



Government of **Western Australia**  
Department of **Water**

## Compliance and enforcement policy

October 2015

*Securing Western Australia's water future*



# Compliance and enforcement policy

Department of Water

October 2015

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# 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*
- *Waterways Conservation Act 1976.*

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](http://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.<sup>1</sup> 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<sup>2</sup>. While greater effort may go into encouragement and assistance, we will impose sanctions when required.

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<sup>1</sup> 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).

<sup>2</sup> This pyramid is based on one featured in the *National framework for compliance and enforcement systems for water resource management* (Australian Government 2009).

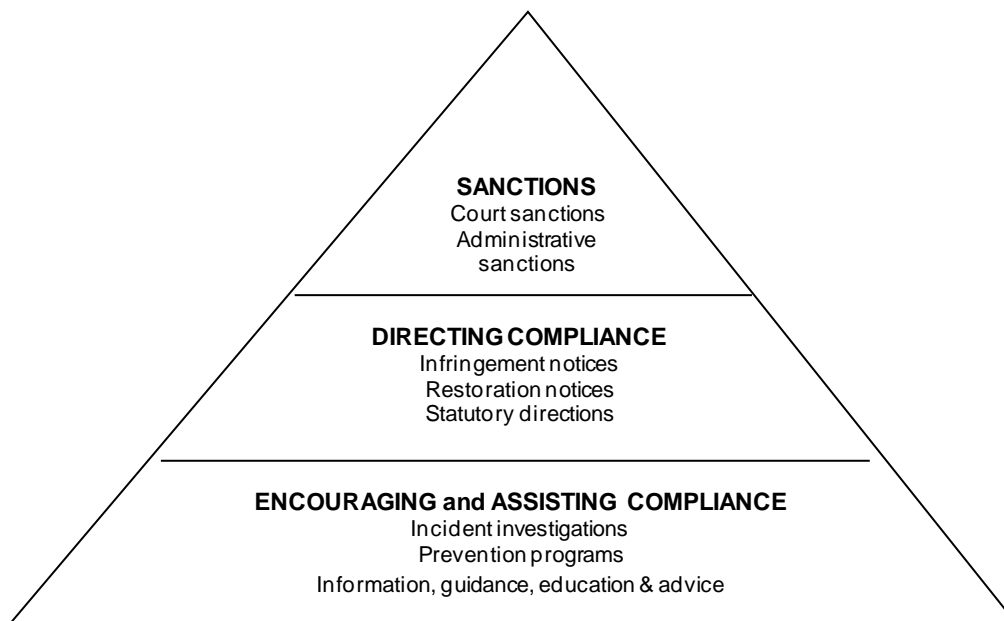


Figure 1. Compliance pyramid

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.

