



## 21. Rivers and watercourses

Western Australia has a great diversity of rivers and watercourses – from perennial rivers of the south west and Kimberley, to the internally draining or mostly dry systems in the arid and semi arid areas. Many of these watercourses are under pressure from over-exploitation, direct interference or indirect damage from incompatible or unsustainable land use practices. It is estimated, for example, that over one third of the water resources of the south west can no longer be used for domestic, agricultural or some industrial purposes as a result of salinity caused by over clearing native vegetation.

This fact sheet examines the law relating to the exploitation of water in rivers and streams, controls on the construction of works on or near watercourses, and controls on other land uses on or near watercourses. For information on the controls applying to other water resources, refer to **Fact Sheet 22: Groundwater** and **Fact Sheet 23: Wetlands**.



### What is a “watercourse”?

For the purpose of this fact sheet, a watercourse means a stream, creek, brook or river through which water flows, and includes the bed and banks of that watercourse, and any reservoir or other collection of water on a watercourse. Included in this definition are watercourses that may only flow occasionally (such as the river systems of the Pilbara) and watercourses that may have been artificially modified in some way.

The definition excludes drains constructed to take away surface or groundwater (see **Fact Sheet 33: Drainage on agricultural land**), water in wetlands (see **Fact Sheet 23: Wetlands**) and water from underground sources (see **Fact Sheet 22: Groundwater**).



### Who is responsible for managing watercourses?

The Water and Rivers Commission (“the Commission”) has principal responsibility for managing the State’s water resources (which includes watercourses, wetlands and groundwater). The Commission manages the resource in accordance with the objectives of the *Rights in Water and Irrigation Act*, which include to:

- (a) provide for the sustainable use and development of water resources, and for the protection of the environment;
- (b) promote the orderly, equitable and efficient use of water resources;
- (c) foster consultation with members of local communities and to enable them to participate in administration; and
- (d) assist the integration of the management of water resources with the management of other natural resources.



### When is a licence required to take water from a watercourse?

#### What does “taking water” mean?

“Taking water” means to remove water from, or reduce the flow of water in, a watercourse, including by:

- pumping or siphoning;
- stopping, impeding or diverting;
- permitting stock to drink from a watercourse.

The definition includes storing water ancillary to any of the above processes.

#### Proclaimed areas and irrigation districts

It is an offence to take water from a watercourse in a “proclaimed area”, “irrigation district” or “prescribed area” unless the taking is in accordance with:

#### Important disclaimer:

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- a riparian right;
- a public right; or
- a licence issued by the Water and Rivers Commission.

Many of the State's major river systems are within one of these areas (for example, the Avon River system, Gascoyne River and the Moore River). Details on the location of proclaimed areas, irrigation districts and prescribed areas is available from the **Commission**.

The penalty for taking water without approval is a maximum fine of \$10,000.

### Riparian rights

The *Rights in Water and Irrigation Act* permits a person whose land adjoins a watercourse (called a "riparian owner") to take water without a licence for the following purposes:

- for domestic and ordinary use by the riparian owner;
- for watering cattle and other stock other than those being raised under intensive conditions ("intensive conditions" basically means stock held in confinement and fed by hand); and
- if the land title was granted before September 1914, for watering a garden not exceeding two hectares in size *provided* the produce is used for domestic purposes and is not offered for sale.

### Public rights

A person does not need a licence to take water from Crown land which is accessible by road or public reserve for domestic and ordinary use or for watering cattle or stock (other than those being raised under intensive conditions).

Note that the right to take water under one of these public rights does not authorise the person to install works (such as a dam or pumping apparatus) or do anything that causes:

- interference or obstruction to the watercourse without a permit from the Commission; or
- interference or obstruction to the road or reserve without the approval of the managing authority.

## Outside proclaimed areas and irrigation districts

### Riparian rights

In addition to the riparian rights mentioned above, a riparian owner outside a proclaimed area, prescribed area or irrigation district has (subject to any local by-laws) the right to take water from a watercourse for any other purpose *provided* the amount or flow of water in the watercourse is not sensibly diminished.

### Public rights

A person outside a proclaimed area, prescribed area or irrigation district does not need a licence to take water from Crown land which is accessible by road or public reserve for domestic and ordinary use, watering cattle or stock (other than those being raised under intensive conditions), firefighting and subject to any local by-laws, for any other purpose provided the amount of water in the watercourse is not sensibly diminished. Approval is required from the public authority managing the Crown land in question before a person installs works to take water for one of these purposes.

