Compliance and enforcement policy

Department of Water

October 2015
Department of Water
168 St Georges Terrace
Perth Western Australia 6000
Telephone +61 8 6364 7600
Facsimile +61 8 6364 7601
National Relay Service 13 36 77
www.water.wa.gov.au

© Government of Western Australia 2015

October 2015

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the Copyright Act 1968, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to the Department of Water.

ISBN 978-1-925174-25-0 (online)

The recommended reference for this publication is: Department of Water 2015, Compliance and enforcement policy, Department of Water, Perth.

Acknowledgements

This document has been prepared by the Strategic Policy branch of the Policy and Innovation division of the Department of Water.

For more information about this report, contact:
Strategic Policy Division at policy@water.wa.gov.au or 6364 7600

Disclaimer

This document has been published by the Department of Water. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

This publication is available at our website <www.water.wa.gov.au> or for those with special needs it can be made available in alternative formats such as audio, large print, or Braille.
Contents

1 Introduction ..............................................................................................................................................1
2 Objectives and guiding principles .............................................................................................................2
3 Legislative responsibilities ..........................................................................................................................3
4 Compliance and enforcement approach ....................................................................................................4
   4.1 Mechanisms used to encourage compliance with legislation ..........................................................4
   4.2 Risk-based approach ..........................................................................................................................5
   4.3 Determining an appropriate response .................................................................................................6
5 Procedural fairness ......................................................................................................................................9
6 Need for change .........................................................................................................................................10
    Regional enquiries ....................................................................................................................................11
Appendices ...................................................................................................................................................12
    Appendix 1 ..............................................................................................................................................12
References .....................................................................................................................................................17
1 Introduction

The Department of Water (the department) is responsible for administering legislation that makes provision for the regulation, management, use and protection of water resources and certain water services within Western Australia.

Water is a precious resource, particularly within the context of a drying climate, increasing population and growth in the state’s economy. To ensure the community makes best use of this water resource, we administer the legislation based on appropriate criteria that are public, open, fair and capable of being applied consistently across a broad range of circumstances.

The legislation provides the basis on which water is allocated to users, through licences that are consistent with the best interests of the state as a whole.

By application of this policy, the department will ensure that compliance and enforcement is conducted properly and fairly. This policy describes:

- the objectives of our compliance and enforcement activities
- the range of non-statutory and statutory tools available to us for encouraging compliance with the legislation
- the application of a risk-based approach to compliance and enforcement activities
- the process and key principles for determining appropriate compliance and enforcement actions.

The department’s responses will encompass mechanisms that use a range of administrative and statutory enforcement actions. Information about our compliance and enforcement activities and outcomes is publicly available in our Annual Report.
2 Objectives and guiding principles

The objectives of the department’s compliance and enforcement policy are to:

- ensure appropriate management of the state’s water resources for the benefit of all users and the state as a whole
- promote and encourage protection of the water resource and the water-dependent environment
- provide support mechanisms that promote self-regulation by licensees in complying with water resource licence conditions
- provide an effective and useful guide for stakeholders and the wider community
- maintain public confidence in how the state’s water resources are managed
- strengthen the security of water entitlements
- ensure consistency and transparency.

The department undertakes to implement this policy in accordance with the following guiding principle:

- we will undertake compliance and enforcement activities in a manner which ensures procedural fairness, and is:
  - in accordance with the law and within our authority
  - timely and effective
  - reasonable and proportionate
  - coherent and consistent
  - fair and impartial
  - capable of being applied consistently across a broad range of situations.
3 Legislative responsibilities

The department is responsible for matters arising under legislation administered by the Minister for Water. Of that legislation, the following Acts, and associated subsidiary legislation and by-laws, contain offence or penalty provisions:

- *Country Areas Water Supply Act 1947*
- *Metropolitan Arterial Drainage Act 1982*
- *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*
- *Rights in Water and Irrigation Act 1914*
- *Water Agencies (Powers) Act 1984*
- *Water Services Act 2012*

Appendix 1 outlines a number of relevant offence provisions under the above legislation.

