



# Rivers, Watercourses & Groundwater

## ***An introduction to Rivers, Watercourses and Groundwater***

*Western Australia has a great diversity of water resources – from perennial rivers of the South West and Kimberley, to the internally draining or mostly dry systems in the arid and semi arid areas. We also have some important sources of groundwater such as the ancient Yarragadee Aquifer in the South West, and the Gnangara Mound which is a significant source of scheme water for the Perth metropolitan area.*

*Many of our water resources are under pressure from over-exploitation, direct interference or indirect damage from incompatible or unsustainable land and water use practices. It is estimated that one third of the State's divertible water resources are no longer suitable for drinking as a result of salinity caused by over clearing native vegetation.*

*This fact sheet examines the law relating to the management and conservation of water from rivers, watercourses and underground water sources. For information on wetlands see [Fact Sheet 23: Wetlands](#).*

### **What is a “watercourse”?**

The *Rights in Water and Irrigation Act 1914* (WA) governs the management of water in Western Australia. It defines a watercourse to mean 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 only flow occasionally (such as the systems of the Pilbara) and watercourses that have been artificially modified.

The definition excludes water in wetlands (see [Fact Sheet 23: Wetlands](#)), and groundwater.

### **What is “groundwater”?**

For the purpose of this fact sheet, “groundwater” means sources of water occurring naturally beneath the land surface. According to the *Rights in Water and Irrigation Act 1914* (WA), it includes both 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 following 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](#)).

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## Management of water resources

The Department of Water has principal responsibility for managing all of the State's water resources. The Department of Water manages the use, service and health of water and waterways in accordance with the objectives of the *Rights in Water and Irrigation Act 1914* (WA), which include:

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

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

A licence is required to take water from watercourses in a "proclaimed area" or "prescribed area". 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 and prescribed areas is available from the Department of Water.

"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; or
- permitting stock to drink from a watercourse.

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

Failure to obtain a licence when required is an offence, and is subject to a maximum fine of \$10,000 (all fines shown in this fact sheet can be multiplied by five times when imposed on a body corporate).

A licence is **not** required for the taking of water from a watercourse when it is outside one of these areas, or when the taking is considered a "landholder's right" or a "public right".

## Landholder right (Riparian right)

The *Rights in Water and Irrigation Act 1914* (WA) 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 stock other than those being raised under intensive conditions ("intensive conditions" means stock held in confinement and fed by hand); or
- 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.

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In addition to these rights, riparian owners outside a proclaimed area may take water for any other purpose provided the amount or flow of water in the watercourse is not “sensibly diminished”.

## Public right

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.

For areas outside proclaimed areas, a person may take water for any other purpose, provided the flow of water in the watercourse is not sensibly diminished.

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 Department of Water.

## When is a licence required to take groundwater?

A licence is required to take groundwater from a non-artesian bore within a proclaimed groundwater area, and an artesian bore in any area (that is, a bore where the water flows to the surface without pumping).

The majority of the State (including the Swan coastal plain) is within a proclaimed groundwater area. Details on the location of proclaimed areas and prescribed areas are available from the Department of Water.

Failure to obtain a licence when required is an offence, and is subject to a maximum fine of \$10,000.

Within proclaimed areas, the Governor may declare that the licensing provisions do not apply to a certain bore, or certain types of bores.

## Water Licences

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.

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 Department of Water is of the opinion that advertising is not warranted due to the small impact of the licence on the water resource.

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

In considering applications for a licence to take water, the Minister 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.

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Conditions can be placed on a licence 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.

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.

## Water Directions

The Department of Water may give directions to a person who is taking water from a water resource under the authority of a licence, landholder's rights or public rights if the taking is having a harmful effect on the water resource or the water being taken is being wasted or is having a harmful effect on the waterway.

Failure to comply with a direction is an offence, the maximum penalty for which is a fine of \$4,000 together with a daily fine of \$400.

## On-stream dams

Under the *Rights in Water and Irrigation Act 1914 (WA)*, a person needs a permit from the Minister (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 Department of Water.

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 (see [Fact Sheet 3: Planning law](#)).

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 Minister 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 (see [Fact Sheet 3: Planning law](#)).

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## Flood protection levees

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 that control, direct or interfere with the flow of water in a watercourse are prohibited in proclaimed areas or on Crown land without the approval of the Minister.

