

# Controlled activity approval exemptions

The Department of Planning and Environment – Water is responsible for issuing all controlled activity approvals in accordance with the *Water Management Act 2000* for work carried out on waterfront land.

Waterfront land is the bed of any river, lake or estuary, and the land within 40 metres of the highest bank of the river, the shore of the lake or the mean high-water mark of the estuary.

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## Controlled activity approval

A controlled activity approval allows you to carry out certain types of activities on waterfront land as defined in the *Water Management Act 2000*.

You do not need a controlled activity approval if an exemption applies.

You can find more information about controlled activities on the department's website at [water.dpie.nsw.gov.au/licensing-and-trade/approvals/controlled-activity-approvals](http://water.dpie.nsw.gov.au/licensing-and-trade/approvals/controlled-activity-approvals).

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## Exemptions

The Water Management (General) Regulation 2018 specifies a number of exemptions.

A summary of these exemptions is provided below. You should refer to the Regulation for a full description of these exemptions, including the circumstances when the exemption applies and any restrictions or limitations.

This summary of exemptions is listed by:

- exemptions that can apply to any person and relate to:
  - taking water from a water source
  - approved development
  - maintenance and repairs
  - directions
  - other matters
- exemptions that apply to specific entities – public authorities, state-owned bodies, and network operators.

## Accessing a copy of the Regulation

NSW legislation is published online at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au). Look for the Water Management (General) Regulation 2018 within the In force > Statutory Instruments section under 'W'.

## Find help

Contact the department for assistance.

- Call 1800 633 362 during business hours
- Email [waterlicensing.servicedesk@dpie.nsw.gov.au](mailto:waterlicensing.servicedesk@dpie.nsw.gov.au).

## Summary of exemptions

Table 1. Exemptions that can apply to any person

Controlled activity approval exemption	Regulation reference
<b>Exemptions relating to taking water from a water source</b>	
<p><b>Enabling take of water under domestic and stock right</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out by a person for the purpose of enabling that person to take water under a domestic and stock right.</p> <p>Restrictions on the application of this exemption apply.</p> <p>Domestic and stock rights are provided in section 52 of the <i>Water Management Act 2000</i>.</p>	<p>Clause 42</p> <p>Clause 21 of Schedule 4</p>
<p><b>Construction or use of harvestable rights dam</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out in accordance with the construction or use of a harvestable rights dam.</p> <p>Harvestable rights are provided in section 53 of the <i>Water Management Act 2000</i>.</p>	<p>Clause 42</p> <p>Clause 22 of Schedule 4</p>
<p><b>Excavation for purpose of using water supply work</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to the excavation of the bed of a river lake or estuary for the purpose of using a water supply work.</p> <p>This exemption only applies if the excavation is:</p> <ul style="list-style-type: none"> <li>• detailed in the conditions of a water supply work approval for that water supply work, and</li> <li>• carried out in accordance with the conditions of the water supply work approval.</li> </ul> <p><i>Water supply work</i> is defined in the <i>Water Management Act 2000</i>.</p>	<p>Clause 42</p> <p>Clause 20 of Schedule 4</p>