Further information about compliance and enforcement aspects of the above legislation, including how licensees and/or the public can report the misuse of water, can be obtained from the department's website at <www.water.wa.gov.au> or by contacting your regional office.
4 Compliance and enforcement approach

4.1 Mechanisms used to encourage compliance with legislation

In this policy, the term compliance refers to conformity with legislation and/or licence conditions, whereas enforcement refers to using powers under legislation to secure compliance with the law. The department employs several mechanisms to ensure effective and appropriate compliance and enforcement approaches. This enables us to use the most appropriate response in a given situation, such as a higher level of enforcement action where a water resource is being degraded.

The mechanisms we use to encourage compliance with legislation or licence conditions include, but are not limited to:

- general provision of information about the legislation (e.g. purpose, provisions and effect)
- targeted communication and education activities
- timely provision of information and advice
- dispute resolution
- cooperative assistance and collaboration
- informal warnings
- formal warnings
- issuing of fines
- directing compliance and prosecution.

In addition to protecting the state’s water resources, our compliance and enforcement activities aim to:

- raise awareness of the benefits of complying with the legislation, and the potential consequences of non-compliance
- assist and enhance stakeholders’ ability and commitment to complying with the legislation
- remove barriers to compliance (e.g. improve knowledge of the legislation, or how to comply)
- promote the objectives of the legislation
- overcome factors that encourage non-compliance (e.g. lack of public support, allowing non-compliance to go unchecked, or misunderstanding legislative objectives)
- act as a specific and general deterrent to future breaches of the legislation.
The department is committed to engaging with stakeholders and licensees to promote self-regulation. Through this engagement, we also aim to enhance the community’s understanding of the relevant legislation.

4.2 Risk-based approach

The department has a risk-based approach to compliance, whereby the level of compliance monitoring and enforcement action in a given situation is proportionate to the level of risk to the state’s water resources. A risk assessment will consider the possible impacts of non-compliance on the quantity and quality of available water, other water users, the community and the water-dependent environment. The greater the risk, the more compliance activity we will undertake.

The focus of this approach is to identify ‘at risk’ water resources and target breaches of legislation most likely to further stress the resource or undermine the public’s confidence in effective water resource management.\(^1\) The level of risk is assigned through the department’s internal process for categorising water resources according to risk for compliance monitoring purposes. We assign a risk category to the water resource depending on the level of current water use, historical non-compliance and environmental assets, among other factors.

The compliance pyramid below illustrates the department’s approach to compliance and enforcement\(^2\). While greater effort may go into encouragement and assistance, we will impose sanctions when required.

---

\(^1\) This department has adopted this definition of a risk-based compliance strategy from the *National framework for compliance and enforcement systems for water resource management* (Australian Government 2009).

\(^2\) This pyramid is based on one featured in the *National framework for compliance and enforcement systems for water resource management* (Australian Government 2009).
The concentration of activities and resources at the first (bottom) level of the pyramid reflects the department’s commitment to compliance through education, prevention and cooperation.

In most circumstances and depending on risk, the department will consider enforcement measures at the second (middle) level of the pyramid once we have determined that efforts at the first level have been ineffective in achieving compliance. The same principle generally applies as a prerequisite to employing enforcement measures at the third (top) level of the pyramid.

While the approach concentrates most resources at the bottom of the pyramid (e.g. prevention and guidance), we are committed to using the tools and processes available at all levels of the pyramid when necessary. In some circumstances, depending on the situation and the risk to the water resource, offences may not have provisions at the bottom or middle level of the pyramid, and we will proceed directly to enforcement actions at the middle or top level of the pyramid.

4.3 Determining an appropriate response

The department will investigate all detected breaches using a three-step process and then formulate a response after considering four key factors. These are outlined in the flow diagram below. Our Compliance and Enforcement Unit has developed more detailed guidance documents for each of the key elements of the investigative process, as well as for responding to breaches post-investigation.

The department makes compliance and enforcement decisions on an individual basis. The level and type of response will depend on a number of factors. These include:
• the nature of the offence (including the alleged offender's history), the seriousness of the offence, how long it has continued and if it was foreseeable

• the risk to the water resource, other water users, communities or the water-dependent environment

• how effective enforcement action will be in supporting compliance

• legal precedents, where legislation may require us to proceed directly to higher levels of the compliance pyramid

• statutory time limits defining the time period within which enforcement action must be initiated.