## Water Management Plans

A "water management plan" is a statutory plan developed in relation to a particular water resource. These plans are intended to guide the allocation of water resources and include factors to be considered when granting licenses and approvals in particular regions to ensure that waterway conditions are maintained or improved. Plans may be regional, sub-regional or local area management plans. The development and amendment of management plans can only occur after consultation with any water resources management committee in the region, sub-region or area. The Plan must then be publically advertised, and a period will then be open for the public to make submissions to the Department of Water regarding the proposed Plan.

## Swan and Canning Rivers management area

Special development controls apply to land and waters within the "development control area". This area is defined under the *Swan and Canning Rivers Management Act 2006 (WA)*, to be the Swan and Canning Rivers and their catchment areas. A map of the area is available from the Swan River Trust.

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

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

## Waterway conservation areas

Under the *Waterways Conservation Act 1976 (WA)*, 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. The Minister has the power to preserve the waters and land, and control or prevent acts or omissions that may cause pollution, among other powers.

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

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recommendations.

## Underground Water Pollution Control Areas

Underground water pollution controls areas can be proclaimed in the Perth metropolitan region, to which certain controls on activities that might endanger the purity of the water may apply. These areas can be classified as priority 1, 2 or 3 depending on the conservation importance of the particular groundwater area. For example, underground storage tank systems and automotive businesses cannot be established in priority 1 or 2 source protection areas.

## Environmental Protection Policies

An Environmental Protection Policy is a legally enforceable policy that the Environmental Protection Authority can create under the *Environmental Protection Act 1986 (WA)* for the protection of any portion of the environment or for the prevention or control of pollution and environmental harm. An Environmental Protection Policy may also include penalties for breach of its provisions.

To protect underground water, the State government has enacted the *Environmental Protection Gnangara Mound Crown Land Policy 1992*. This policy sets rules for the prevention of the discharge of contaminants, clearing of vegetation and abstracting groundwater from the Gnangara Mound area (the largest source of Perth's groundwater), as well as setting environmental and water quality objectives.

This policy is currently due for review by the Environmental Protection Authority, and will be undertaken in conjunction with a review by the Department of Water on the levels of sustainable abstraction of water from the Gnangara Mound. The policy may or may not be retained depending on the results of these reviews.

Environmental Protection Policies also exist to protect certain wetlands (see [Fact Sheet 23: Wetlands](#)).

## Pollution controls

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

However, the Department of Water also has the same powers as a local government to control pollution of watercourses within and under catchment areas and water reserves under *Metropolitan Water Supply, Sewerage and Drainage Act 1909 (WA)* and the *Country Areas Water Supply Act 1947 (WA)*. This includes the power to make local laws to control polluting activities within a catchment.

The *Health Act 1911 (WA)* 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

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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 Regulations 1992 (WA)* (see [Fact Sheet 33: Drainage on agricultural land](#)).

## Planning approval 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 rules apply (see also [Fact Sheet 3: Planning law](#)).

## 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.

## Opportunities for public involvement

- Encourage the development of water management plans for the protection of watercourses, and make submissions on the contents of these plans.
- Monitor water licence applications in the media, and make submissions to the Department of Water if you are likely to be adversely affected.
- Report unlawful taking of water, interference with beds or banks, wastage or improper use of water to the Department of Water.
- Where a licence or development approval 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 (you may need an FOI request to obtain conditions – see [Fact Sheet 40: Freedom of information law in Western Australia](#)).
- Join a local water resource management committee or other catchment group in your local area.

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## Contacts and further information

Department of Water, Tel: (08) 63647600, [www.water.wa.gov.au](http://www.water.wa.gov.au).

A Map of Proclaimed Groundwater areas is available on the Department of Water website at:  
<http://www.water.wa.gov.au/PublicationStore/first/86307.pdf>

A Map of Proclaimed Surface Water areas is at:  
<http://www.water.wa.gov.au/PublicationStore/first/86306.pdf>

Environmental Protection Authority, Perth Tel: (08) 6467 5600 [www.epa.wa.gov.au](http://www.epa.wa.gov.au)

Department of Environment and Conservation, Perth Tel: (08) 6467 5000 [www.dec.wa.gov.au](http://www.dec.wa.gov.au)

The Swan River Trust, Perth Tel: (8) 9325 7149 [www.swanrivertrust.wa.gov.au](http://www.swanrivertrust.wa.gov.au)

For copies of legislation (including regulations) visit: [www.slp.wa.gov.au](http://www.slp.wa.gov.au) (WA legislation only).

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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 and State Attorney-General's Departments.

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:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: [edowa@edowa.org.au](mailto:edowa@edowa.org.au)

Thank you to our donors

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