



New South Wales

Water Industry Competition (General) Amendment (Licensing Exemptions) Regulation 2010

under the

Water Industry Competition Act 2006

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Water Industry Competition Act 2006*.

PHILLIP COSTA, MP
Minister for Water

Explanatory note

The object of this Regulation is to amend the list of water infrastructure and sewerage infrastructure that is not required to be licensed under the *Water Industry Competition Act 2006*.

This Regulation is made under the *Water Industry Competition Act 2006*, including section 5 (4) (b) (which provides for the regulations to prescribe exemptions from the requirement that water industry infrastructure be licensed) and section 101 (the general regulation-making power).

2010 No 738

Water Industry Competition (General) Amendment (Licensing Exemptions)
Clause 1 Regulation 2010

**Water Industry Competition (General) Amendment
(Licensing Exemptions) Regulation 2010**

under the

Water Industry Competition Act 2006

1 Name of Regulation

This Regulation is the *Water Industry Competition (General) Amendment (Licensing Exemptions) Regulation 2010*.

2 Commencement

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

Schedule 1 Amendment of Water Industry Competition (General) Regulation 2008

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

dual occupancy has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

dwelling house has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

multi dwelling housing has the same meaning as it has in the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

roof water means rainwater collected from the roofs of buildings.

stormwater means rainwater that has run off any urban trafficable surface such as a pavement, car park, road, garden or urban vegetated open space.

[2] Part 2, Division 4

Omit clause 19. Insert instead:

Division 4 Exemptions from requirement for licence

19 Water industry infrastructure that is exempt from requirement for a licence

For the purposes of section 5 (4) (b) of the Act, the water industry infrastructure specified in Schedule 3 is prescribed as water industry infrastructure to which section 5 of the Act does not apply (and so is exempt from the requirement for a licence).

19A Water industry infrastructure that was formerly exempt from requirement for a licence

- (1) For the purposes of section 5 (4) (b) of the Act, the water industry infrastructure prescribed under clause 19 immediately before the commencement of the *Water Industry Competition (General) Amendment (Licensing Exemptions) Regulation 2010* is prescribed, for a period of 18 months after that commencement, as water industry infrastructure to which section 5 of the Act does not apply.

2010 No 738

Water Industry Competition (General) Amendment (Licensing Exemptions) Regulation 2010

Schedule 1

Amendment of Water Industry Competition (General) Regulation 2008

- (2) In their application to infrastructure specified in subclause (1):
 - (a) clauses 6 (1) and 7 (1) of Schedule 1 are to be construed as if the words “Before commencing to operate water infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for water infrastructure”, and
 - (b) clauses 13 (1) and 14 (1) of Schedule 1 are to be construed as if the words “Before commencing to operate sewerage infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for sewerage infrastructure”.

19B Phasing-in of requirements relating to infrastructure formerly exempt under clause 7 or 13 of Schedule 3

- (1) This clause applies to:
 - (a) water industry infrastructure referred to in clause 7 (a) of Schedule 3 that has been able to be connected to water industry infrastructure operated by a public water utility for more than one year, and
 - (b) water infrastructure referred to in clause 13 (a) of Schedule 3, that has been able to be connected to water infrastructure operated by a public water utility for more than one year.
- (2) In their application to such infrastructure:
 - (a) clauses 6 (1) and 7 (1) of Schedule 1 are to be construed as if the words “Before commencing to operate water infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for water infrastructure”, and
 - (b) clauses 13 (1) and 14 (1) of Schedule 1 are to be construed as if the words “Before commencing to operate sewerage infrastructure commercially” were replaced by the words “Within 6 months after being granted a network operator’s licence for sewerage infrastructure”.

