territory's water resources as a result of the conduct and the person's approach to compliance. Enforcement action increases in severity and impact (on the licence holder) in correlation with the level of culpability, and harm or risk to water resources and the environment.

Culpability of person	Deliberately non-compliant (intentional)					Revoke licence
	Minimal or no attempt to comply (reckless)			Prosecution		Suspend licence
	Inadequate attention given to compliance (negligent)		Infringement notice	Remediation notice		
	Unknowingly non-compliant (mistake)	Warning	Direction			
	Compliant	Educate				
Likelihood Consequence		Low Low	Unlikely Minor	Possible Moderate	Likely Major	Certain Severe
Risk or harm to water resource						

Figure 1. Escalation of enforcement response

## 7 Related documents

Related documents include:

- Water Act 1992<sup>1</sup>
- Water Regulations 1992, Schedule 1 in particular<sup>2</sup>
- Fines and Penalties (Recovery) Act 2001<sup>3</sup>
- Guidelines – Director of Public Prosecutions NT 2016<sup>4</sup>
- Water Resources Division's Compliance and Enforcement Priorities<sup>5</sup>.

<sup>1</sup> <https://legislation.nt.gov.au/en/Legislation/WATER-ACT-1992>

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

<sup>3</sup> <https://legislation.nt.gov.au/Legislation/FINES-AND-PENALTIES-RECOVERY-ACT-2001>

<sup>4</sup> [https://dpp.nt.gov.au/\\_\\_data/assets/pdf\\_file/0005/574124/DPP-Guidelines-Current-2016.pdf](https://dpp.nt.gov.au/__data/assets/pdf_file/0005/574124/DPP-Guidelines-Current-2016.pdf)

<sup>5</sup> <https://denr.nt.gov.au/water/policy/water-licensing-policies/compliance-and-enforcement-priorities-2020>