

Water Management (General) Amendment (Emergency Works Exemption) Regulation 2018

Frequently asked questions

June 2021 Natural Resources Access Regulator



The Natural Resources Access Regulator (NRAR) is an independent regulator established under the NSW *Natural Resources Access Regulator Act 2017*. The current regulatory focus of NRAR is water regulation, a key part of which is to prevent, detect and stop unlawful water activities.

What does the exemption do?

It allows a public or private sector entity to carry out urgent dewatering in emergency situations without needing to apply for and hold any of the following:

- (i) a water access licence for the water removed
- (ii) a water supply works approval for the works used to remove the water
- (iii) a water use approval for the use of the water removed
- (iv) a controlled activity approval for works undertaken in the vicinity of a watercourse.

The activity must clearly be an emergency work as defined in the Regulation and summarised below. It does not apply to any further (secondary) use of the water that is removed.

What is an emergency work?

It is a work carried out urgently, as a direct result of an *emergency event*, to remove groundwater or overland flow water for the purpose of reducing a significant risk to:

- (i) public health or safety
- (ii) the environment, including groundwater systems
- (iii) infrastructure or the construction of infrastructure.

It would include, for example, the removal of water from an excavation that had to be dug to fix a burst water supply pipe or sewer pipe.

Emergency works are limited to doing only what is necessary to address the significant risk. Any further activities done after the immediate risk has been addressed are not covered by this exemption and the entity must apply for and hold relevant water access licence and approvals.

For licence and approvals information visit www.industry.nsw.gov.au/natural-resources-access-regulator/licensing-and-approvals/licensing-and-approvals.



What is not an emergency work?

- Works that are, or ought reasonably to be, included in a planned schedule of maintenance or repairs
- Works that would have been required to be carried out even if the relevant emergency event had not happened.

Examples of work that is not emergency work include the removal of groundwater from a site which has filled with water due to sub-standard construction planning, or using building equipment to keep water out.

What is an emergency event?

To be able to claim the exemption, the work must be carried out in direct response to one of the following events:

- (a)** a sudden natural event, including a storm, flood, tree fall, bush fire, landslip or coastal inundation, or
- (b)** a sudden ingress of water, into an excavation site, that is not:
 - (i)** foreseen, or
 - (ii)** a result of inadequate planning or assessment or the use of unsuitable materials or methods, or
- (c)** an accident, or
- (d)** an actual or imminent failure of infrastructure or equipment, including a rupture or breakage of piping infrastructure caused by natural ground movements, or
- (e)** An unlawful act resulting in damage, including vandalism, arson or pollution.

This means that the exemption covers legitimate unplanned emergencies, such as the sheet piling in a building construction site cracking and resulting in the excavation filling quickly with groundwater that needs urgent removal to prevent further damage or injury.

What am I required to do before starting emergency work under this exemption?

Before, or as soon as reasonably possible after starting the emergency work, you must give all of the following

information to NRAR:

- (i)** your name and contact details. If the works are being done for an organisation or company, the name and contact details of the relevant person in that organisation or company should be provided
- (ii)** the address of the site of the works. If there is no street address, describe the location/s or specify GPS coordinates or provide a good description of where the works are, to enable an NRAR officer to locate the works to undertake a site inspection
- (iii)** the nature of the emergency event resulting in the need to carry out the works, and
- (iv)** the significant risk to be reduced by the works (i.e. the public health or safety, environmental, infrastructure or construction risk).

This is known as the initial report.

This initial report must be provided to NRAR by email to nrar.enquiries@nrar.nsw.gov.au or by phoning 1800 633 362.

The initial report is important for NRAR to have a chance to review the emergency situation and the works being undertaken.

In most circumstances, the above information should be sent to NRAR before the work starts – such as when the company or landholder is first informed of the need to carry out the emergency work or while repair personnel are travelling to the site.

Submitting the initial report form by email ensures that all information is clearly received and makes the completion report easier.

There may be infrequent cases when this is not possible – e.g. works required overnight with skeleton staff, or in a location with no mobile or internet access. In such cases, the works should be notified to NRAR as soon as possible, such as first thing the next morning, or when back in a mobile / internet reception area.

The exemption may not apply if notification of the emergency works is received too long after the commencement of the work.



What am I required to do after completing the emergency work under the exemption?

Within 14 days of completing the work, you must report to NRAR the date that the emergency works were completed and the volume of water taken. For this reporting, the same form is updated and resubmitted as the completion report.