[3] Schedule 3

Insert after Schedule 2:

**Schedule 3 Water industry infrastructure
exempt from licensing requirement**

(Clause 19)

Note. This Schedule prescribes the water industry infrastructure that is exempt from the requirement in section 5 of the Act that water industry infrastructure must be licensed. It is noted that:

- (a) the definition of **sewerage infrastructure** in the Act does not include any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a sewer main, so section 5 of the Act would not require such infrastructure to be licensed, and
- (b) the definition of **water infrastructure** in the Act does not include any pipe, fitting or apparatus that is situated downstream of a customer's connection point to a water main or any pipe, fitting or apparatus that is situated upstream of a customer's connection point to a stormwater drain, so section 5 of the Act would not require such infrastructure to be licensed.

1 Water industry infrastructure that is constructed, maintained or operated for or on behalf of:

- (a) a public water utility, or
- (b) a licensed network operator.

2 Water infrastructure:

- (a) that is a water supply work within the meaning of the *Water Management Act 2000*, and
- (b) that is used solely for the purpose of taking water pursuant to an entitlement created by any of the following provisions of that Act:
 - (i) section 52 (Domestic and stock rights),
 - (ii) section 53 (Harvestable rights),
 - (iii) section 55 (Native title rights),
 - (iv) section 56 (Access licences),
 - (v) section 89 (Water use approvals),
 - (vi) section 90 (Water management work approvals),
 - (vii) section 91 (Activity approvals).

3 Water infrastructure:

- (a) that is a work to which Part 2 of the *Water Act 1912* extends (within the meaning of section 5 of that Act), and

2010 No 738Water Industry Competition (General) Amendment (Licensing Exemptions)
Regulation 2010Schedule 1 Amendment of Water Industry Competition (General) Regulation 2008

- (b) that is used solely for the purpose of taking water pursuant to an entitlement to take and use water created by the issue of:
 - (i) a licence under Division 3 of that Part, or
 - (ii) a permit under Division 3B of that Part, or
 - (iii) an authority under Division 4 of that Part, or
 - (iv) a group licence under Division 4A of that Part, or
 - (v) an entitlement under section 20AB of that Act.

- 4** Water infrastructure:
 - (a) that is a work constructed pursuant to the authority conferred by a licence under Division 3 of Part 5 (Artesian wells) of the *Water Act 1912*, and
 - (b) that is used solely for the purpose of taking water pursuant to the authority conferred by a licence under Division 3 of that Part.

- 5** Water industry infrastructure that is used to supply potable water or provide sewerage services, or both, to public water utilities or network licence holders, or both:
 - (a) from an entity in the Australian Capital Territory that is licensed under the *Utilities Act 2000* of the Australian Capital Territory to provide a water or sewerage service (within the meaning of that Act), or
 - (b) from a water authority in Queensland that is established, and exercises water or sewerage functions, in accordance with the *Water Act 2000* of Queensland, or
 - (c) from an authority in Victoria that is established, and exercises water or sewerage functions, in accordance with the *Water Act 1989* of Victoria, or
 - (d) from the South Australian Water Corporation (established, and exercising functions, in accordance with the *South Australian Water Corporation Act 1994* of South Australia).

- 6** Water infrastructure operated by ACTEW Corporation Limited that is used to supply potable water to the Australian Capital Territory or Queanbeyan City Council from the Googong Dam Area, as authorised under the *Canberra Water Supply (Googong Dam) Act 1974* of the Commonwealth.

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- 7** Water industry infrastructure:
- (a) that services land that is managed by:
- (i) a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, or
 - (ii) a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth, or
 - (iii) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, and
- (b) that:
- (i) is not able to be connected to water industry infrastructure operated by a public water utility because it is not practicable or economical to connect the infrastructure, or
 - (ii) has been able to be connected to water industry infrastructure operated by a public water utility for less than a year, and that, before that ability arose, was not able to be connected to water industry infrastructure operated by a public water utility.

Note. This clause exempts certain water industry infrastructure that is not able to be connected to water industry infrastructure operated by a public water utility, or that has been able to be connected for less than a year. Once it is able to be connected, there is a period of one year during which the exemption continues to apply and then section 5 of the Act requires the water industry infrastructure to be licensed.

