



Wetlands

An introduction to Wetlands

Western Australia contains a large number of significant wetlands that provide important habitats for native plants and animals. Many of these wetlands have been damaged or destroyed by land developments, the alteration of natural water system regimes and pollution. In agricultural areas, significant land clearing has led to many naturally saline lakes and marshes becoming hyper-saline and unable to sustain native species. It is estimated that over 80% of the wetlands of the Swan Coastal Plain have been destroyed, with only 15% retaining high conservation values.

This fact sheet examines the legal protection that applies 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: River, watercourses and groundwater](#).

What are wetlands?

The *Rights in Water and Irrigation Act 1914* (WA) ("RIWI Act") defines a wetland as a natural collection of water (permanent or temporary) on the surface of any land and includes any lake, lagoon, swamp or marsh; and a natural collection of water that has been artificially altered. A wetland is not a watercourse (i.e. any river, creek, stream, brook or reservoir in which water flows into, through or out of; or any place where water flows that is prescribed by local by-laws to be a watercourse).

Under the *Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971* ("Ramsar Convention"), a wide variety of natural and human-made habitat types can be classified as wetlands. The Ramsar Convention defines wetlands as areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres. The boundaries of a wetland can also incorporate islands or bodies of water deeper than 6 metres within the wetland. This is a very broad definition, and includes areas such as coral reefs, tidal flats, lakes, rivers, rice paddies and salt pans, as well as estuaries, swamps and mangroves, as types of wetlands.

Protection of wetlands

Wetlands are protected under a number of different laws. Commonwealth laws apply to wetlands that are classified under the Ramsar Convention. The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ("the EPBC Act") applies to these wetlands.

For other wetlands in Australia, State laws control developments that directly or indirectly interfere with a wetland, as well as the taking and using of water from a wetland. In Western Australia, these laws include the RIWI Act and the *Environmental Protection Act 1986* (WA) ("the EP Act").

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.



Ramsar Wetlands

The Ramsar Convention is an intergovernmental treaty that aims to promote and protect wetlands throughout the world. Its original aim was to protect waterbird habitats, however, it now seeks to provide a framework for national action and international cooperation for the conservation of all wetland biodiversity and the wise use of all wetlands and their resources. The Ramsar Convention designates almost two thousand wetlands throughout the world as wetlands of international importance, providing protection and recognition to over 180 million hectares of wetlands ("Ramsar Wetlands").

Australia is a party to the Ramsar Convention and is therefore required to protect Ramsar Wetlands within its jurisdiction. Australia currently has 64 Ramsar Wetlands, with 11 Ramsar Wetlands in Western Australia. These wetlands are the Becher Point Wetlands, Eighty-mile Beach, Forrestdale and Thomsons Lakes, Lake Gore, the Lake Warden system, Lakes Argyle and Kununurra, the Muir-Byenup System, the Ord River floodplain, the Peel-Yalgorup system, Roebuck Bay, Toolibin Lake and the Vasse-Wonnerup system.

Listing a Ramsar wetland

The Commonwealth has the power to designate an Australian wetland for inclusion in the List of Wetlands of International Importance ("the List") under the Ramsar Convention if the Commonwealth has used its best endeavours to reach agreement with the owner of the land and with the relevant State or Territory on the proposed designation and management arrangements for the wetland. If the Commonwealth designates a wetland for inclusion in the List; extends or restricts the boundaries of, or deletes from the list a wetland that has previously been included on the List, the Minister must give notice in the Government Gazette as soon as practicable.

The Ramsar Convention states that wetlands should be selected for listing on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology, and wetlands of international importance to waterfowl at any season should be included. There are currently nine specific criteria that have been adopted by the Ramsar Convention for listing as a Ramsar wetland. These can be found on the Ramsar website.

Management of Ramsar wetlands

If a wetland is included in the List and is entirely within the jurisdiction of the Commonwealth (ie. land owned or leased by the Commonwealth or in an external territory, or in the coastal sea of Australia or an external territory), the Minister must make a written plan for managing the wetland. The plan must not be inconsistent with Australia's obligations under the Ramsar Convention or the Australian Ramsar management principles.

The Minister must give notice of the making of a plan in the Government Gazette; on the internet; and in a daily newspaper that circulates throughout Australia. Each plan must be reviewed by the Minister at least once every 5 years after the plan is made to consider whether the plan is consistent with the Australian Ramsar management principles in force at the time.

If the Ramsar wetland is within the jurisdiction of a State or Territory, or is not entirely within a Commonwealth area, then the Commonwealth must use its best endeavours to ensure a plan for managing the wetland consistently with Australia's Ramsar obligations is prepared and implemented in co-operation with the State or Territory.

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.