### Who can apply for a water licence?

The owner or occupier of land, a person authorised by the owner or occupier of land or a public authority that has power to take water from land may apply for a licence to take water.

### Do licence applications have to be advertised?

Licence applications must be publicly advertised in a State newspaper and a newspaper circulating in the area where the water is proposed to be taken *unless*:

- an approved "water management plan" specifies that advertising of licences of this description is not required; or
- the Commission is of the opinion that an application, if granted, will not be of sufficient impact on a water resource to warrant advertising.

Where a proposal is advertised, interested persons may make written submissions to the Commission regarding the application.

### What matters is the Commission required to consider before granting a licence?

In considering applications for licences to take water, the Commission is to have regard to all matters that it considers relevant, including whether the proposed taking and use of water is ecologically sustainable and environmentally acceptable. A licence must also be consistent with any relevant local by-law or water management plan. A “water management plan” is a statutory plan developed in relation to particular water resources. The development of management plans must be advertised to allow members of the public an opportunity to make a submission.

### 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 the grant of a licence or licence conditions?

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 licence conditions 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.



## Activities on or near watercourses

### Is approval required to build or alter a dam on private land?

A person wishing to build a dam on private land may need approval from the Water and Rivers Commission.

#### On-stream dams

Under the *Rights in Water and Irrigation Act*, a person needs a permit from the Commission (or authority under another Act) to build or alter a temporary or permanent dam on a watercourse:

- within a proclaimed area or irrigation district;
- on any land “prescribed” by local by-laws to be subject to this provision; and
- on any Crown land outside a proclaimed area.

To find out the locations of these areas, contact the **Commission**.

Failure to obtain a permit is an offence, and is subject to a maximum penalty of \$10,000.

A permit is not required where:

- the construction of the dam commenced before 10 January 2001; or
- the dam is exempted from a permit under local by-laws.

Development approval to build a dam may also be required under a local government’s planning scheme. Check with your local government before commencing work. For further information, see **Fact Sheet 3: Planning laws** and **Fact Sheet 4: Development controls**.

For dams or weirs being constructed on a river, stream or other waterway by a public authority, the public authority is required to notify the Minister for Fisheries, and must make alterations to the proposal if that Minister directs that a fish by-pass be established.

### Off-stream dams

Off-stream dams do not require approval from the Commission *provided*:

- the flow of water in a watercourse, or the amount of water in a wetland, is not diminished or there is no significant adverse effect on the quality of water, or any ecosystem, in a watercourse, or a wetland; or
- it is used only for watering cattle or other stock, other than those being raised under intensive conditions.

Development approval to build a dam may be required under a local government's planning scheme. For further information, see [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#).

### Is approval required to build or alter a flood protection levee on private land?

Local by-laws can be made providing for the regulation and control of flood protection levees so far as they obstruct or interfere with the flow of a watercourse, including the flow of its flood waters. Failure to abide by a local by-law is an offence, and is subject to a maximum fine of \$5,000 and a daily penalty of \$500.

Levee banks directed at controlling or directing the flow of water in a watercourse in proclaimed areas or on Crown land requires the approval of the Commission.

### Interfering with a watercourse

A person needs approval from the Water and Rivers Commission (or authority under another Act) before interfering with a watercourse:

- on land within a proclaimed area;
- on land prescribed by local by-laws to be subject to this provision; and
- on Crown land outside a proclaimed area.

“Interfere” is not defined in the Act, but would likely include undertaking earthworks, placing refuse or other material in a watercourse, damaging vegetation, or de-stabilising the banks of a watercourse.

### Is planning approval required for activities on or near watercourses?

Planning approval may be required from local government to commence a development which impacts on a watercourse. Check with your local government as to what local rules apply. For a general overview of the planning system, refer to [Fact Sheet 3: Planning laws](#).

### Swan River management area

Special development controls apply to land and waters within the “Swan River management area”. This area is defined under the *Swan River Trust Act 1988*, and includes much of the Swan, Helena, Southern and Canning Rivers and lands adjoining those waters that are reserved as parks and recreation areas under the Metropolitan Region Scheme. A map of the area is available from the [Swan River Trust](#).

#### *Developments entirely within the management area*

Under the *Swan River Trust Act*, a person (including a public authority) is required to obtain the approval of the Minister for the Environment before commencing a “development” entirely within the boundaries of the management area. A “development” includes the carrying out of any building, excavation, or other works in, on, over, or under land or waters.