Controlled activity approval exemption	Regulation reference
<p><b>Works under the <i>Water Act 1912</i></b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out in connection with the construction or use of a work authorised by a licence issued under Part 2 of the <i>Water Act 1912</i>.</p> <p>This exemption only applies if the controlled activity is:</p> <ul style="list-style-type: none"> <li>• detailed in the conditions of the Part 2 licence, and</li> <li>• carried out in accordance with the conditions of the Part 2 licence.</li> </ul>	<p>Clause 42</p> <p>Clause 24 of Schedule 4</p>
<p><b>Emergency works</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any urgent controlled activity undertaken for the purpose of carrying out emergency works in direct response to an emergency event.</p> <p><i>Emergency works</i> and <i>emergency event</i> are defined in Clause 3 of the Regulation.</p> <p>This exemption only applies if the person claiming the exemption provides certain information to the Natural Resources Access Regulator (NRAR) before (or soon after) commencing relevant works and within 14 days of completing the works, as outlined in Clause 42A(2) of the Regulation.</p> <p>Please refer to information on the <a href="#">department's website</a> in relation to the application and use of this exemption, including its scope, duration and associated requirements.</p>	<p>Clause 42A</p>
<p><b>Exemptions relating to approved development</b></p>	
<p><b>Development relating to dwellings</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out in connection with development for a dwelling house or dual occupancy building.</p> <p>This exemption only applies if:</p> <ul style="list-style-type: none"> <li>• the activity is:             <ul style="list-style-type: none"> <li>○ exempt development, or</li> <li>○ subject to a development consent, or</li> <li>○ subject to a complying development certificate, and</li> </ul> </li> <li>• the activity is not carried out on or in the:</li> </ul>	<p>Clause 42</p> <p>Clause 29 of Schedule 4</p>

Controlled activity approval exemption	Regulation reference
<ul style="list-style-type: none"> <li>○ bed or bank of any river, or</li> <li>○ bed or shore of any lake, or</li> <li>○ bed, or land lying between the bed and the mean high water mark, of any estuary.</li> </ul>	
<p><b>Development in urban or industrial areas adjoining certain lakes and estuaries</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity located within an urban or industrial area adjoining a lake or estuary identified on a map published on the department’s website for the purposes of this exemption.</p> <p>This exemption only applies if the activity is:</p> <ul style="list-style-type: none"> <li>• development for which development consent has been granted, or</li> <li>• exempt development, or</li> <li>• complying development.</li> </ul> <p>The maps can be found <a href="http://water.dpie.nsw.gov.au/licensing-and-trade/approvals/controlled-activity-approvals/what/guidelines">water.dpie.nsw.gov.au/licensing-and-trade/approvals/controlled-activity-approvals/what/guidelines</a>.</p>	<p>Clause 42</p> <p>Clause 36 of Schedule 4</p>
<p><b>Development at Rouse Hill Regional Centre</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity which is development in accordance with section 6 of Part D (Rouse Hill Regional Centre) of <i>The Hills Development Control Plan 2012</i>, on the land to which that section applies (being land bounded by Windsor Road, Commercial Road and Withers Road, Rouse Hill).</p>	<p>Clause 42</p> <p>Clause 26 of Schedule 4</p>
<p><b>Development on waterfront land at Oran Park or Turner Road</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity which is development in accordance with the <i>Oran Park and Turner Road Waterfront Land Strategy 2009</i>, as published in the <i>Gazette</i> on 17 July 2009.</p>	<p>Clause 42</p> <p>Clause 27 of Schedule 4</p>
<p><b>Exemptions relating to maintenance and repairs</b></p>	
<p><b>Maintenance of existing lawful works</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity necessary to preserve, repair or upkeep a building or structure.</p> <p>This exemption only applies if the:</p>	<p>Clause 42</p> <p>Clause 33 of Schedule 4</p>

Controlled activity approval exemption	Regulation reference
<ul style="list-style-type: none"> <li>building or structure has been lawfully constructed, and</li> <li>activity does not include additions, enhancements to, or the expansion of, the building or structure.</li> </ul>	
<p><b>Repair and restoration work after storms</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to the following kinds of controlled activities following a storm event:</p> <ul style="list-style-type: none"> <li>repair work on a building or structure, including an access track, watercourse crossing, water supply work or essential services infrastructure, which has been damaged by the storm, but only if the repair work:                             <ul style="list-style-type: none"> <li>does not involve the replacement of a structural component of any building or structure that could not otherwise be repaired under the exemption in clause 33, and</li> <li>does not include enhancements to, or the expansion of, the building or structure beyond its condition immediately before the storm damage occurred</li> </ul> </li> <li>the removal of detritus (including woody debris) deposited on waterfront land as a result of the storm.</li> </ul>	<p>Clause 42</p> <p>Clause 34 of Schedule 4</p> <p>Clause 33 of Schedule 4</p>
<p><b>Exemptions relating to directions</b></p>	
<p><b>Compliance with enforcement action</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity a person is required to carry out by a direction, request or order made under the <i>Water Management Act 2000</i> or any other act or law.</p> <p>This exemption only applies if the:</p> <ul style="list-style-type: none"> <li>direction, request or order is made by the Minister for Lands and Water or an authorised officer under the</li> <li><i>Water Management Act 2000</i>, or</li> <li>order is made by a court, or</li> <li>direction, request or order relates to another act or law, and the Minister has approved the carrying out of the activity without a controlled activity approval.</li> </ul>	<p>Clause 42</p> <p>Clause 35 of Schedule 4</p>

