



*Overview
public consultation responses
on water reform proposals*



WATER AND RIVERS
COMMISSION

Foreword

Western Australia's water resources are under increasing demand because of our increase in population and this trend is set to continue.

The decisions we take to use and protect our vital water resource must be farsighted and wise.

We can avoid the environmental damage and community conflict caused in some other Australian states from over-allocation and poor management.

This is why the Council of Australian Governments - COAG - (made up of the Premiers and Chief Ministers of the states and territories and the Prime Minister) has agreed to commit the nation to water reform.

We know Western Australians are concerned about one of our nation's most precious assets — water.

Western Australians, who late in 1997 responded to the in-principle proposals to reform Western Australia's water laws to accommodate the community's needs in the future, generally supported the need for reform.

The original proposals have been modified following comments to the Water and Rivers Commission. The new proposals will improve our water use for the benefit of all.

They will ensure the State's water resources are developed and used to provide for the future needs of Western Australians.

The reforms will also protect our important water-dependent ecosystems (including their biological diversity).

This report details how the Water and Rivers Commission is changing its proposals in response to public consultation and explains what the Commission proposes as the way ahead.



Ian Burston
Chairman
Water and Rivers Commission

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Consultation

The COAG reform commitments require the Western Australian Government to amend the *Rights in Water Irrigation Act 1914*, to update and protect the benefits and rights of water resource users and the State.

This reform package more formally defines private property rights in water use and promotes trading of rights to allow water to flow to its highest value and best use under a system of free choice.

This also provides an opportunity for water users to gain a tangible return from their water right.

In this, the Water and Rivers Commission sought State-wide community input on plans to update our water management laws. In August 1997 the Commission launched this consultation process and sent hundreds of copies of reports, newsletters and other written information to all corners of the State.

Seminars and workshops were also held across the State as well as individual meetings with more than 60 stakeholder groups. This produced 158 written submissions and countless face-to-face comments on the reform proposals.

Submissions came from the farming community, business, local government, government departments, interested groups, water user organisations and private individuals.

The Commission has carefully reviewed the submissions and comments and has now changed the original proposal based on the submissions and comments. The new proposals are described in this report.

A positive outcome of the consultation process is that essential and agreed reforms have been identified as top priorities to be developed, while other reforms need to be deferred for further consultation. Reform proposals considered unacceptable will not proceed.

This report summarises the comments received and modifications made to the most widely debated elements of the reform package. A more detailed report of reform issues will shortly be available from the Commission. If you would like to receive a copy, lodge your request by telephoning 1800 061 025 during business hours.

At the back of this report there is a chart that describes the process still to be undertaken, a cornerstone of which will be the introduction of legislation by the end of this year.

But the consultation does not stop there. It will continue on the detail of implementation beyond December 1998 by setting up ongoing consultation, often through local water management committees.



Roger F Payne
Chief Executive
Water and Rivers Commission

The Commission is committed to consultation over major policy changes. It means the Commission makes better decisions, creates awareness, understands problems, reduces delays and false starts in achieving improved water management, builds credibility and trust and satisfies community expectations.

— from the detailed report on the consultation process



A pool on the Carson River within an area of vine thicket.

Many of the submissions and comments emphasised the need to treat the consultation process seriously, for example: "...the COAG requirements for full and open education, consultation and negotiation must be carried out. Highlighted was the need to negotiate elements of the proposal which were in regard to COAG requirements."

— from the detailed report on the consultation process

Current legislation

Does the existing water legislation override land title ?

Throughout the consultation there has been confusion over legal “rights” to water with many expecting that ownership to water was granted along with the land. Many land titles state that the landholder owns the land to a depth of 60 metres (or 200 feet) and some have suggested this gives a landholder ownership of water to that depth.

The Water and Rivers Commission has asked the Crown Solicitors Office to clarify if anything granted by land ownership overrides the *Rights in Water and Irrigation Act*.

The answer provided was no it did not and that “the RIWI Act is not modified by anything related to the grant of freehold title” **and the RIWI Act therefore** “operates according to its provisions” **in controlling water use on freehold land.**

Who owns the water, what does the RIWI Act say?

Nobody owns the water that flows from place to place. The RIWI Act and common law have established a system for sharing the water.

