



Submission on the draft Water Management (General) Regulation 2025

6 April 2025



About NCC

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 200 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

www.nature.org.au

For further information about this submission, please contact:

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Acknowledgement

The Nature Conservation Council NSW acknowledges that we live and work on the land of First Nations. This land has been cared for since time immemorial by Traditional Owners, whose sovereignty was never ceded. We pay our respects to the Traditional Owners past and present of the many Countries within so-called New South Wales.

We respect the leadership of Traditional Owners in caring for Country and support the development of treaties that meaningfully empower them to do so. We acknowledge the dispossession of First Nations People, and the harm inflicted on people and Country since colonisation began. We acknowledge that colonisation is an unjust and brutal process that continues to impact First Nations people today. As people living and working on First Nations Country it is incumbent on us to play our part in righting the historical and ongoing wrongs of colonisation. Indeed, our vision of a society in which nature and communities thrive together depends upon it.

The Nature Conservation Council of NSW (NCC) respects and supports all First Nations people's right to self-determination as outlined by the UN Declaration of the Rights of Indigenous Peoples (UNDRIP), which extends to recognising the many different First Nations within Australia and the Torres Strait Islands. NCC commits to maintain open lines of communication and to build respectful mutual relationships with First Nations people in all the work we do and wherever possible, seek aligned outcomes with and support the goals of First Nations groups.

We commit, as an organisation, to empower and work together with First Nations people to protect, conserve and restore the land, waters, air, wildlife, climate and culture of the many First Nations people in NSW.



6 April 2025

NSW Department of Climate Change, Energy, Environment and Water
Water Group

By email: water.enquiries@dpie.nsw.gov.au

To whom it may concern

SUBMISSION: Draft Water Management (General) Regulation 2025

Nature Conservation Council NSW (NCC) is pleased to provide comment on the draft Water Management (General) Regulation 2025 (WM Regulation).

This submission does not provide comment on the Water Management (Water Supply Authority) Regulation 2025. Comments in this submission are limited to highlighting the NCC's objections to content in the General Regulation, and proposed inclusions.

NCC raises concerns about clauses in the draft 2025 WM Regulation regarding floodplain harvesting that do not appear in the 2018 regulation in a similar format or wording. These changes we refer to were not identified in the Regulatory Impact Statement. **The practice and licencing of Floodplain Harvesting is a contentious issue in the community, therefore a detailed, clear, transparent explanation of how the 2025 WM Regulation will determine the metering and works approval process for floodplain harvesting should have been made available to the public.**

Detailed Comments

Suggested inclusions to streamline wetland restoration

Over half of NSW's coastal wetlands have been lost since 1788. In some catchments, up to 90% of low-lying wetlands have been drained or cleared. In the North Coast, for example, this has led to climate vulnerability, water acidic as lemon juice, blackwater events, mass fish kills, and locally collapsed primary industries. Fortunately, this is all reversible – from Hexham Swamp to Yarrahapinni Wetlands, we have repeatedly proven wetland restoration to be viable and worthwhile.

Current state planning laws were designed to limit environmental harm rather than facilitate nature restoration projects. Navigating so many regulations, processes, and departments means many proposed projects would overrun grant costs and timelines on administration work alone, frequently making them unviable.

The updated regulation should include:

1. The insertion of a provision which indicates that tidal restriction mechanisms and any associated works regulated under the Water Management Act installed or undertaken before 2016, which are to be modified or removed for the purposes of wetland restoration works, are deemed lawful.
2. The insertion of a provision which allows for wetland restoration works which a) involve modification or removal of a tidal structure b) do not require the construction of any additional floodplain structures and c) do not affect neighbouring properties (as determined by the hydraulic report, which has to be submitted to the CER for any blue carbon project) to be exempt from the requirement to hold a flood work approval.
3. The insertion of a provision which allows for wetland restoration works which meet certain criteria to be exempt from the requirement to hold a controlled activity works approval and drainage approval.
4. The insertion of a provision that requires wetland restoration project applications be determined for approval, or clarification that an exemption applies, within 60 days.
5. For projects that require one or more approvals under the Water Management Act, amend the Water Management Regulation to specify that one, single approval (and associated assessment process) is required for all relevant works. This could be, for example, a controlled works approval or a drainage works approval (if the relevant provisions in the WM Act are switched on).