Controlled activity approval exemption	Regulation reference
<p><b>Emergency safety measures</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out in an emergency in accordance with a direction given under the <i>State Emergency Service Act 1989</i> or the <i>State Emergency and Rescue Management Act 1989</i>.</p>	<p>Clause 42</p> <p>Clause 30 of Schedule 4</p>
<b>Other exemptions</b>	
<p><b>Construction of fencing, crossings or tracks</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to the construction or use of fencing, a vehicular crossing or access track.</p> <p>This exemption only applies if the activity:</p> <ul style="list-style-type: none"> <li>• does not impound water, and is</li> <li>• located on a minor stream, and</li> <li>• located within a rural zone (but not a rural village) under an environmental planning instrument.</li> </ul> <p><i>Minor stream</i> is defined in the Regulation.</p>	<p>Clause 42</p> <p>Clause 23 of Schedule 4</p> <p>Clause 3(1)</p>
<p><b>Removal of vegetation</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to the removal of vegetation. This exemption only applies if the activity:</p> <ul style="list-style-type: none"> <li>• is authorised by the <i>Water Management Act 2000</i>, or another act or law, and</li> <li>• does not involve the removal of large woody debris, and</li> <li>• does not involve the removal or disturbance of soil or other extractive material such as sand, gravel, rock, mud or clay.</li> </ul> <p><i>Large woody debris</i> is defined in the NSW Department of Primary Industries fact sheet <u><a href="#">Removal of large woody debris in NSW rivers and streams</a></u>, available at <a href="http://www.dpi.nsw.gov.au">www.dpi.nsw.gov.au</a> &gt; Fishing &gt; Habitat management &gt; Publications, under 'Aquatic habitat – threats'.</p>	<p>Clause 42</p> <p>Clause 25 of Schedule 4</p>

Controlled activity approval exemption	Regulation reference
<p><b>Pontoons, jetties and moorings</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out in connection with the construction of a pontoon, jetty or mooring pole on waterfront land relating to a lake or estuary.</p> <p>This exemption only applies if the activity does not require:</p> <ul style="list-style-type: none"> <li>• removal of material from the land, or</li> <li>• depositing material on the land, other than that necessary for the construction of the pontoon, jetty or mooring, or</li> <li>• works that change the profile of the waterfront land adjoining the lake or estuary.</li> </ul>	<p>Clause 42</p> <p>Clause 32 of Schedule 4</p>
<p><b>Waterfront land where the river is concrete lined or in pipe</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity.</p> <p>This exemption only applies if the activity is carried out on waterfront land relating to a river where the channel of the river is fully concrete lined or is a fully enclosed pipe channel.</p>	<p>Clause 42</p> <p>Clause 28 of Schedule 4</p>
<p><b>Waterfront land that has been separated from a 1<sup>st</sup> to 3<sup>rd</sup> order stream by existing development</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity that is carried out:</p> <ul style="list-style-type: none"> <li>• on waterfront land in relation to a minor stream or third order stream, and</li> <li>• where the activity is separated from the bed of the stream by one or more of the following:             <ul style="list-style-type: none"> <li>○ public road</li> <li>○ hard stand space, such as a car park or building</li> <li>○ levee bank located in an urban area and a designated high flood risk area, which was constructed under an approval granted by a consent authority under the <i>Environmental Planning and Assessment Act 1979</i>.</li> </ul> </li> </ul> <p><i>Minor stream</i> is defined in the Regulation.</p> <p>Schedule 2 of the Regulation provides the method for determining the stream order of a watercourse.</p>	<p>Clause 42</p> <p>Clause 31 of Schedule 4</p> <p>Clause 3(1)</p> <p>Schedule 2</p>

