



Factsheet

23. Wetlands

Western Australia contains a large number of significant wetlands, providing important habitat for native plants and animals. Many of these wetlands have been damaged or destroyed by incompatible development and land use changes. It is estimated for example that over 80% of the wetlands of the Swan Coastal Plain have been destroyed, and many of those that remain have been heavily modified. A similar situation is found in agricultural areas, where land clearing has led to many naturally saline lakes and marshes becoming hyper-saline and unable to sustain native species.

This fact sheet examines the legal protection applying to wetlands in Western Australia and identifies the bodies responsible for their management. For information on the laws relating to other water resources, see **Fact Sheet 21: Rivers and watercourses** and **Fact Sheet 22: Groundwater**.



What are “wetlands”?

“Wetlands” is a general term used to encompass naturally occurring landforms which are wet on a regular or semi-regular basis, such as lakes, swamps, marshes, mudflats and billabongs. The term includes lakes in arid areas which may only occasionally hold water. For the purpose of this fact sheet, the definition does not include rivers, streams, estuaries, caves, artificial lakes, dams and shallow marine areas (such as mangroves).



How are wetlands protected?

Wetlands can be protected under a number of different laws. For wetlands that are internationally significant (called “Ramsar wetlands”), special Commonwealth laws apply. For other wetlands, State laws may control developments that directly or indirectly interfere with a wetland or which control the taking and using of water from a wetland.



Protection of “Ramsar wetlands”

What are “Ramsar wetlands”?

“Ramsar wetlands” are wetlands that are listed under the international *Convention on Wetlands of International Importance*. This convention is often referred to as the Ramsar Convention after the name of the city in Iran where it was finalised in 1971.

As a party to the convention, Australia is required to protect Ramsar wetlands within its jurisdiction. There are currently 12 Ramsar wetlands in Western Australia, including Lake Toolibin near Wickiepin, the Warden lakes near Esperance and the Vasse-Wonnerup system near Busselton.

How are wetlands listed?

New wetlands can be nominated to the list by the Commonwealth government after consulting with the relevant State or Territory and land owner to reach agreement on listing the wetland and how it will be managed. Criteria for listing is available from the [Ramsar website](#).

If there is an imminent threat facing a wetland that may have international significance, the Commonwealth Minister for the Environment may declare a wetland to be protected as an interim measure. Such a declaration can apply for up to 12 months to provide time for the wetland to be assessed for inclusion under the Convention.

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.

How are Ramsar wetlands managed?

The primary purpose of management of a declared Ramsar wetland is:

- (a) to describe and maintain the ecological character of the wetland; and
- (b) to formulate and implement planning that promotes:
 - (i) conservation of the wetland; and
 - (ii) wise and sustainable use of the wetland for the benefit of humanity in a way that is compatible with maintenance of the natural properties of the ecosystem.

For Ramsar wetlands entirely within Commonwealth land, the Commonwealth must develop a management plan and manage the wetland in accordance with that plan. Commonwealth agencies must not contravene a management plan.

For other areas, the Commonwealth must use its best endeavours to establish a management plan for the wetland in co-operation with the relevant State or Territory and the owner of the land.

What controls apply to Ramsar wetlands?

A person must not take any action that has, will have, or is likely to have a **significant impact** on the ecological characteristics of a Ramsar wetland without referring the proposal to the Commonwealth Environment Minister. A “significant impact” on a Ramsar wetland includes an action that has, will have or is likely to result in:

- areas of the wetland being destroyed or substantially modified;
- a substantial and measurable change in the hydrological regime of the wetland (e.g. a substantial change to the volume, timing, duration and frequency of water flows to the wetland);
- the habitat of native species dependant upon the wetland being seriously affected; or
- a substantial and measurable change in the salinity, nutrient or pollutant levels of the wetland.

Taking action without referring it is an offence, and is liable to a maximum civil penalty of \$550,000 for an individual and \$5.5 million for a company. There are exemptions from the requirement to notify, such as where the proposal is assessed under a bilateral agreement between the State and Commonwealth government or where the Commonwealth Minister has declared that the action does not require approval so long as it is carried out in accordance with an accredited management plan.

What happens once the proposal is referred to the Commonwealth Minister?

Where a proposal has been referred to the Commonwealth Environment Minister, the Minister must determine whether the proposal requires formal environmental impact assessment. In making this decision, and in undertaking an assessment, the Minister must ensure that any decisions made are consistent with Australia’s obligations under the Ramsar Convention and he or she must take into account the precautionary principle. For further information on environmental impact assessment, see [Fact Sheet 6: Commonwealth environmental impact assessment](#).



