

Drought works exemptions

This document provides information about water supply work approval exemptions for public authorities during a drought.

Recent drought conditions have placed significant pressures on water utilities to maintain water supplies to their local communities. The NSW Government recognises that in serious drought conditions, water utilities may need to seek additional sources of water.

In order to take water from additional sources, water utilities generally need to construct a new water supply work, such as a water bore, dam or water pump, or re-activate a decommissioned work. These new works require authorisation under the *Water Management Act 2000*, unless an exemption applies.

In a drought, there is often no time to apply and have approved a water supply work because additional water is required urgently.

An exemption under [clause 39A of the Water Management \(General\) Regulation 2018](#) (view the Regulation at <http://www.legislation.nsw.gov.au>) responds to this situation by allowing prompt construction, and use of water supply works by a public authority in order to supply water for critical needs in times of drought.

Works may require assessment and licensing under other legislation to authorise construction. In addition, the public authority will need to ensure a relevant water access licence (WAL), or an exemption, applies prior to taking water from any work constructed under the exemption.

This document provides answers to frequently asked questions about the exemption.

How does this exemption work, and who can use it?

Any relevant public authority can apply to the department for this exemption under clause 39A of the Regulation.

If granted, the public authority would be exempt from the requirement to hold a water supply work approval for the construction or use (or both) of a water supply work.

This exemption can only be granted:

- if conditions of drought exist
- the grant of the exemption is in the public interest given those conditions.

What is a 'relevant public authority'?

For the purposes of this exemption, a 'relevant public authority' is a public authority (within the meaning of the *Water Management Act 2000*) that supplies water to the public.

This includes WaterNSW and local councils' local water utilities.

Is this exemption the only option available to relevant public authorities during drought?

No. It may be a better option for a relevant public authority in the long term to apply for a water supply work approval. This exemption is only a short-term measure and granted under specific circumstances.

The Regulation provides for a streamlined process for water supply work approval applications, which is intended to be used for:

- short periods (less than 6 months)
- drought relief purposes.

How do you apply for this exemption?

To apply for this exemption, a relevant public authority must submit an application to the department. The application must provide:

- information on the reason(s) why the water supply work is needed, and the timeframes required to obtain water supplies
- information outlining drought conditions and why the work is in the public interest
- explain why the public authority has applied for this exemption
- details of the work to be used to supply water, including the location, type and size of work, and installation and operation requirements
- details of the water source from which water may be taken by the work.

Authorities submit completed applications to waterlicensing.servicedesk@dpie.nsw.gov.au. Additional information may be requested to support the application assessment.

How is the exemption granted?

This exemption is granted by notice in writing. This notice is called an 'exemption notice'. An exemption notice will specify the period the exemption will remain in force and the conditions that apply to the exemption.

For how long does this exemption apply?

If granted, the exemption will remain in force for either:

- the period specified in the exemption notice
- if no period is specified in the exemption notice, then 12 months following the date the exemption is granted.

What does a relevant public authority need to consider about the future use of the water supply work?

The exemption under the Regulation is a short-term response to drought conditions in NSW. It does not authorise ongoing use of a water supply work.

A relevant public authority will need to consider its plans for the water supply work in the long term. This includes if, and how, any ongoing use will be authorised. Possible options are to:

- apply for an extension of this exemption if the drought conditions are continuing
- rely on another exemption under the *Water Management Act 2000* or the regulations
- apply for a water supply work approval.

It is a condition of this exemption for a relevant public authority to notify the department in writing of its plans in relation to the work, including whether or not it proposes to continue to use the work after the exemption expires or if it is to be decommissioned.

Will a water supply work approval be granted after this exemption expires?

There is no guarantee that a water supply work approval will be granted after an exemption under clause 39A of the Regulation expires.

A relevant public authority would need to apply for the approval separately.

Will there be conditions attached to this exemption?

Yes. It is a condition of the exemption that the public authority must notify the department in writing – and within the ‘relevant period’ – of the following matters:

- (a) the plans of the public authority in relation to the water supply work, in particular, whether or not it proposes to continue to use the work after the exemption expires
- (b) if the public authority intends to cease using the water supply work on or before the expiry of the exemption – the date on which it will cease to use the work and its plans for the work once that occurs (for example, whether the work is to be capped, decommissioned or removed)
- (c) if the public authority intends to continue using the water supply work after the exemption expires – whether it intends to –
 - (i) apply for an extension of the period of the exemption
 - (ii) rely on another exemption
 - (iii) apply for a water supply work approval.

What is the ‘relevant period’?

This is the period specified on the exemption notice, or if there is none specified, then the ‘relevant period’ is 3 months before the date on which the exemption is due to expire.

Could other conditions apply to the exemption?

Yes. The department may also impose any further conditions on the exemption that are considered appropriate. These might relate to the:

- location of the work
- water source from which water may be taken by the work
- construction standards with which the work must comply

- maximum size of the work
- reporting requirements on completion of the construction of the work.

Is it possible to seek an extension of this exemption?

Yes. To apply for an extension of an exemption, a relevant public authority must submit an application to the department. This application must provide:

- information on the reason(s) why an extension of an exemption is required
- details of whether the request for an extension of an exemption is consistent with the plans provided in relation to the water supply work (i.e. whether or not the relevant public authority intended to continue to use the work after the exemption expires).

Completed applications must be submitted to waterlicensing.servicedesk@dpie.nsw.gov.au.

If granted, the department will extend the exemption by giving further notice in writing to the public authority, which is called an 'extension notice'.