The following flow diagram illustrates the department's compliance and enforcement mechanisms and overall approach.
Figure 2. Flow diagram of the department’s compliance and enforcement approach
5 Procedural fairness

In line with the principles of procedural fairness, several opportunities are available to seek review of enforcement actions and/or the decisions leading to them. The methods for appealing these decisions and enforcement actions may include challenging the action in court (e.g., infringement notices), seeking a review by the State Administrative Tribunal (e.g., departmental amendment of a licence) or review by a delegated authority within the Department of Water (e.g., directions).

The procedure to seek a review depends on the circumstances. In the majority of circumstances, the procedure to seek a review is provided with a notification (for example, it is provided on an infringement notice). For further information on how to seek a review, please contact the Department of Water or the State Administrative Tribunal [http://www.sat.justice.wa.gov.au/](http://www.sat.justice.wa.gov.au/).
6 Need for change

The department’s compliance and enforcement policy has been reviewed and updated to support our regulatory and resource management functions. The review will help ensure we meet our strategic goal to achieve contemporary and adaptive water management in Western Australia.

The department is delivering a series of policies, systems and processes that underpin how we manage water both now and into the future. This policy forms part of that series.

This policy is consistent with the *National framework for compliance and enforcement systems for water resource management* (Australian Government 2009) and the state’s implementation plan. Ensuring compliance with the legislation we administer is important for achieving our strategic goals and maintaining public confidence in the regulatory system.

This policy forms a strategic component of the department’s water resource compliance and enforcement strategy. The strategy also comprises several guidance documents that provide further detail on this policy’s implementation. Our Compliance and Enforcement Unit is developing these guidance documents.

This policy will be reviewed in accordance with our water policy framework, or earlier if any new legislation is introduced. As part of the review process, we will evaluate how effective this policy has been.
Regional enquiries

Please direct any enquiries about this policy or management of water resources in the regions to the following regional offices:

**North West Region**
Kununurra regional office
27 Victoria Highway
PO Box 625
Kununurra WA 6743
Phone: 08 9166 4100
Fax: 08 9168 3174

Karratha regional office
Lot 4608 Cherratta Road
PO Box 836
Karratha WA 6714
Phone: 08 9144 0200
Fax: 08 9144 2610

**Kwinana Peel Region**
Kwinana Peel regional office
107 Breakwater Parade
Mandurah Ocean Marina
PO Box 332
Mandurah WA 6210
Phone: 08 9550 4222
Fax: 08 9581 4560

**Mid West Gascoyne Region**
Geraldton regional office
94 Sanford Street
PO Box 73
Geraldton WA 6531
Phone: 08 9965 7400
Fax: 08 9964 5983

Carnarvon district office
211 Robinson Street
PO Box 81
Carnarvon WA 6701
Phone: 08 9941 6100
Fax: 08 9941 4931

**South Coast Region**
Albany regional office
5 Bevan Street
Albany WA 6330
PO Box 525
Albany WA 6331
Phone: 08 9842 5760
Fax: 08 9842 1204

**South West Region**
Bunbury district office
35–39 McCombe Road
Bunbury WA 6230
PO Box 261
Bunbury WA 6231
Phone: 08 9726 4111
Fax: 08 9726 4100

Busselton district office
Suite 1B/72 Duchess Street
Busselton WA 6280
Phone: 08 9781 0111
Fax: 08 9754 4335

Warren Blackwood district office
52 Bath Street
Manjimup WA 6258
Phone: 08 9771 1878
Fax: 08 9771 8108

**Swan Avon Region**
Victoria Park regional office
7 Ellam Street
Victoria Park
Perth WA 6100
Home: 08 6250 8000
Fax: 08 6250 8050
Appendices

Appendix 1

Relevant offence provisions

For all the offences prescribed under the department’s water resource management legislation, the minimum enforcement action that can be taken is the issue of an infringement notice, and the maximum enforcement action is prosecution. Additional enforcement action includes the issue of a statutory direction notice.

The tables below specify the relevant offences for which these actions can be taken.

