Strategy for compliance and enforcement of water resource legislation in Western Australia

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Looking after our all water needs
Introduction

The Department of Water is the lead agency responsible for water resource management in Western Australia. The department's responsibilities are defined in a number of 'Acts' such as those dealing with drinking water supplies, land drainage (the Land Drainage Act 1925), waterways (the Waterways Conservation Act 1976) and especially the take and use of water resources (the Rights in Water and Irrigation Act 1914).

An important management tool employed by the department in regulating the use of water, including the protection of water resources, is the issuing of licenses to authorise the take and use of water throughout the state. The Rights in Water and Irrigation Act 1914 governs both unlicensed and licensed access to water resources including authorised water use activities, disturbance of water courses, and the construction of works (such as bores and some dams).

The department works with individuals, business, industry, local government and other state agencies to ensure water resource activities comply with the state’s water legislation.

Where a party is found to be in breach of the legislation, the department is obligated to take appropriate action. This may ultimately lead to stopping a non-compliant activity and the issuing of financial penalties.

The department adopts a ‘risk-based’ approach in enforcing compliance with water resource legislation. Generally, the department's approach involves an increasing focus on compliance for activities that are judged to pose the greatest potential threat of damage to the condition of the state’s water resources.

Responsibilities of users and the Department of Water

Compliance with water resource legislation is essential to ensure continued productive use of licensed water allocations, support equitable access to water resources, and ensure water resources and their dependent ecosystems are protected.

The additional stress on water resources caused by a drying climate in many areas of the state has meant that enforcing compliance is now more important than ever.

Licensees have a legal responsibility to manage their water use in accordance with the terms and conditions of their licence. This includes managing their annual water usage so as not to exceed their water entitlement. Some licensees are required to meter their water usage and need to regularly report data to the department (for instance by water usage cards).

The Department of Water’s regulatory responsibility is to assess if a licensee is complying with their licence terms and conditions, and if not, to take appropriate action. The Rights in Water and Irrigation Act 1914 provides for penalties to be applied where a licensee is found to be non-compliant with the terms and conditions of their water licence.
Compliance monitoring

The main focus for the Department of Water’s strategy for compliance and enforcement of water resource legislation concerns ‘water use’ and associated activities. The department undertakes proactive compliance monitoring to aid in the detection of non-compliant water use activities as they occur.

Water use monitoring data including water usage cards, provided by the licensee, are also essential for us to assess a licensee’s compliance with their licence conditions.

The process of compliance monitoring includes obtaining information that is:

- Accurate and consistent
- Purposeful to assess compliance
- Achievable by the licensee
- Considerate of site-specific factors
- Subject to review and improvement.

Compliance and enforcement pyramid

The department’s approach to responding to non-compliance.

- **Sanctions**
  - Court sanctions
  - Administrative sanctions

- **Directing compliance**
  - Infringement notices
  - Restoration notices
  - Statutory directions

- **Encouraging and assisting compliance**
  - Incident investigations
  - Prevention programs
  - Information, guidance, education and advice

How non-compliance is managed

There are three components in the Department of Water’s approach to non-compliance. These are:

1. Detect alleged non-compliance
2. Investigate whether there is non-compliance
3. Respond to non-compliance (considering such factors as risk to the water resource and other water users, nature of non-compliance, mitigating circumstances, compliance history of licensee).

In general, the department first responds to non-compliance by discussing the issue with the party involved. These discussions would include making them aware of their responsibilities and assisting them in working out ways to make their activities comply. However, if the risks to the water resource or to other water users are immediate, or if the non-compliance continues, then we may issue specific directions to comply. Sanctions will be applied if non-compliance continues and the threat to water resources and other water users remains.
The National Framework for Compliance and Enforcement

The ‘National Framework for Compliance and Enforcement Systems for Water Resource Management’ (the National Framework) is a collaborative reform program agreed to by the Council of Australian Governments and funded by the Australian Government. The objective of the National Framework is to establish a nationally consistent approach to compliance and enforcement activity.

The Government of Western Australia has agreed to adopt the National Framework. The federal government has provided funding to assist the Department of Water to make its compliance and enforcement activities consistent with the new National Framework. As part of this process we are working across the state, particularly where resources are at greatest risk, to satisfy our compliance monitoring and enforcement obligations.

What effect will this have on your water licence?

Western Australia’s participation in the National Framework will not require a change in your water resource management provided that you continue to comply with the terms and conditions of your water licence.

Licensees are encouraged to assess the efficiency of their water usage and irrigation system and to conserve water. There may be a financial incentive to do this, as any water no longer needed, may be able to enter the water market and be sold, or leased.

If you have concerns about your ability to comply with the terms and conditions of your licence, please contact us to discuss the situation.