- 8** Water industry infrastructure that is used to supply potable water or provide sewerage services, or both, and:
- (a) that is owned by:
- (i) an entity in the Australian Capital Territory that is licensed under the *Utilities Act 2000* of the Australian Capital Territory to provide a water or sewerage service (within the meaning of that Act), or
 - (ii) a water authority in Queensland that is established, and exercises water or sewerage functions, in accordance with the *Water Act 2000* of Queensland, or
 - (iii) an authority in Victoria that is established, and exercises water or sewerage functions, in accordance with the *Water Act 1989* of Victoria, or

2010 No 738Water Industry Competition (General) Amendment (Licensing Exemptions)
Regulation 2010Schedule 1 Amendment of Water Industry Competition (General) Regulation 2008

(iv) the South Australian Water Corporation (established, and exercising functions, in accordance with the *South Australian Water Corporation Act 1994* of South Australia), and

(b) that services land that is managed by:

- (i) a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, or
- (ii) a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth, or
- (iii) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth.

9 Water industry infrastructure:

- (a) that is located only on land on which one dwelling house or dual occupancy is located (whether or not the dwelling is used for a business purpose), and
- (b) that is used solely for the purpose of supplying water or a sewerage service to the dwelling house or dual occupancy.

10 Water industry infrastructure:

- (a) that is owned by a customer of a public water utility or licensed retail supplier to whom water is supplied, or to whom sewerage services are provided, by that public water utility or licensed retail supplier, and
- (b) that either:
 - (i) is used by that customer solely to reticulate or convey that water, or provide sewerage services, to another person but only if the person is one of the following:
 - (A) a tenant of the customer,
 - (B) a lessee of the customer,
 - (C) if the customer is the manager of a strata plan, an owner of lots in the strata plan,
 - (D) if the customer is the operator of a retirement village, a resident of the retirement village,
 - (E) if the customer is the park owner of a residential park (within the meaning of the *Residential Parks Act 1998*), a resident of the residential park,

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- (F) if the customer is the park owner of a holiday park (within the meaning of the *Holiday Parks (Long-term Casual Occupation) Act 2002*, an occupant of that holiday park, or
 - (ii) services land that is managed by:
 - (A) a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983*, or
 - (B) a registered native title body corporate within the meaning of the *Native Title Act 1993* of the Commonwealth, or
 - (C) an Aboriginal and Torres Strait Islander corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* of the Commonwealth, and
 - (c) that does not involve the further treatment of the water or sewage and the water or sewerage service is supplied at a cost that represents no more than the cost of providing the water or sewerage service and the cost of the operation and maintenance of the infrastructure.
- 11** Water infrastructure that is used solely for the purpose of stormwater drainage.
- 12** Water infrastructure:
- (a) that is owned by a customer of a public water utility or licensed retail supplier to whom a supply of water is supplied by that public water utility or licensed retail supplier, and
 - (b) that is used by that customer solely to heat or chill that water in order to provide heating and cooling services to its customers and the water is not further treated.
- 13** Water infrastructure:
- (a) that is used for the production, treatment, filtration, storage, conveyance or reticulation of water sourced only from roof water, and
 - (b) that:
 - (i) is not able to be connected to water infrastructure operated by a public water utility because it is not practicable or economical to connect the infrastructure, or

2010 No 738

Water Industry Competition (General) Amendment (Licensing Exemptions) Regulation 2010

Schedule 1

Amendment of Water Industry Competition (General) Regulation 2008

- (ii) has been able to be connected to water infrastructure operated by a public water utility for less than a year, and that, before that, was not able to be connected to water infrastructure operated by a public water utility.

Note. This clause exempts certain water infrastructure that is not able to be connected to water infrastructure operated by a public water utility, or that has been able to be connected for less than a year. Once it is able to be connected, there is a period of one year during which the exemption continues to apply and then section 5 of the Act requires the water infrastructure to be licensed.

14

Water infrastructure that is used for the production, treatment, filtration, storage, conveyance or reticulation of water sourced only from roof water if:

- (a) the water is supplied for a non-potable use, and
- (b) the water is supplied without charge (either in the form of a fee or a requirement for other consideration).