Regulatory Compliance and Enforcement Framework
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1. About us

We are Australia’s largest water supplier and NSW’s major supplier of raw water. We deliver water from our 42 large dams, pipelines and the State’s rivers to regional towns, irrigators, Sydney Water and other licensed authorities, retail suppliers and councils.

WaterNSW promotes improvements in achievable water quality standards and contributes to the protection of public health and the environment through enhanced catchment protection practices in declared catchments.

We work collaboratively with the community as a single point of contact for the day-to-day business needs of water customers including the management of groundwater, regulated and unregulated water.

This Framework outlines how WaterNSW manages compliance with relevant legislation and how we will use our authority in a fair and equitable manner. Compliance will be sought by education and encouragement wherever possible, but, where appropriate, enforcement measures will be used.

This Framework is supported by operational procedures that guide our staff in discharging our functions.

1.1 Our Mission and Values

We strive to deliver water to our customers on time, through the most efficient and effective means possible, in an environmentally responsible manner.

To achieve this, we will operate in accordance with our legislative requirements and obligations and WaterNSW’s values:
Our Values explained:

<table>
<thead>
<tr>
<th>Value</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>Think Customer</td>
<td>In every decision we make, we consider the benefit to our customers.</td>
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<td>Drive change</td>
<td>We are open to change and always improving the way we do things.</td>
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<td>Deliver Excellence</td>
<td>We take pride in individual and corporate excellence.</td>
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<td>Achieve Together</td>
<td>We support each other and all work together as one team.</td>
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<tr>
<td>Value our People</td>
<td>We keep people safe, treat them with respect and we are committed to growing our people.</td>
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<tr>
<td>Own it</td>
<td>We do what we say we will do and we take ownership of our actions.</td>
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2. Relevant Legislation and Obligations

This Framework applies to WaterNSW compliance related functions under the following legislation, regulations and instruments made under the following Acts:

1. Water NSW Act 2014;
2. Water NSW Regulation 2013;
5. Protection of the Environment Operations Act 1997 (NSW) (POEO Act);
6. Environmental Planning and Assessment Act 1979 (NSW); and
7. In addition to relevant legislation, industry participants are required to operate in accordance with certain standards and obligations contained in, amongst other things, authorisations, approvals, permits, registrations or licences issued under the above legislation.

3. Approach to Regulatory Compliance and Enforcement

3.1 Our Approach

WaterNSW recognises that the clear majority of its customers are committed to doing the right thing and will comply if they understand their rights and responsibilities. We recognise that ensuring compliance is a key consideration in the way we design our policies, systems and processes, communicate with our stakeholders, present our informational materials, and explain our compliance and enforcement approaches and decisions.

In order to maximise utilisation of our resources and to achieve the most appropriate outcomes for our customers and stakeholders, we adopt a risk-based approach to our compliance and enforcement activities. We use a range of compliance and enforcement initiatives that are designed to promote positive behavioural change, stop or minimise ongoing breaches and achieve future compliance.

Our preferred approach is to prevent or minimise non-compliance through education and guidance materials. These options enable compliance and enforcement to be achieved through an improved understanding of regulated and licensed activities and participants obligations. Education and advice play an important role in our compliance activities so that unintentional breaches are minimised.
WaterNSW aims to use the most proportional compliance and enforcement action to bring about a compliance outcome which is appropriate in the circumstances to prevent any further breach or to restrain an existing breach. The approach reflects WaterNSW’s focus on achieving compliance through the appropriate use of a range of compliance and enforcement tools.

A summary of WaterNSW's approach to regulatory compliance and enforcement is shown in the diagram below:

### 3.2 Working with Stakeholders
WaterNSW believe the successful discharge of our responsibilities comes from proactively working with our customers, stakeholders, industry participants and the broader community to ensure compliance with legislation and community standards. The desired outcome is to provide information to customers and stakeholders about how they can comply and remain compliant.

