



New South Wales

Water Management (General) Amendment (Floodplain Harvesting Exemptions) Regulation 2020

under the

Water Management Act 2000

[*The following enacting formula will be included if this Regulation is made.*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Management Act 2000*.

MELINDA PAVEY, MP
Minister for Water, Property and Housing

Explanatory note

The object of this Regulation is to provide for exemptions from requirements under the *Water Management Act 2000* (*the Act*) to hold a water access licence to take water from a water source for the purpose of floodplain harvesting and to hold a water supply work approval to use a work for that purpose. The amendments do not override the power of the Minister under section 324 of the Act to direct that the taking of water from a specified water source is temporarily prohibited or subject to restrictions.

The exemption from the requirement for a water access licence applies only in relation to water management works, and the exemption from the requirement for a water supply work approval applies only in relation to water supply works located on a floodplain that has been declared under clause 252 of the *Water Management (General) Regulation 2018* to be a floodplain if the water supply works were—

- (a) constructed on or before 3 July 2008 and the subject of an approval under the Act or a licence under Part 2 or an approval under Part 8 of the *Water Act 1912*, or
- (b) constructed after 3 July 2008 in accordance with an approval under the Act, or a licence under Part 2 or an approval under Part 8 of the *Water Act 1912*, for which an application had been made before 3 July 2008 but which, on that date, was yet to be determined.

Persons who take water for the purpose of floodplain harvesting under the exemption from the requirement for a water access licence must comply with certain notice requirements. Failure to comply with each notice requirement is an offence with a maximum penalty of 20 penalty units.

This Regulation is made under the *Water Management Act 2000*, including sections 365 and 400 (the general regulation-making power) and, in particular, section 400(2) and (3).

Note. This Regulation, being the same in substance as the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020, which was disallowed in the Legislative Council on 22 September 2020, may not be published on the NSW legislation website within 4 months

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after the date of the disallowance, unless the resolution is rescinded by the Legislative Council. (See clause 8 of the *Subordinate Legislation Act 1989*.)

Water Management (General) Amendment (Floodplain Harvesting Exemptions) Regulation 2020

under the

Water Management Act 2000

1 Name of Regulation

This Regulation is the *Water Management (General) Amendment (Floodplain Harvesting Exemptions) Regulation 2020*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Water Management (General) Regulation 2018

[1] Clause 21 Exemption from requirement for access licence

Insert after clause 21(6)—

- (7) A person who claims an exemption conferred by this clause with respect to the taking of water for the purpose and in the circumstances specified in clause 17AA of Schedule 4 (Floodplain harvesting) must comply with the requirements set out in subclauses (8)–(10).
- (8) The person must give notice to the Natural Resources Access Regulator that the person has taken water from a water source for the purpose of floodplain harvesting by means of an eligible work within 12 hours of the time at which the person becomes aware that the use of the eligible work has commenced.
Maximum penalty—20 penalty units
- (9) The person must also give to the Natural Resources Access Regulator the following information, within 28 days after each occasion on which water is taken by means of an eligible work, calculated from the end of the last day of use of the eligible work—
 - (a) a reasonable estimate of the volume of water taken,
 - (b) the method used to estimate the volume of water,
 - (c) the date, or consecutive dates, on which the water was taken.Maximum penalty—20 penalty units
- (10) The person must also give to the Minister for Water, Property and Housing the following particulars relating to the water the person has taken by means of an eligible work during a water year, within 28 days after the end of the water year—
 - (a) a reasonable estimate of the volume of water taken,
 - (b) the method used to estimate the volume of water,
 - (c) the dates on which the water was taken.Maximum penalty—20 penalty units

[2] Clause 39AA

Insert after clause 39—

39AA Exemption relating to use of water supply work for floodplain harvesting

- (1) A person is exempt from section 91B(1) of the Act in relation to the use of an eligible work for the purpose of floodplain harvesting.
- (2) In this clause—

eligible work means a water supply work that is located on a floodplain, other than a work in respect of which an application for a water supply work approval has been refused, and that was—

 - (a) constructed on or before 3 July 2008 and is the subject of—
 - (i) an approval under the Act, or
 - (ii) a licence under Part 2 or an approval under Part 8 of the former 1912 Act, or

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- (b) constructed after 3 July 2008 in accordance with one of the following approvals or licence for which an application had been made before 3 July 2008 but which, on that date, was yet to be determined—
 - (i) an approval under the Act,
 - (ii) a licence under Part 2 or an approval under Part 8 of the former 1912 Act.
- (3) This clause is repealed on 30 June 2021.

[3] Schedule 4 Exemptions

Insert after clause 17—

17AA Floodplain harvesting

- (1) Any person—in relation to the taking of water from a water source for the purpose of floodplain harvesting by means of an eligible work.
- (2) In this clause—

eligible work means a water supply work that is located on a floodplain, other than a work in respect of which an application for a water supply work approval has been refused, and that was —

 - (a) constructed on or before 3 July 2008 and is the subject of—
 - (i) an approval under the Act, or
 - (ii) a licence under Part 2 or an approval under Part 8 of the former 1912 Act, or
 - (b) constructed after 3 July 2008 in accordance with one of the following approvals or licence for which an application had been made before 3 July 2008 but which, on that date, was yet to be determined—
 - (i) an approval under the Act,
 - (ii) a licence under Part 2 or an approval under Part 8 of the former 1912 Act.
- (3) This clause is repealed on 30 June 2021.

[4] Schedule 7 Penalty notice offences

Insert before the matter relating to clause 123(1)—

Clause 21(8), (9) or (10)	\$750	\$1,500
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