Wetlands in the south west of Western Australia

The State government has enacted two Environmental Protection Policies (EPPs) which are directed towards protecting the environmental values of wetlands on the Swan coastal plain and within the south west agricultural zone. These EPPs are legally enforceable, and include penalties of up to \$5,000 for an offence (\$10,000 for a company).

South West Agricultural Zone Wetlands Policy

The *South West Agricultural Zone Wetlands Policy* operates by obtaining the landowner’s consent to list significant wetland areas on a register. Registered wetlands are then managed to protect their beneficial uses and environmental qualities. This is done by way of best practice guidelines and catchment management strategies. There are also offences for carrying out damaging activities on registered wetlands, such as excavation and mining, clearing native vegetation and removal of water. Because landowner’s consent must be obtained before a wetland is registered, very few wetlands are protected under this Policy.

Swan Coastal Plain Lakes Policy

The *Swan Coastal Lake Policy* differs from the *South West Agricultural Zone Wetlands Policy* in that the Policy does not rely on the landowner's consent. Rather, it automatically applies to all wetlands that had an area of more than 1,000m² of standing water at 1 December 1991.

Approval is required to fill in, excavate, mine, discharge effluent, remove water or damage vegetation around a wetland under the Policy. Development proposals affecting one of these wetlands requires the approval of the EPA. The maximum penalty is a fine of \$5,000.



Interference with wetlands

Under the *Rights in Water and Irrigation Act*, a person needs a permit from the Water and Rivers Commission (or authority under another Act) before interfering with a wetland:

- on any land within a proclaimed area or irrigation district; and
- on Crown land outside a proclaimed area or irrigation district.

“Interfere” is not defined in the Act, but would likely include undertaking earthworks, placing refuse of other material in a wetland, damaging vegetation, or de-stabilising the banks of a wetland. For location of proclaimed areas and irrigation districts, contact the **Water and Rivers Commission**. Failure to obtain a permit is an offence, and is subject to a maximum penalty of \$10,000.



Controls on taking and using water from wetlands

A licence is required to take water from wetlands and watercourses in “proclaimed areas” and “irrigation districts” unless the taking is in exercise of a statutory right (being “riparian” or “public” rights, which are discussed in **Fact Sheet 21: Rivers and watercourses**). A licence is generally not required to take water from a wetland outside a proclaimed area or irrigation district, unless the area is prescribed under Regulations.

For full details on the laws applying to taking water from wetlands, including licence conditions and management plans, refer to **Fact Sheet 21: Rivers and watercourses**.



Other controls

Planning controls

Development or planning controls can play a significant role in protecting wetlands. The types of controls that apply vary from region to region. For example, local planning laws may require that a developer/land holder obtain development approval to undertake earthworks that impact on a wetland. For a general overview of the planning system, refer to **Fact Sheet 3: Planning laws** and **Fact Sheet 4: Development controls**.

Wetlands in conservation reserves

Wetlands on conservation reserves (being national parks, conservation parks or nature reserves) are protected from disturbance under specific legislation relating to the management of those reserves. For further information, see **Fact Sheet 11: Conservation reserves**.

Drainage of saline water

Proposals to build drains or discharge saline water directly or indirectly into a 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**.

Pollution controls

Under the *Environmental Protection Act 1986*, it is an offence for a person to pollute the environment. The Act also establishes a licensing and approval system for “prescribed premises”, which include premises likely to have an adverse impact on a watercourse or wetland. For further information, refer to **Fact Sheet 27: Pollution and environmental harm** and **Fact Sheet 30: Contaminated sites**.

How can you become involved?

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

- encouraging the Water and Rivers Commission to develop water management plans for wetlands;
- requesting the Commonwealth Environment Minister lists eligible wetlands under the Ramsar Convention;
- 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 (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 wetlands (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**

Environment Australia Wetlands Section, Canberra	Tel: (02) 6274 2393
Environment Australia Compliance and Enforcement Section, Canberra	Tel: (02) 6274 1449
Environmental Protection Authority, Perth	Tel: (08) 9222 7000
Water and Rivers Commission, East Perth	Tel: (08) 9278 0300
Department of Environmental Protection, Perth	Tel: (08) 9222 7000
Department of Conservation and Land Management, Crawley	Tel: (08) 9442 0300
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
Commonwealth legislation is available from Australian Legal Information Institute website	

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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