We keep stakeholders and industry participants aware of their obligations and requirements by:
- Engaging with stakeholders on a regular basis and on circumstances which may impact them;
- Providing necessary information, education, general guidance and advice;
- Consistently adhering to our Framework and applying decisions in an appropriately considered manner using a risk-based approach;
- Communicating instances of non-compliance in a clear and respectful manner;
- Promoting a continuous improvement mindset and being open to opportunities to improve our policies, systems and processes;
- Keeping informed of the legislative, industry and environmental landscape; and
- Meeting our obligations, regulatory and organisational requirements.

### 4. The Compliance and Enforcement Process

#### 4.1 Key Phases
WaterNSW follows a standardised approach in the execution of our compliance and enforcement activities to ensure efficient and effective allocation and utilisation of our resources.
Regulatory Compliance and Enforcement Framework

The key phases in the WaterNSW Compliance and Enforcement Process are:
1. Receiving Complaints and Suspected instances of Non-compliance;
2. Assessment of Complaints;
3. Formal Investigation;
4. Determining Enforcement Action; and
5. Enforcement Toolkit – Available Actions.

4.2 Receiving Complaints and Suspected Non-Compliance

We promote and encourage customers, industry stakeholders and the broader community to report suspected or actual instances of non-compliance.

Complaints and reports of suspected non-compliance form the basis of an Alleged Breach Notification (ABN) and these can be lodged by:
- WaterNSW staff such as Customer Field Officers, Water Regulation Officers and Water System Operators when conducting field inspections, monitoring, desk study and other routine tasks; or
- External parties such as informants, members of the public and other government agencies.

Refer to WaterNSW’s Alleged Water Breach – Reporting Procedure.

4.3 Assessment of Complaints or Suspected Non-Compliance

Suspected or actual instances of non-compliance (complaints) are then assessed in order to determine the most appropriate course of action.

We do not investigate all matters reported to us and adopt a risk-based approach to how suspected or actual instances of non-compliance are assessed and subsequently actioned. We take into consideration a variety of factors to determine the most appropriate compliance or enforcement outcome that is proportionate to the suspected or actual instance of non-compliance.

WaterNSW may undertake a range of actions in regards to reported issues, such as:
- Note the information for intelligence;
- Take no further action;
- Refer to another agency (if appropriate);
- Deliver education and guidance materials; or
- Commence a formal investigation.

4.4 Formal Investigation

Matters requiring formal investigation are then allocated to the appropriate area within WaterNSW for further investigation. The scope and depth of the investigation will be determined by the complexity and severity of the alleged breach or instance/s of non-compliance.

WaterNSW utilise a number of investigative initiatives to assist in proving or disproving an allegation of non-compliance and these may include:
- Site inspections;
- Gathering evidence;
- Requiring production of information; and
- Interviewing witnesses and suspects.

4.5 Determining Enforcement Action

Where a formal investigation has been undertaken, and non-compliance has been identified, findings will be documented along with a recommendation in relation to potential compliance and enforcement outcomes that may be applied.
WaterNSW considers a number of factors when determining the most appropriate compliance or enforcement outcome such as:

- Applying a considered and proportionate response relative to the instance of non-compliance;
- Securing remedial and future compliance;
- Meeting legislative and regulatory requirements; and
- Instilling public confidence in the regulatory environment.

### 4.6 Enforcement Toolkit – Available Actions

WaterNSW believes that the overriding requirement in how it applies compliance and enforcement outcomes is to ensure that, viewed collectively, they are adequate and appropriate to maintaining public confidence in the regulatory regime.

Within that overriding requirement, in terms of both compliance and enforcement outcomes to each individual matter, WaterNSW believes that it is important that enforcement outcomes are applied according to the severity and behavioral drivers of the instance of non-compliance.

WaterNSW uses a number of compliance and enforcement options in order to ensure an an appropriate outcome proportionate to the matter investigated. The objective being to stop the improper conduct, promote behavioural change and future compliance, rather than simply applying a punishment.

WaterNSW may use one, or a combination of it’s options in it’s enforcement ‘Toolkit’ in order to take appropriate action.

