Water Compliance Escalation Pathways – Discretionary Factors



Factor for

Compliance Unit

or Court

The main purpose of compliance and enforcement for Water Licensing is to obtain compliance and change behaviour.

Consequently, the most significant considerations when determining what course of action to take when facing a breach are the consequences/impact of the breach that is occurring or has occurred and the likelihood that the offender will come into compliance. It is also important to think beyond the immediate incident or event and look for improvement within the organisation or with an individual.

Our role is to protect the resource, not to make a moral judgement about a person's gain. A court may take this into consideration when assigning a penalty

The compliance pyramid

Mainly purple > **Choose HIGH severity pathway (Sanctions)**

Mainly orange > Choose MEDIUM severity pathway (Directing Compliance)

Mainly blue > Choose LOW severity pathway (Encouraging & Assisting Compliance)

Intentional **Reckless or negligent** Mistake or accident

Wilfully non-compliant Chancer **Careless** Confused about Offender their obligations Is generally compliant

Rarely complies Regular offender Infrequent offender

but not significant **Effect on a Category** 3A resource Effect on a Category Risk of effect on a water resource or other water user No risk of effect on a water resource or other water use **Effect on a Category** 1 or 2 resource

Effect on a water resource

tandards, not affecting a wate resource or other water user Consider whether the non-compliance has caused adverse effect on a water resource or other water user, or created

a risk it could occur, or no risk at all.

The water compliance risk category tells us the likelihood of adverse effect on other water users, with Category 3A denoting highest consumptive use and likelihood of impact, and Category 1 the lowest. Categories for each prescribed and non-prescribed GW, SW and WC water resource are visible on the WaterConnect map plus in ArcGIS layers for management zones from the corporate SDE database

Adjust pathway?

Aggressive resistance

ance actions

2

5

going to comply Passive resistance

Has stated that they aren't

Unknown

Has stated that they don't agree with the obligations, but will do as asked

Is co-operative and appears to want to do the right thing

After taking the initial actions on the pathway, assess the offender's response and decide whether it warrants an escalation may be skipped or repeated.

Significant benefit

Medium benefit when compared to the size of their business

when compared to the

size of their business

Minor benefit when compared to the size of their business

A court may take economic gain into consideration when awarding a penalty.

The Compliance Unit may take this into consideration when preparing a prosecution.

It is not a factor for consideration in the escalation pathway up to the point where prosecution is to be pursued.

INTENTIONAL – planned or intended

RECKLESS - doing something dangerous and not worrying about the risks and the possible results

NEGLIGENT - not being careful or giving enough attention to people or things that are your responsibility

MISTAKE - an action, decision, or judgment that produces an unwanted or unintentional result

ACCIDENT - something bad that happens that is not expected or intended and that often damages something or injures someone

WILFULLY NON-COMPLIANT

- determined to do exactly as they want, even if they know it is wrong

CHANCER – taking a risk based on their perception that they won't get caught

CARELESS – not taking enough care and attention

CONFUSED – not clear about what is required of them

GENERALLY COMPLIANT – they usually try to do the right thing

Look beyond the immediate incident at the pattern of offending by the individual or body corporate.

The concept of repeat offences should be considered across a 5 year period, or consecutive

or de-escalation of actions. Actions