General offences

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights in Water and Irrigation Act 1914 Section 17</td>
<td>Obstruction, destruction or interference with a watercourse prohibited</td>
</tr>
<tr>
<td>Section 25</td>
<td>Obstruction, destruction or interference with watercourse on Crown land prohibited</td>
</tr>
<tr>
<td>Waterways Conservation Act 1976 Section 46</td>
<td>Contravenes or fails to comply with any condition endorsed upon or attached to the licence</td>
</tr>
<tr>
<td>Section 50</td>
<td>Fails or neglects to comply with the provisions of that order</td>
</tr>
</tbody>
</table>

Prescribed penalties

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights in Water and Irrigation Act 1914 Section 5C</td>
<td>Unauthorised taking of water prohibited</td>
</tr>
<tr>
<td></td>
<td>Penalty: $10 000 and daily penalty of $1000 or Modified Penalty: $500 or $100 for 5C(2)</td>
</tr>
<tr>
<td>Section 22</td>
<td>Directions about diversion, taking or use of water</td>
</tr>
<tr>
<td></td>
<td>Penalty: Fine not exceeding $4000 and daily penalty of $400</td>
</tr>
<tr>
<td>Section 26A</td>
<td>Artesian wells to be licensed</td>
</tr>
<tr>
<td></td>
<td>Penalty: Fine not exceeding $10 000 and daily penalty of $1000</td>
</tr>
</tbody>
</table>
| Section 26B | Non-artesian wells in certain areas to be licensed  
| Penalty: Fine not exceeding $10 000 and daily penalty of $1000 |
| Section 26E | Failure to provide information regarding construction or deepening of a non-artesian well  
| Penalty: $1000 or Modified Penalty: $150 |
| Section 26F | No alterations to be made to licensed well  
| Penalty: $10 000 and daily penalty of $1000 and possible cancellation of licence |
| Section 26G | Failure to comply with a section 26G direction  
| Penalty: $5000 and daily penalty of $500 or Modified Penalty: $500 |
| Section 26GC | Directions to restrict or prohibit the taking or use of water  
| Penalty: $4000 and daily penalty of $400 or Modified Penalty: $500 |
| Section 26O | Local by-laws for control of drainage  
| Penalty: $5000/$2000 and daily penalty of $500/$200 |
| Section 26P | Local by-laws relating to flood protection works  
| Penalty: $5000/$2000 and daily penalty of $500/$200 |
| Section 27A | Regulations may require certain work or activities to be licensed  
| Penalty: $10 000/$2000 and daily penalty of $1000/$200 |
| Section 39A | Unauthorised taking of water  
| Penalty: $50 000/$20 000 |
| Section 39C | Fraudulent taking of water  
| Penalty: $50 000/$20 000 or imprisonment for two years |
| Section 70 | Obstructing authorised persons in performance of duty  
| Penalty: not exceeding $5000 |
| Section 71 | Penalty for refusing to give up possession of works  
| Penalty: $10 000 |
| Section 72 | If no other penalty is imposed, any offence against the Act is liable to a general penalty  
| Penalty: not exceeding $10 000 |
| Schedule 1, Clause 18 | Failure to comply with any term, condition or restriction in a licence  
<p>| Penalty: Fine $2500 and a daily penalty of $250 |</p>
<table>
<thead>
<tr>
<th>Source</th>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule 1, Clause 46</td>
<td>Must maintain meters in good condition</td>
<td>$2000</td>
</tr>
<tr>
<td>Rights in Water and Irrigation Regulations 2000</td>
<td>Failure to return a suspended or cancelled permit</td>
<td>$2000</td>
</tr>
<tr>
<td>Regulation 13(4)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulation 16</td>
<td>Minister to be notified of change of ownership</td>
<td>$250</td>
</tr>
<tr>
<td>Regulation 18</td>
<td>Failure to comply with a direction regarding a permit condition</td>
<td>$2000 and a daily penalty of $200</td>
</tr>
<tr>
<td>Regulation 25</td>
<td>Licensee no longer eligible to hold licence to inform Minister</td>
<td>$1000</td>
</tr>
<tr>
<td>Regulation 29</td>
<td>Licensee to return licence on suspension and cancellation</td>
<td>$2000</td>
</tr>
<tr>
<td>Regulation 41</td>
<td>Cancelled licence to be given to Minister</td>
<td>$2000</td>
</tr>
<tr>
<td>Regulation 43</td>
<td>Interfering with a meter</td>
<td>$2000 or Modified Penalty: $400</td>
</tr>
<tr>
<td>Regulation 55</td>
<td>Unauthorised alteration of infringement notices</td>
<td>$200</td>
</tr>
<tr>
<td>Regulation 57</td>
<td>False or misleading information in respect of applications</td>
<td>$2000</td>
</tr>
<tr>
<td>Section 12(B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section 112</td>
<td>Obstructing Minister or the Water Corporation or officers in performance of duty</td>
<td>$5000</td>
</tr>
<tr>
<td>Section 113</td>
<td>Penalty for refusing to give up possession of works</td>
<td>$10 000</td>
</tr>
<tr>
<td>Waterways Conservation Act</td>
<td>Control of pollution and the use of waters</td>
<td></td>
</tr>
</tbody>
</table>
## Compliance and Enforcement Policy