If the volume of water removed can be measured (e.g. by a meter on a pump), then the take must be recorded throughout the course of the emergency work and the actual total volume of water taken must be reported.

If the volume cannot be measured, then an estimated total volume of water removed through the duration of the work must be provided. This might be the case if the water naturally drains away rather than needing to be pumped out, or if the groundwater and/or overland flow water is mixed in with water or sewage flowing from a broken pipe. The estimate of take in these cases should be as accurate as possible.

The data reported will help to improve understanding of water extraction volumes from each water source and by different forms of take. It will help to inform how extraction limits are set for water sources longer term, to protect the water source and the environment while also supporting community economic and social outcomes.

Can I take water under the exemption while a temporary water restriction made under s 324 of the *Water Management Act 2000* is in force and applies to that same take?

No.

The emergency works exemption only exempts a person from offences relating to a failure to hold an access licence (s 60A), a water use approval (s 91A), a water supply work (s 91 B) or a controlled activity approval (s 91E). This exemption does not exempt a person from the offence of failing to comply with a s 324 order under s 336C.

Is the volume of water taken under the exemption limited?

There is no limit on the volume of water that can be removed. It is expected that the minimum volume possible will be removed in order to fix the emergency situation. This acknowledges that emergency stations and dewatering activities cause delays and costs to corporations, councils and businesses. It is in their interest to remove as much water as possible, as quickly as possible.

The exemption does not authorise the take of water beyond the work needed to reduce the significant risk caused by the emergency event. It does not allow for longer term take or take associated with standard construction and maintenance activities or normal risk management situations.

Is there a set time limit for the exemption for each emergency work undertaken?

There is no time limit on the exemption, for the same reasons outlined in the answer above.

Emergency works that take longer than the expected time may be closely scrutinised to ensure the exemption only covers the take of water needed to carry out legitimate emergency works and only to the point that the significant risk has been reduced (not eliminated altogether).

Emergency works are limited to doing only what is necessary to address the significant risk. Any further activities done after the immediate risk has been addressed are not covered by this exemption and the entity will be required to apply for and hold relevant water access licence and approvals.

For licence and approvals information visit www.industry.nsw.gov.au/natural-resources-access-regulator/licensing-and-approvals/licensing-and-approvals.

Can I use the water removed during emergency works for another purpose?

Water removed under this exemption will normally be returned to the groundwater source (through reinjection or infiltration) or released into the stormwater system.



For more information on the Natural Resources Access Regulator visit industry.nsw.gov.au/nrar

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The exemption does not cover use of the water removed for a secondary purpose (such as domestic consumption, supplying it to another person or body, or any other use from which a commercial benefit is or may be obtained). If the water taken is used for another purpose, the standard licensing and approvals requirements apply in relation to that use.

This means that if a water access licence and/or a form of approval is ordinarily required to take and use this water from a water source, you must hold the relevant approval and have sufficient entitlement in a water account to cover the full volume of water taken.

Does this exemption apply to floodplain harvesting?

No.

Any overland flow water taken under this exemption that is used for irrigation or stored for later irrigation use must be accounted for under either another relevant exemption or under a floodplain harvesting licence and entitlement (once they have been issued in each of the five northern NSW valleys).

Why does this exemption include the take of overland flow water as well as groundwater?

This covers situations where groundwater might seep into an excavation hole, and rainfall runoff also spills into the hole during a rain event.

Not that the definition of overland flow water (see section 4A of the *Water Management Act 2000*) does not include water that is flowing over or lying on the bed of a river, lake or estuary. Therefore, any water taken directly from a stream, river, lake or estuary during emergency works must be covered by the relevant water access licence and/or approval that would ordinarily apply to the take of that water.

Does this exemption remove the need to hold licence or approvals under other legislation?

No.

The requirements of other Acts and Regulations continue to apply. For example, any water pollution requirements under the *Protection of the Environment Operations Act 1997* still apply in relation to releasing water into a groundwater source or the stormwater system.

More information

This fact sheet is one in a series explaining water management, compliance and associated issues. You can find this series and more information about licensing, approvals and compliance on the NRAR website at

www.industry.nsw.gov.au/nrar

Copies of the Acts and associated Regulations are available on the NSW Government legislation site at www.legislation.nsw.gov.au

For enquiries call NRAR on 1800 633 362 or email at nrar.enquiries@nrar.nsw.gov.au.



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