EPBC Act controls that apply to Ramsar wetlands

An action that has, is likely to have, or will have a significant impact on the ecological character of a declared Ramsar Wetland are controlled sections under the EPBC Act requiring approval from the Commonwealth Environment Minister. (See [Fact Sheet 6: Commonwealth environmental impact assessment](#))

Environment Protection Policies

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

To protect wetlands, the State government has enacted the Environmental Protection Swan Coastal Plain Lakes Policy 1992, the Environmental Protection South West Agriculture Zone Wetlands Policy 1998, and the Environmental Protection Peel Inlet – Harvey Estuary Policy 1992.

As an example, the current South West Agricultural Zone EPP operates by recording significant wetlands on a register. A wetland is recorded in Table 1 of the register if it is a wetland that has a high degree of value for nature conservation and provides a habitat for fauna declared likely to become extinct, rare or otherwise in need of special protection, or for flora declared rare flora under the *Wildlife Conservation Act 1950* (WA). If a wetland does not meet these criteria, it may be recorded in Table 2 of the register if it is a wetland that may have significant natural or human use attributes and functions without having a high degree of naturalness.

If the wetland is on freehold land, the landowner's consent must be obtained to list a significant wetland area on the register. Similarly, if a significant wetland is on Crown land, the relevant authority's consent is required to list the wetland.

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. These activities include filling in the wetland with any material; excavation and mining; discharging or disposing of effluent; removal of water; and construction or alteration of a water drainage system. A fine of \$62,500 plus \$12,500 per day for a continuing offence applies to an individual and a fine of \$125,000 plus \$25,000 per day for a continuing offence applies to a body corporate.

Interference with wetlands

Under the RIWI Act, a person intending to do anything that causes obstruction of or interference to a wetland or its bed or banks must first obtain a permit from the Minister. In addition, it is an offence for a person, unless authorised, to obstruct, destroy, or interfere with a wetland that is wholly or partly on Crown land, and offenders may be liable to a penalty of \$10,000, or \$50,000 for a company.

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.



Controls on taking and using water from wetlands

A licence is required to take water from wetlands and watercourses in proclaimed areas unless the taking is in exercise of a statutory right (riparian or public rights). A licence is generally not required to take water from a wetland outside a proclaimed area, unless the area is prescribed under *Rights in Water and Irrigation Regulations 2000* (WA). (See [Fact Sheet 21: Rivers and watercourses](#)).

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 a developer/land holder to obtain development approval to undertake earthworks that impact on a wetland. (See [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#)).

Wetlands in conservation reserves

Wetlands in conservation reserves (including national parks, conservation parks or nature reserves) are protected from disturbance under specific legislation relating to the management of those reserves. (See [Fact Sheet 11: Conservation reserves](#)).

Drainage of saline water

Proposals to build drains or discharge saline water directly or indirectly into a wetland are subject to a notification process under the *Soil and Land Conservation Regulations 1992* (WA). (See [Fact Sheet 33: Drainage on agricultural land](#)).

Pollution controls

Under the EP Act, it is an offence for a person to pollute the environment or cause environmental harm. The Act also establishes a licensing and approval system for prescribed premises, which includes premises likely to have an adverse impact on a watercourse or wetland. (See [Fact Sheet 27: Pollution and environmental harm](#) and [Fact Sheet 30: Contaminated sites](#)).

How can you become involved?

Opportunities for public involvement in the protection of wetlands include:

- Encouraging the Department of Environment and Conservation to develop water management plans for wetlands.
- Requesting the Commonwealth Environment Minister list eligible wetlands under the Ramsar 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.



- Monitoring water licence applications, and making submissions to the Department of Water if you believe there to be environmental consequences.
- Reporting wastage or improper use of water to the Department of Water.
- Reporting pollution spills, land clearing or other activities that may result in environmental harm to the Department of Environment and Conservation (see [Fact Sheet 27: Pollution and environmental harm](#), [Fact Sheet 33: Drainage on agricultural land](#) and [Fact Sheet 7: Clearing native vegetation](#)).
- Monitoring local government agendas for development proposals that could impact on wetlands (see [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#)).
- Referring 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

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

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

Ramsar website www.ramsar.org

Department of Sustainability, Environment, Water, Population and Communities (Commonwealth) Tel: 1800 803 772 www.environment.gov.au

Compliance and Enforcement of the EPBC Act (Commonwealth) 1800 110 395
www.environment.gov.au/epbc/compliance/index.html

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

For copies of legislation considered in this fact sheet visit:

State Law Publisher (WA Legislation) www.slp.wa.gov.au Tel: (08) 9426 0000

Comlaw (Commonwealth Legislation) www.comlaw.gov.au

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.



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

Thank you to our donors

The EDO is grateful for the funding provided by the following organisations to create and maintain these fact sheets.



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.