Controlled activity approval exemption	Regulation reference
<p><b>Mining, crown lands or western lands legislation</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out in accordance with any lease, licence or permit under the <i>Mining Act 1992</i>, the <i>Crown Lands Act 1989</i>, the <i>Crown Lands (Continued Tenures) Act 1989</i> or the <i>Western Lands Act 1901</i>, or a petroleum title in force under the <i>Petroleum (Onshore) Act 1991</i>.</p>	<p>Clause 42</p> <p>Clause 18 of Schedule 4</p>
<p><b>Land of Maritime Authority or Port Corporation</b></p> <p>This exemption applies to any person.</p> <p>This exemption applies to any kind of controlled activity carried out:</p> <ul style="list-style-type: none"> <li>• in accordance with any lease, licence or permit relating to land under the ownership or control of Transport for NSW or the Port Authority of New South Wales, or</li> <li>• in accordance with any lease, licence or permit relating to land under the ownership or control of a port operator, but only if the operator has considered the environmental impact of the activity and is satisfied that the activity is not likely to significantly affect the environment, or</li> <li>• where the minister administering the <i>Ports and Maritime Administration Act 1995</i> is the consent authority under the <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</i>.</li> </ul>	<p>Clause 42</p> <p>Clause 19 of Schedule 4</p>

Table 2. Exemptions that can apply to public authorities

Controlled activity approval exemption	Regulation reference
<p>This exemption applies to public authorities.</p> <p><i>Public authority</i> is defined in the <i>Water Management Act 2000</i>. Public authorities include NSW public service agencies and local councils, but not Landcom or the Superannuation Administration Corporation.</p> <p>This exemption applies to any kind of controlled activity.</p>	<p>Clause 41</p>



Table 3. Exemptions that can apply to state-owned bodies

Controlled activity approval exemption	Regulation reference
<p>This exemption applies to state-owned bodies wholly owned by the state or a government agency, and have a public purpose.</p> <p>This exemption applies to any kind of controlled activity. This exemption only applies if:</p> <ul style="list-style-type: none"> <li>the activity does not cause any change in the course of the river, and</li> <li>the body has considered the environmental impact of the activity and is satisfied that the activity is not likely to significantly affect the environment.</li> </ul>	<p>Clause 42</p> <p>Clause 37 of Schedule 4</p>

Table 4. Exemptions that can apply to network operators

Controlled activity approval exemption	Regulation reference
<p><b>Network operators and pipeline licensees</b></p> <p>This exemption applies to:</p> <ul style="list-style-type: none"> <li>network operators licensed or authorised under the <i>Water Industry Competition Act 2006</i>, the <i>Gas Supply Act 1996</i> or the <i>Electricity Supply Act 1995</i>, or</li> <li>pipeline licensees under the <i>Pipelines Act 1967</i>.</li> </ul> <p>This exemption applies to the construction, modification, repair, maintenance, or emergency work on the network operator’s water, gas or electricity infrastructure, or a pipeline licensee’s pipeline and its associated infrastructure.</p> <p>This exemption only applies if the:</p> <ul style="list-style-type: none"> <li>activity does not cause any change in the course of the river, and</li> <li>network operator or pipeline licensee has considered the environmental impact of the activity and is satisfied that the activity is not likely to significantly affect the environment.</li> </ul>	<p>Clause 43</p>