



## 22. Groundwater

Groundwater is an important source of water for the major population areas of the State. According to the Water and Rivers Commission, there are more than 80 000 shallow bores in the Perth region pumping as much as 220 million kL of groundwater per year. Most of these bores provide water for maintaining domestic gardens and irrigating parks, recreational ovals and golf courses. Other bores provide water for larger irrigation projects such as market gardens, industrial purposes and drinking water supplies for Perth.

This fact sheet examines the law relating to the protection of groundwater resources, particularly in the Perth metropolitan area. For information on other water resources, see **Fact Sheet 21: Rivers and watercourses** and **Fact Sheet 23: Wetlands**.



### What is "groundwater"?

For the purpose of this fact sheet, "groundwater" means sources of water occurring naturally beneath the land surface. It includes artesian and non-artesian water ("artesian" water means groundwater that flows to the surface through a bore under its own pressure and without the need for a pump).

"Groundwater" does not include water flowing naturally to the surface through a natural spring or sump, as this is considered to be surface water. It also excludes drains constructed to take away groundwater because of salinity (see **Fact Sheet 33: Drainage on agricultural land**) or for waterlogging.



### Who is responsible for managing groundwater?

The Water and Rivers Commission ("the Commission") is the principal authority with responsibility to manage the State's water resources under the *Rights in Water and Irrigation Act* ('water resources' include watercourses, wetlands and groundwater).



### Taking and using groundwater

#### When is a licence required to take groundwater?

Subject to the exemptions in the next section, a licence is required to take groundwater from:

- an artesian bore (that is, a bore where the water flows to the surface without the aid of pumping);
- a non-artesian bore within a proclaimed or prescribed groundwater area;
- a bore within the metropolitan public water supply area.

The majority of the State (including the Swan coastal plain) is within a proclaimed groundwater area. Details on the location of proclaimed areas, irrigation districts and prescribed areas is available from the Water and Rivers Commission.

Failure to obtain a licence when required is an offence, and is subject to a maximum fine of \$10,000 (or five times this amount for a company).

#### Exemptions from licence requirements

##### Outside proclaimed areas and prescribed areas

A person does not need a licence to take groundwater from non-artesian bores outside proclaimed or prescribed areas.

#### Important disclaimer:

This Fact Sheet is for general information purposes. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Fact Sheet.

## Exemptions for non-artesian bores in proclaimed areas

Within proclaimed areas, the Governor may declare that the licensing provisions do not apply to certain types of bore. The most notable example is the exemption for domestic bores within the Perth metropolitan area.

## Public rights in prescribed areas

For non-artesian bores in prescribed areas, a person may take water for any of the following purposes without a licence:

- domestic or ordinary use;
- firefighting; or
- watering cattle or other stock provided they are not raised under intensive conditions;

## Local by-laws

Local by-laws may be made by the Minister for the Environment that exempt or exclude acts, persons or things from the application of particular provisions of the *Rights in Water and Irrigation Act*, the regulations or other by-laws. This includes excluding a person from requiring a licence to take groundwater.

## Who can apply for a licence?

Generally, only an owner or occupier of land, or a person acting for the owner or occupier, can apply for a licence. A public utility that has statutory power to take groundwater may also apply for a licence.

## Do licence applications have to be advertised?

Applications for a licence to take more than 100,000 kilolitres of groundwater a year must be advertised in a State newspaper and a newspaper circulating in the area where the water is proposed to be taken. The Commission may also require that a proposal be advertised where it is likely to have a significant impact on the resource.

An interested person may make written submissions to the Commission regarding an advertised proposal. The Commission is required to take these submissions into account before determining the application.

## What matters must be taken into account before granting a licence?

In considering applications for licences, the Commission is to have regard to all matters that it considers relevant, including whether the proposal is environmentally acceptable and complies with any relevant *water management plan*. A water management plan is a statutory plan developed in relation to a particular water resource or resources. The public has the right to make submissions during the development of management plans.

The Commission must refuse to grant a licence if it considers that the applicant would not be willing or able to comply with the terms, conditions and restrictions of the licence.

## Can environmental conditions be placed on a licence?

Conditions can be made in relation to the use, management, protection and enhancement of any water resource and its ecosystem or the environment in which the water resource is situated.

## Is there a public right of appeal against a decision on a licence application?

Only the applicant or transferee for the licence can appeal against a decision of the Commission.

## What happens if licence conditions are breached?

Failure to abide by the conditions of a licence is an offence, and is subject to a maximum fine of \$10,000 and a daily penalty of \$1,000. A person convicted of an offence under the Act may also have his or her licence amended or cancelled.

## Are licence details publicly available?

The Commission is required to keep a public register which contains details of all licences and any directions given by the Commission in respect to water use. In the case of licences, the register is to include details on the volume of water that can be taken and the name and address of the licence holder. Access to the register is currently free, although there is a charge for taking copies of documents.