Comments on draft WM Regulation

1. *Exemptions from the need for approval to construct certain water supply, conveyance and reticulation works that don't traverse sensitive land.*

Object - inland wetlands are not included in the definition of 'sensitive land.' Until inland wetlands are added to the list of environmentally sensitive lands, this change to the WM Regulation should not be included.

2. *Broaden exemptions for activities on waterfront land by removing reference to stream order.*

Object - Increasing the exemptions for activities on waterfront land by reducing the reference to stream order will weaken the protection of riparian corridors.

The riparian corridor is 40 meters back from the highest point of the bank, on both sides of the river. The vegetation in this area is critical for:

- Improving water quality by removing sediment.
- Bank stability, reducing erosion.
- Habitat for animals including insects and birds.
- 40% of native fish diets come from riparian vegetation.

The overarching objective of the WMA is to establish and preserve the integrity of the riparian corridor. Disturbance of the riparian corridor is a controlled action that needs approval through the WMA. Through this process, damage done to the riparian corridor is offset elsewhere.

3. *Require the maintenance or decommissioning of drought works. The proposed change to the regulation is to amend clause 39A to allow the Minister to require that after the exemption period:*

- *works that are intended to be used in future droughts are tested and maintained*

Object – all works that fail to obtain approval after the exemption period lapses should be decommissioned.

4. *Metering exemption for pumps with diameters less than 100mm (surface water) and 200mm (groundwater).*

Object to the continuation of this exemption – **This exemption allows 40% of pumps to continue extracting water completely unchecked.** In some catchments such as the Richmond, up to 90% of pumps remain unmetered.

NSW's coastal catchments include many small, undammed rivers that are home to countless threatened species, from the critically endangered Bellinger River turtle to the iconic Platypus. Rivers facilitate tourism and recreation economies, supply town water, support downstream primary industries, and are culturally significant for Traditional Owners.

The exemption of such a significant proportion of pumps means that in many instances, cumulative extraction is not measured or estimated. License compliance is unenforceable, and low-accuracy cumulative extraction data makes evidence-based management difficult.

In the context of climate change, significant population growth, and the drought-prone characteristics of NSW's coastal zones, foregoing the opportunity to more thoroughly measure cumulative water extraction is a decision incompatible with the precautionary principle.

5. *Metering exemption for rainfall runoff capture.*

Object to the continuation of this exemption - all water diversions above the harvestable right should be metered.

6. *Metering exemption of floodplain harvesting listed in Schedule 7*

Object to this listing – Clarification is required as to why it is necessary to have the explicit exemption of floodplain harvesting from metering listed in schedule 7 of the WM Regulation.

This part of the exemption also requires explanation: *(2) A work used solely to take overland flow water from a declared floodplain under an unregulated river access licence.*

There are no comparable clauses in the 2018 Water Management Regulation to the listing in Schedule 7 exempting floodplain harvesting from metering. The treatment of floodplain harvesting metering should have been included in the Regulatory Impact Statement, as floodplain harvesting wasn't licenced in 2018, therefore isn't fully detailed in the 2018 regulation.

7. Exemption for advertising applications for floodplain harvesting water supply works.

Object – all applications for water supply works must be advertised. Currently, floodplain harvesting works and other floodplain works are advertised, although the advertisements lack enough detail for the public to be able to determine if the works are for water diversions or other flood mitigation purposes. This exemption increases the opaque nature of water management in NSW.

Removing the requirement for floodplain harvesting works would be a change from the current requirements, therefore it should have been included in the Regulatory Impact Statement.

8. Penalty notices have not increased.

Object to no change in the maximum penalties for water theft.

- The fines listed in Schedule 10 for water theft are not high enough to be a deterrent for many operators.
- Schedule 10 of the draft Water Management Regulation shows the penalty for corporations is lower than the penalty for individuals, possibly a formatting error.
- Repeat offenders, and the theft of significant volumes, should result in a loss of water access licence.
- If any stolen water is determined to be any classification of environmental water, that water should be recovered as soon as possible from the offender's water account and reallocated to the environmental water account(s) impacted by the theft.

Thank you for the opportunity to participate in this consultation.

Your key contact point for further questions and correspondence is Melissa Gray, Water Campaigner, available via mgray@nature.org.au and (02) 9516 1488. We welcome further conversation on this matter.



Yours sincerely,

A handwritten signature in black ink, appearing to read "JM", written in a cursive style.

Jacqui Mumford
Chief Executive Officer
Nature Conservation Council of NSW