

# Floodplain management

## Our compliance approach to flood works

Natural Resources Access Regulator

Fact sheet



**The Natural Resources Access Regulator (NRAR) applies a graduated and proportionate response to situations where licence or approval holders are not complying strictly with regulatory requirements. Our approach to enforcement and prosecution is set out in our regulatory policy and prosecution guidelines.**

NRAR wants to help all landholders make unauthorised structures comply with regulatory requirements for flood works.

Unauthorised structures are those existing flood works that are approved, but are constructed in a way that is in breach of the authorisation and/or the conditions of the authorisation.

## Flood works and their importance

Flood works are structures that are built on a floodplain, affecting the flow of water to/from rivers or the distribution of floodwaters. They include access roads, infrastructure protection works, levees, storages, stock refuges and supply channels.

## Regulatory approach to floodplain management

The regulatory approach to the management of flood works in NSW has varied over the last 20 to 30 years. Over this time, there have been substantial legislative and policy changes. These changes have been considered in the development of the pilot projects and the regulatory response to any alleged breaches of the legislation.

## How NRAR ensures compliance

We will initially focus on areas where there are floodplain management plans in place. These areas are the NSW northern valleys of the Border Rivers, Gwydir, Namoi, Macquarie and the Barwon-Darling.

This strategy will start with two pilot projects in the Gwydir and the Barwon-Darling valleys that will review:

- flood works that could, potentially, significantly affect flow distribution
- unlicensed flood works in Management Zones A and D.

Unlicensed flood works are access roads, supply channels, stock refuges and infrastructure protection works.

When the two pilot projects are completed, we will develop a strategy to broaden the focus to include other management zones and valleys.

## Reported non-compliances

We will respond to reports, incidents or other intelligence received from the community and assess the information. We will prioritise investigations according to risk-based principles.

NRAR gives priority to situations that have the potential to cause serious harm, and to patterns of similar incidents that may suggest ongoing or broader issues.



We don't act on behalf of individuals and will not undertake investigations or actions to resolve a dispute. People may pursue civil outcomes for grievances in the courts.

## Compliance and exemptions

Under the *Water Management Act 2000*, any flood work that is constructed or modified without an approval is deemed non-compliant with the legislation.

### Chapter 3, Part 3, Division 1A, Section 91D of the Act

- 1) A person:
  - a) who constructs or uses a flood work, and
  - b) who does not hold a flood work approval for that work, is guilty of an offence.
- 2) The holder of a flood work approval who constructs or uses a flood work in or in the vicinity of a river or lake, or within a floodplain, otherwise than as authorised by the approval is guilty of an offence

The Water Management (General) Regulation 2018 allows for exemptions for the construction of flood works without an approval. Under these exemptions, a flood work may be constructed if:

- a person constructs, uses or modifies a flood work in compliance with a direction given under the *State Emergency and Rescue Management Act 1989* or the *State Emergency Services Act 1989*
- the flood work is constructed by a determining authority or a person who constructs a flood work under a development authorisation
- the flood works are constructed in relation to ring embankments around dwelling houses or certain farm infrastructure
- the flood works are constructed by certain public authorities (for example, roads authority for public roads)

- the person constructs or uses a flood work that consists of earthworks (including farm tracks and check banks) that are less than 150 millimetres above (but not below) the natural surface of the ground on which it is constructed or situated.

## The regulatory responses

We respond in a range of ways to non-compliance when we confirm that a water law has been breached. These regulatory responses include, in increasing severity:

- guidance, education, information
- advisory letters
- warnings (written and verbal)
- cautions
- corrective action requests
- statutory directions such as stop-work orders, directions to remove water management works and remediation notices
- enforceable undertakings
- penalty infringement notices
- licence action (including suspension, variation or cancellation)
- civil action
- prosecution.

## Important: Before you construct or modify flood works

Before constructing or modifying flood works refer to the provisions under your valley-wide floodplain management plan or local floodplain management plan.

For more information visit [www.dpie.nsw.gov.au/floodplain-management-plan-program](http://www.dpie.nsw.gov.au/floodplain-management-plan-program)

For more information on the Natural Resources Access Regulator visit [www.nrar.nsw.gov.au](http://www.nrar.nsw.gov.au)

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