## Can the Commission restrict water use to protect the environment?

The Commission may give directions to any person who is taking water under a licence or other approval if the taking is having a harmful effect on the water resource or the water is being improperly used, wasted or is not being used to the best advantage. Failure to comply with directions issued by the Commission is an offence, the maximum penalty for which is a fine of \$5,000 together with a daily fine of \$500.



## Constructing or altering a bore

### Is approval required to construct or alter a bore?

A licence is required to construct any artesian bore and any non-artesian bore in a proclaimed area or prescribed area. Failure to obtain a licence is an offence, the maximum penalty for which is a fine of \$10,000.

### Exemptions from licence requirements

#### Exemptions for non-artesian bores in proclaimed areas

Within proclaimed areas, the Governor may declare that the licensing provisions do not apply to certain types of bore, such as in much of the Perth region.

#### Local by-laws

Local by-laws made by the Minister for the Environment may exempt a person from requiring a licence to alter or construct an artesian or non-artesian bore.



## Pollution and development controls to protect groundwater

### Underground water pollution control areas

Special development controls apply to activities and land uses in respect of underground water pollution controls areas in the Perth region. These areas can be classified as priority 1, 2 or 3 depending on the conservation importance of the particular groundwater area. There are four priority 1 and 2 pollution control areas in Perth: Jandakot, Mirrabooka, Wanneroo and Gngangara. Within these areas, land uses such as petrol stations or wreckers yards are prohibited. Approval is required to commence a business which uses chemicals liable to pollute groundwater in a protected area.

Related controls apply to groundwater controls in country areas. Penalties for breaching these controls are minimal, being \$200 in the case of the metropolitan area, and \$40 in the case of the country.

Under the *Health Act 1911* it is an offence for any person to pollute any water supply or water catchment containing water intended for human consumption. The penalty for failing to comply with this provision is a maximum fine of \$10,000 and a daily penalty of \$1,000.

### General pollution controls

Pollution affecting land and water is generally controlled under the *Environmental Protection Act 1986*. The Act establishes a licensing and approval system for “prescribed premises”, which include premises likely to have an adverse impact on a watercourse, wetland or underground source. Licences cannot be granted in respect to discharges of waste into catchment areas, proclaimed areas or irrigation districts without the Commission being consulted. Penalties for causing pollution under the *Environmental Protection Act* are significantly higher than under the water legislation. For further information, see [Fact Sheet 27: Pollution and environmental harm](#) and [Fact Sheet 30: Contaminated sites](#).

### Development controls

Special controls on developments affecting water resources may be included in local and regional planning schemes. For example, a local government town planning scheme may contain a “special control area” for the protection of a groundwater resource.

The Western Australian Planning Commission has published a number of policies intended to guide development that may have an impact on water resources, including the Gngangara and Jandakot Groundwater Protection Policies.

For more information on planning and development, see [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#).

## How can you become involved?

There are a number of opportunities for public involvement in the protection of groundwater, including:

- encouraging the Water and Rivers Commission to develop water management plans;
- monitoring water licence applications, and make submissions if you believe there to be environmental consequences;
- reporting wastage or improper use of water to the Water and Rivers Commission;
- reporting pollution spills, land clearing or other activities that may result in environmental harm to the Department of Environmental Protection or the Commission (see [Fact Sheet 27: Pollution and environmental harm](#), [Fact Sheet 33: Drainage on agricultural land](#) and [Fact Sheet 7: Clearing native vegetation](#));
- monitor local government agendas for development proposals that could impact on groundwater (see [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#));
- refer development proposals likely to lead to significant environmental harm to the Environmental Protection Authority for an environmental impact assessment (see [Fact Sheet 5: Environmental impact assessment in WA](#) and [Fact Sheet 6: Commonwealth environmental impact assessment](#)).

## Contacts and further information

For emergency pollution reports, telephone the DEP on **(08) 9222 7123** or after hours **1800 018 800**

Water and Rivers Commission, East Perth	Tel: (08) 9278 0300
Environmental Protection Authority, Perth	Tel: (08) 9222 7000
Department of Environmental Protection, Perth	Tel: (08) 9222 7000
Department of Conservation and Land Management, Kensington	Tel: (08) 9334 0333
Local government	Refer to White Pages for listings

For copies of WA legislation considered in this fact sheet, contact the [State Law Publisher](#) Tel: (08) 9321 7688

## The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- ◆ to provide community groups and individuals with legal advice and representation to help protect the environment;
- ◆ to promote law reform that improves environmental protection; and
- ◆ to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal Attorney-General's Department. However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

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***This fact sheet was produced with the assistance of:***

