

Report on the online questionnaire:

Inquiry into the impact and implementation of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020

As part of its inquiry into the impact and implementation of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020, the Regulation Committee launched an online questionnaire to encourage individuals to participate in the inquiry.

The committee notes that participants cannot be considered to represent a statistically valid, random sample of views on the regulation. The participants were self-selected in choosing to respond (in the same way that submission authors are self-selected) and should not be considered to be a representative sample of the population. Nevertheless, community views provide valuable input for the committee in formulating its findings.

The committee received 29 responses. These responses will inform the committee's views throughout the inquiry and be used in the inquiry report.

This report summarises the views expressed by participants and provides examples of these views. Sample comments have been chosen to best represent the variety of views expressed by the participants.

Overview of questionnaire process

Participants were asked three open-ended questions seeking their views on:

- the way the regulation was implemented,
- the impact of the regulation, and
- any other comments to explain their views on the bill.

Participants were also asked what capacity they were answering the questionnaire in and could choose from the following options: interested citizen, irrigator, farmer, local resident, organisation, other (please specify).

15 questionnaire participants identified as interested citizens, five as farmers, four as local residents, two as irrigators and three as other (who nominated themselves to be a fisherman, commercial fisherman and beef cattle grazier).

The committee found the online submission process to be a valuable tool to seek the views of interested stakeholders on the significant issues raised in relation to the implementation and impact of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020. In addition to seeking online responses, the committee also sought more detailed, written submissions from organisations with specialist knowledge in the field.

The material gathered will inform committee members' views as the inquiry progresses and be reflected in the inquiry report. The committee will also quote from participants' responses to support its findings and conclusions.

Summary of participants' views

This section summarises the general themes raised in participants' responses.

Implementation

Questionnaire participants told us they were dissatisfied with how the regulation was implemented. In particular, they were concerned about a lack of transparency in the regulation's implementation and felt that the purpose for the regulation and its predicted impact had not been well communicated and was not well understood.

A number of participants were concerned with the timing of the regulation's implementation. Some argued that the regulation's introduction during heavy rains indicated it had been rushed and not properly thought through. Questionnaire participants also noted that a section 324 order, gazetted on the same day, added to confusion about the purpose and impact of the regulation.

Impact

Questionnaire participants generally agreed that, as the regulation allows floodplain harvesting to occur, its impact was that floodplain harvesting had in fact occurred in February 2020. Participants had different views about whether the water taken under the regulation was a significant amount, with some noting that it was difficult to measure the exact amount of water taken.

A number of participants argued that the floodplain water harvested in February had a negative impact on downstream water users and communities, as well as on the environment, by reducing water flows that would have continued downstream if not harvested under the regulation.

Other comments

Some respondents claimed that the regulation had come about as a result of lobbying by a few. This was related to concerns many participants raised regarding the different impact the regulation had on different water users. In particular, participants argued that the regulation had allowed certain water users to benefit to the detriment of others.

Participants had different views about whether floodplain harvesting should be allowed in the absence of a finalised licencing scheme. Some argued that the regulation is a necessary interim measure while others argued that the regulation effectively legalises flood works that have not been approved by a proper assessment process.

A number of participants were concerned about water management in NSW generally and angry at what they considered long-term mismanagement of NSW waterways.

Quotes from participants

This section provides a selection of quotes on each of the key themes raised by participants.

Implementation of the Regulation

- The implementation of this Regulation lacked transparency, integrity, and due diligence, and does not hold up to public scrutiny.
– Farmer

- The Regulation was implemented very poorly. There was no prior notice, no public consultation and no justification given for implementing an exemption to extract water without a licence or approval. The gazettal of the Regulation late on a Friday afternoon is unsatisfactory Government process and has the appearance of stealth, whether that was the intent, or not. Procedure for good government includes transparency, consultation and justification for action. This did not occur in the implementation of the Regulation.
 - Interested citizen
- Poorly managed and communicated. Reasons for exemptions not substantial and only a few local properties impacted by flooding should not warrant exemptions.
 - Interested citizen
- Active management was good. Initial communication was very poor, but improved as the flow event progressed.
 - Irrigator
- The regulation was implemented very quickly, on a Friday afternoon with NO notice or consultation. The timing was highly suspicious with the restrictions of floodplain harvesting happening at the same time. As soon as the regulation was tabled the floodplain harvesting embargoes were lifted impacting downstream communities and businesses greatly.
 - Local resident
- Rushed and not thoroughly considered.
 - Irrigator
- In my opinion the lack of transparency & process caused misinformation to be rapidly spread by vested interests to the wider community during this event.
 - Irrigator

Impact on water flow

- Predicted flood heights were reduced by 3 metres at Bourke. We saw a return of normal river level and nothing more.
 - Local resident
- 30GL was taken, that was about 8% of the flow that arrived at Menindee ... A river is supposed to flood ...
 - Interested citizen
- Less water for everyone downstream. Lack of moisture contributes to drought.
 - Farmer
- The lifting of the floodplain harvesting embargo did not result in significant volumes of water being extracted in the embargo lifted area. The event highlighted the urgent need for the NSW wrp's and fph reform to be finalised to ensure all stakeholders have a black & white understanding of the rules & processes that apply in these situations.