The range of compliance and enforcement actions available include:

<table>
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<tr>
<th>Increased engagement / scrutiny</th>
<th>Increased frequency and scope of inspections, audits or other regulatory engagements (e.g. including meeting with company senior executives) may be used where the regulator has concerns around a specific risk or operation.</th>
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<tbody>
<tr>
<td>Advisory Letter</td>
<td>An advisory letter may be issued when:</td>
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<td></td>
<td>- a breach has not occurred as there is insufficient evidence to establish all elements of the offence to the required standard;</td>
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<td></td>
<td>- the offender can establish a defence to the alleged offence;</td>
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<td></td>
<td>- a breach is unlikely to occur; or</td>
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<tr>
<td></td>
<td>- a breach has occurred but it is considered inappropriate to take further action given that future non-compliance is unlikely.</td>
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<td>Warning Letter</td>
<td>A warning letter may be issued when:</td>
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<td>- a person could have prevented the breach and has agreed to implement voluntary measures to remedy the breach or its reoccurrence;</td>
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<td></td>
<td>- the effects of the breach were not substantial and the person has agreed to undertake voluntary remedial measures; or</td>
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<tr>
<td></td>
<td>- the person has notified WaterNSW of the breach, co-operated with any investigation and voluntarily agreed to implement remedial measures.</td>
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<td>Offical Caution</td>
<td>A warning letter constitutes an official caution under the Fines Act 1996.</td>
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<td>Penalty Notice</td>
<td>Penalty notices are issued to deal with one-off minor instances of non-compliance which can easily be remedied and are considered inappropriate to be dealt with by a Court. WaterNSW considers that it is</td>
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inappropriate to issue numerous simultaneous or successive penalty notices for multiple or ongoing similar breaches of the legislation.

Payment of a penalty notice fine also means that the recipient has no further exposure to regulatory action for the alleged non-compliance.

The payment of a penalty notice fine for an apparent non-compliance is made without an admission of liability and does not lead to the recording of a criminal conviction.

**Statutory Notice**

The role of a statutory notice is to remedy the effects of non-compliance and/or prevent further non-compliance from occurring where targeted warnings, cautions and advice have failed, or are not appropriate. Complying with a statutory notice generally requires the recipient to carry out some work and report back to WaterNSW.

Statutory notices are flexible as they are usually able to be issued quickly and contain a range of conditions which are tailored to address the specific instance of non-compliance. Failure to comply with the requirements of a statutory notice is an offence.

Examples include include stop work orders, directions to remove an unlawful work, and/or to remediate and make good any damage.

A statutory notice may also be an environment protection notice issued under the **POEO Act**. Examples include: a ‘notice to take clean up action’, a catchment correction notice or a catchment protection notice issued under the **Water NSW Act 2014**.

**Cost Recovery**

Some laws allow WaterNSW as the regulatory authority to recover its costs of issuing and/or ensuring compliance with a statutory notice. It is an offence not to pay the fees associated a statutory notice.

**Administrative Enforcement**

The conditions of a Water Access Licence or approval for a work or activity may be amended or suspended to temporarily prevent the licensee or approval holder from operating a work or conducting an activity.

This option will generally be contemplated when the holder has a history of seriously and intentionally breaching conditions, or has been successfully prosecuted for identical or similar non-compliance.

A Consent issued to a person to enter a special area or controlled area under the **Water NSW Regulation 2013** may be amended or revoked depending on the circumstances of the non-compliance. Civil penalties of up to 5 times the value of water taken are able to be imposed in circumstances where a customer over draws their water account.

**Civil Proceedings or Court Orders**

Injunctions and other civil proceedings may be sought by the regulator to compel a person to comply with certain requirements or to recover costs.

**Prosecution**

The **WaterNSW Prosecution and Compliance Guidelines** set out the factors which WaterNSW will have regard prior to deciding to prosecute and the process by which the decision to prosecute is made. The decision to prosecute is taken by the Board.

6. Reporting on Performance

WaterNSW will report annually on the performance of its compliance functions in its annual report which will contain the number of enforcement actions undertaken.