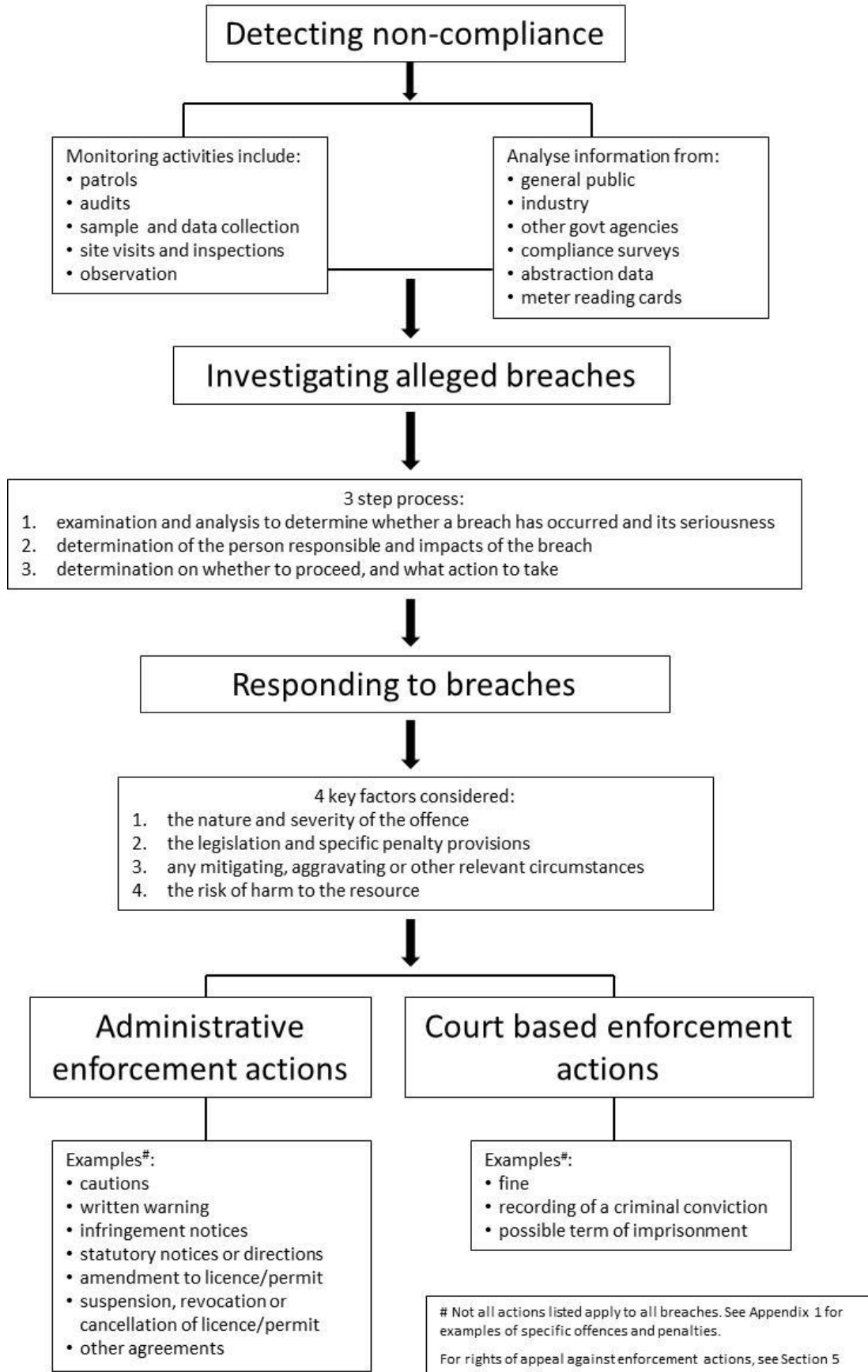


Figure 2. Flow diagram of the department's compliance and enforcement approach

## 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/>.

## 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

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

### Prescribed penalties

Legislation	Offence
<i>Rights in Water and Irrigation Act 1914</i> Section 5C	Unauthorised taking of water prohibited Penalty: \$10 000 and daily penalty of \$1000 or Modified Penalty: \$500 or \$100 for 5C(2)
Section 22	Directions about diversion, taking or use of water Penalty: Fine not exceeding \$4000 and daily penalty of \$400
Section 26A	Artesian wells to be licensed Penalty: Fine not exceeding \$10 000 and daily penalty of \$1000

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 Penalty: Fine \$2500 and a daily penalty of \$250

Schedule 1, Clause 46	Must maintain meters in good condition Penalty: \$2000
Rights in Water and Irrigation Regulations 2000 Regulation 13(4)	Failure to return a suspended or cancelled permit Penalty: \$2000
Regulation 16	Minister to be notified of change of ownership Penalty: \$250
Regulation 18	Failure to comply with a direction regarding a permit condition Penalty: \$2000 and a daily penalty of \$200
Regulation 25	Licensee no longer eligible to hold licence to inform Minister Penalty: \$1000
Regulation 29	Licensee to return licence on suspension and cancellation Penalty: \$2000
Regulation 41	Cancelled licence to be given to Minister Penalty: \$2000
Regulation 43	Interfering with a meter Penalty: \$2000 or Modified Penalty: \$400
Regulation 55	Unauthorised alteration of infringement notices Penalty: \$200
Regulation 57	False or misleading information in respect of applications Penalty: \$2000
<i>Country Areas Water Supply Act 1947</i> Section 12(B)	Offence to clear controlled land Penalty: Fine not exceeding \$2000
Section 112	Obstructing Minister or the Water Corporation or officers in performance of duty Penalty: \$5000
Section 113	Penalty for refusing to give up possession of works Penalty: \$10 000
<i>Waterways Conservation Act</i>	Control of pollution and the use of waters

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

<i>Rights in Water and Irrigation Act 1914</i> Section 17	Directions regarding carrying out works for the purpose of restoring the bed or banks of a watercourse
Section 22	Directions regarding diversion, taking or use of water (riparian rights)
Section 25	Obstruction, destruction or interference with watercourse on Crown land prohibited
Section 26G	Directions regarding improper use or wastage of water

Section 26GC	Directions to restrict or prohibit the taking or use of water
Schedule 1, Clause 18	Direction regarding terms, conditions and restrictions included in a licence
Rights in Water and Irrigation Regulations 2000 Regulation 18	Direction regarding compliance with a permit condition
Regulation 29	Direction regarding return of a suspended or cancelled licence
<i>Country Areas Water Supply Act 1947</i> Section 12(B)	Direction regarding clearing controlled land
<i>Waterways Conservation Act 1976</i> Section 46(1)	Contravening a <i>Swan River Conservation Act</i> Licence

## References

*National framework for compliance and enforcement systems for water resource management* (Australian Government 2009).

*Monitoring compliance with water resource legislation* (Department of Water 2013), available at <[www.water.wa.gov.au](http://www.water.wa.gov.au)>.

*Strategy for compliance and enforcement of water resource legislation in Western Australia* (Department of Water 2013), available at <[www.water.wa.gov.au](http://www.water.wa.gov.au)>.





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