– Irrigator

- The flooding could have filled creeks and billabongs all along the Barwon Darling if it had not been enacted ...
– Interested citizen

Environmental impact

- FPH occurred at this rain event before flows were completed in rivers and offtake creeks. Wetland areas had not had a chance to recover. Many parts of the Macquarie Marshes had not received any inundation for a number of years.
– Farmer
- Allowing floodplain plain harvesting makes a mockery of all the science and data that demonstrates that human induced climate warming is occurring and requires immediate and urgent action. Floodplain harvesting ignores all the effort and billions of dollars spent on the Murray Darling Basin Plan and denies flood plains the natural floods that define the existence of flood dependent flora and fauna. Evapotranspiration from forests and woodlands contributes to increasing rainfall and denying flooding in the North and West of the Murray Darling Basin reduces survival of woodlands and the rainfall generated from them. Floodplain harvesting reduces river flows and rainfall from other inhabitants of the Murray Darling Basin and should not be allowed.
– Interested citizen
- The lack of overland flows in the Darling River is seeing mass death of floodplain vegetation. We are seeing a full collapse of the environment the full length of the Darling and her tributaries.
– Local resident
- The Regulation was introduced at a time when vast lengths of the Barwon-Darling Rivers had ceased to flow. This cease to flow resulted in significant environmental, health, social and economic impacts on the affected country and communities. Both the Vertessy (2019) and Keniry (2019) reports, which were in response to the mass fish kills at Menindee, found that significant interception activities in the northern basin, in particular floodplain harvesting, had a significant impact on the flow events in the Lower Darling. Floodplain harvesting at this time allowed for free, unaccounted take at a time when critical human needs, stock and domestic and high-security irrigation access downstream was not being met.
– Farmer

Concerns about lobbying and vested interests

- What I don't understand about this regulation is the policy that underlies it. The explanatory statement is nonsense. Who wanted this measure, for what reason was it wanted and on what basis did the Minister decide that it was appropriate in the public interest to make this regulation. The absence of any sensible explanation of policy underlying regulatory changes

of this nature gives rise to a suspicion that some vested interest or lobby group has pressed for the change but the government is unwilling to reveal that matter or the reasons why they consider it appropriate to do so. In my opinion the regulation should be disallowed on the basis of the inadequacy of the explanatory statement unless the Minister tables a proper explanation of why this was done.

– Interested citizen

- This was very secretive and then it was very unorganised and ill thought out. It reeked of lobbyists intervention and had dire consequences to downstream users and environment.
– Local resident
- A lack of transparency by Government Authorities and a lack of action makes me ask the question, "Are people in Government profiteering by the lack of action?"
– Irrigator
- After the disaster of what has just happened in our rivers, the questionable benefit of the mass extraction of our rivers (who is benefiting from it??), allegations of fraud, how can you now give instigators an opportunity to take water out of the rivers for free. This should not be allowed.
– Farmer
- The exemption for floodplain harvesting was an example of how the vocal few with contacts in high places can manipulate due process at the expense of the wellbeing of the whole community.
– Beef cattle grazier
- A licencing and work approvals process must be agreed and as it stands, there are unanswered questions and much yet to be quantified about the implementation policy. To sneak implementation of Regulation in on a Friday afternoon, then back-peddle on a Monday shows awareness of the failings and lack of due process, which further weakens already failing public confidence in the agencies and Government itself.
– Interested citizen

Equity of water users

- The Regulation attempts to make legal the inappropriate taking of floodplain water in the Northern Basin of the Darling River system, to the detriment of communities, property owners and the environment downstream of the floodplain harvesting.
– Interested citizen
- The Regulation has provided an unfair share of water to specific users in the NSW Northern Basin tributaries. Floodplain Harvesting is opportunistic access to intermittent flood flows. Just because certain irrigation industry players have had free access to this form of water take for over 30 years, is no reason to exempt it at a time when climate change is causing decreased rainfall runoff and inflows into the Murray-Darling Basin.

– Interested citizen

- The other impact from this messaging is that it is skewed in favour of those who benefit from rain which has evaporated from other areas of the country (counted as a loss) and doubles up on the inequality experienced by downstream communities and industries, who have been strictly managed, monitored and left without water, due to inflow capture restricting instream availability.

– Interested citizen

Appendix 1: List of questions asked

Questions

1. Please enter your contact details.
Name:
Email address:
Postcode:

2. In what capacity are you answering this questionnaire?
 - Interested citizen
 - Irrigator
 - Farmer
 - Local Resident
 - Organisation
 - Other (please specify)

3. What is your view on the way the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020 was implemented?
1000 words – free text box

4. What is your view on the impact of the Water Management (General) Amendment (Exemptions for Floodplain Harvesting) Regulation 2020?
1000 words – free text box

5. Do you have any other comments on this regulation?
500 words – free text box