Development approval is not required for routine work carried out by public authorities; work in buildings which does not alter its external appearance; and developments on land that is wholly within the Midland or East Perth redevelopment areas so long as there is a redevelopment scheme operating in that area.

Proposals to fill in (“reclaim”) more than one hectare of any waters of the management area must be approved by both Houses of Parliament.

Failure to obtain development approval is an offence, and is liable to a maximum fine of \$20,000, with a maximum daily penalty of \$2,000.

### *Developments partly within the management area or abutting the waters of the management area*

The Western Australian Planning Commission is required to refer this type of proposal to the Minister for the Environment. The Minister for the Environment then makes a recommendation to the Minister for Planning, and the matter is determined by the Planning Commission in accordance with that recommendation.

### *Developments that abut the land (but not waters) of the management area or which may affect the waters*

The Planning Commission must refer this type of development proposal to the Swan River Trust, and take into account any advice the Trust provides before deciding the matter.

### Waterway conservation areas

Under the *Waterways Conservation Act 1976*, the Governor, on the recommendation of the Environmental Protection Authority, may set aside management areas for the conservation of a watercourse and associated land. Five management areas have been established in WA, being the Peel/Harvey Estuaries, Leschenault Estuary and associated rivers, Albany Harbour and associated rivers, the Avon River and Wilson Inlet and associated rivers.

A management authority or the Commission has power to control and manage the waters, and formulate and implement schemes, (which may include licensing provisions) for the conservation of those waters and associated land.

The Commission can request a local government refer to it details of any development applications relating to a management area. The Commission may make recommendations on that development proposal, and the planning authority shall not make a decision on the proposal until it has received the Commission's recommendations.

There are a number of specific controls on activities directly impacting on watercourses in a management area, including making it an offence to put any mud, earth, gravel, litter or other matter into any waters or to construct or use any drain designed to discharge directly or indirectly into any waters except on the approval of the management authority/Commission.



## What other controls apply?

### Use of boats

A person operating a boat on a watercourse must not travel at a speed or in a manner to cause damage or erosion to any bank or property. In addition, watercourses can be closed to certain boats (for example, jet-skis are banned from waters on the Swan River up-stream from the Maylands boat ramp) or can be subject to speed restrictions.

### Pollution controls

Pollution of watercourses is largely regulated under the provisions of the *Environmental Protection Act 1986*. Under that Act, it is an offence for a person to pollute the environment. Full details see [Fact Sheet 27: Pollution and environmental harm](#).

The Water and Rivers Commission has the same powers of a local government to control pollution of watercourses within catchment areas and water reserves under *Metropolitan Water Supply, Sewerage and Drainage Act 1909* and the *Country Areas Water Supply Act 1947*. This includes the power to make local laws to control polluting activities within a catchment.

The *Health Act 1911* makes it 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.

### Drainage of saline water

Proposals to build drains or discharge saline water directly or indirectly into a watercourse or wetland is subject to a notification process under the *Soil and Land Conservation Act 1945*. For further information, refer to [Fact Sheet 33: Drainage on agricultural land](#).

### Activities on Crown land

It is generally an offence to undertake activities that impact on Crown land without approval from the relevant land manager. For more information, refer to [Fact Sheet 12: Crown land management](#).

## How can you become involved?

There are a number of opportunities for public involvement in the administration of water protection laws, including:

- encourage the Water and Rivers Commission to develop water management plans for the protection of watercourses, and make submissions on the contents of these plans;
- monitor water licence applications and report wastage or improper use to the Commission;
- report pollution spills or other activities that may result in environmental harm to the Department of Environmental Protection (see **Fact Sheet 27: Pollution and environmental harm**);
- monitor planning authority agendas for development proposals that could impact on a watercourse, and make submissions to the local government through the planning process (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**);
- where authorisation has been granted, find out what conditions were placed on the activity, and if the conditions are not complied with, make a complaint to the body which imposed the conditions (may need an FOI request to obtain conditions – see **Fact Sheet 40: Freedom of information in WA**).

## Contacts and further information

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

Water and Rivers Commission, East Perth	Tel: (08) 9278 0300
Swan River Trust, East Perth	Tel: (08) 9278 0400
Department of Environmental Protection, Perth	Tel: (08) 9222 7000
Environmental Protection Authority, Perth	Tel: (08) 9222 7000
Western Australian Planning Commission, Perth	Tel: (08) 9264 7777
Commissioner of Soil and Land Conservation, South Perth	Tel: (08) 9368 3282
Local government	Refer to White Pages for listings
For copies of 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:***