<table>
<thead>
<tr>
<th>1976 Section 48</th>
<th>Penalty: Fine not exceeding $5000 and daily penalty of $100</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976 Section 55</td>
<td>General provisions relating to by-laws</td>
</tr>
<tr>
<td></td>
<td>Penalty: not exceeding $100</td>
</tr>
<tr>
<td>1976 Section 65</td>
<td>Persons obstructing execution of this Act</td>
</tr>
<tr>
<td></td>
<td>Penalty: $500</td>
</tr>
<tr>
<td>1976 Section 70</td>
<td>General penalties</td>
</tr>
<tr>
<td></td>
<td>Penalty: fine not exceeding $200 and daily penalty not exceeding $25</td>
</tr>
<tr>
<td>1976 Section 79</td>
<td>Information officially obtained to be confidential</td>
</tr>
<tr>
<td></td>
<td>Penalty: $10 000 or 12 months’ imprisonment</td>
</tr>
<tr>
<td>1976 Section 82</td>
<td>If no other penalty is imposed, any offence against the Act is liable to a general penalty</td>
</tr>
<tr>
<td></td>
<td>Penalty: $500 and a daily penalty of $50</td>
</tr>
</tbody>
</table>

**Waterways Conservation Regulations 1981**

| Regulation 8(1) | Certain acts prohibited in relation to waters                |
|                 | Penalty: $200/$500 or Modified Penalty: $30/$50              |
| Regulation 9    | Licence required for certain acts                            |
|                 | Penalty: $500 and a daily penalty of $50                     |
| Regulation 11   | Removal of certain structures                                |
|                 | Penalty: $100/$200 or Modified Penalty: $10/$30              |
| Regulation 24   | Impersonating an inspector or warden                         |
|                 | Penalty: $500                                               |

### Statutory direction notices

**Rights in Water and Irrigation Act 1914**

<table>
<thead>
<tr>
<th>Section 17</th>
<th>Directions regarding carrying out works for the purpose of restoring the bed or banks of a watercourse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 22</td>
<td>Directions regarding diversion, taking or use of water (riparian rights)</td>
</tr>
<tr>
<td>Section 25</td>
<td>Obstruction, destruction or interference with watercourse on Crown land prohibited</td>
</tr>
<tr>
<td>Section 26G</td>
<td>Directions regarding improper use or wastage of water</td>
</tr>
<tr>
<td>Section 26GC</td>
<td>Directions to restrict or prohibit the taking or use of water</td>
</tr>
<tr>
<td>-------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>Schedule 1, Clause 18</td>
<td>Direction regarding terms, conditions and restrictions included in a licence</td>
</tr>
<tr>
<td>Rights in Water and Irrigation Regulations 2000 Regulation 18</td>
<td>Direction regarding compliance with a permit condition</td>
</tr>
<tr>
<td>Regulation 29</td>
<td>Direction regarding return of a suspended or cancelled licence</td>
</tr>
<tr>
<td><em>Country Areas Water Supply Act 1947</em> Section 12(B)</td>
<td>Direction regarding clearing controlled land</td>
</tr>
<tr>
<td><em>Waterways Conservation Act 1976</em> Section 46(1)</td>
<td>Contravening a <em>Swan River Conservation Act</em> Licence</td>
</tr>
</tbody>
</table>
References


Department of Water