The RIWI Act:

- places the control of all underground water in the Crown (the State);
- places the control of all streams, rivers, creeks and brooks in surface water areas in the Crown;
- places the control of all lakes, lagoons, swamps and marshes that cross property boundaries in surface water areas in the Crown;
- allows people to use water for specific purposes such as domestic use;
- requires people to obtain and hold a licence to use water controlled by the Crown, except to use underground water outside groundwater areas; and
- allows people to use water that is not controlled by the Crown only if they do not significantly change the flow outside their land.

In practical terms a licence is the most important means for landowners to get a legal right to use water for industry and commercial irrigation.

Western Australia : A widely variable environment

“... throughout the consultation process perhaps the most notable element of the feedback has been the wide variety of views provided by the Western Australian community. Different individuals and stakeholder groups have frequently provided widely differing viewpoints. Similarly different parts of the State often saw different issues and views as being important. Consequently, when considering modifications to the original proposals, the Commission hopes that the community will bear in mind the need to find a compromise between these different opinions and interests.”

— from the detailed report on the consultation process

Water reform in general

The need for change

The COAG agreement and the outdated 1914 legislation require significant change to manage and allocate water resources in a modern environment. Today's water use environment is a long way from 1914. That's why the COAG reforms were agreed across Australia. To avoid problems that exist in other parts of Australia the 1914 Act needs updating.

Original proposal

The original proposal was to implement the COAG reforms, and make supportive changes to the legislation to maximise the benefits flowing from the COAG reforms while protecting the community from undesirable or unwanted consequences of change.

Public comments and submissions

Western Australians generally accepted the need for reform and comments such as “the changes are long overdue” were common. However some people were satisfied with the current situation, did not understand how they would be affected or were wary of increasing Government control that might reduce their freedom to use water.

The way ahead

Rather than minimise change, a system that optimises the benefits of COAG reforms, security of use and environmental protection needs to be pursued. The Commission proposes to do this by addressing important concerns raised by the community, not by abandoning change altogether. The most substantial changes will occur slowly and with ample opportunity for local communities to participate directly in managing our water resources. A staged process and the fundamental change to employ local management rules will be used to achieve this.

Ramifications

Changes will be implemented in a way that does not threaten industry or water users. They will remove the inadequacies of the existing systems and secure increased benefits for water users.

What happens next

There will be further consultation to define beneficial and non-threatening change and the detail to be built into new legislation.

Rather than minimise changes, the Commission is endeavouring to establish a system that optimises the essential requirements of COAG reforms and provides the maximum benefit and security to users and the environment. This can be done by modifying proposed changes to cover the concerns that people may have, not by abandoning change.

— from the detailed report on the consultation process

Water resource management objectives

The need for change

Existing legislation does not provide clear standards to develop and protect water resources. The objectives of our main water legislation must also reflect community demands.

Original proposal

The original proposal was to add an objective into the Act. The objective would promote development of water resources in a way that is fair to all water users provided future users and the environment are not unreasonably damaged. The objective would be supported by requirements for all water users to operate responsibly.

Public comments and submissions

There was general support for setting modern objectives.

The way ahead

To include objectives that recognise a need to:

- use and develop water resources for the benefit of all Western Australians;
- use our water resources to protect the interests of future generations; and
- preserve and improve important environmental values.

Outcomes

Water users and the community will have a means to review and change water resource management and use. The Commission and local management committees will have clear guidance in managing the State's water resources.

"...Most modern resource allocation systems require an expert resource manager to act in accordance with a statutory set of objectives and to manage the resource in accordance with well-developed strategic policies and management plans."

— extract from Water Resources Law and Management in Western Australia

Local Water Management Committees

Important local rules would be developed in a public process managed by local water management committees. These committees would evolve from the Commission's advisory committees that now operate successfully in many water management areas.

The membership of committees must represent interests of local communities and the State and water users would be represented on them.

The Board of the Water and Rivers Commission would decide membership. This would comprise community members appointed by the Board for their expertise, members nominated locally or nominated by interest groups, one from local government and one Commission officer. Alternatively, an existing local group, such as a land conservation district committee could evolve to become a local water management committee. Either way, community representatives would form the majority.

The size of the local management area would be flexible and could be as small as a single stream where, for instance, there is a need to ration flows.



Horticulture is an important industry in Western Australia.

It is recommended that local rules may be made where the disputes reach such a level as to warrant management strategies being developed to resolve conflicts between rights. Such rules should only be developed in conjunction with a local water management committee, not by the Commission acting alone.

— from the detailed report on the consultation process

Local water management rules

The need for change

The State's diverse environment and economy dictate that no one set of rules can optimise water use in different regions. The current legislation provides no flexibility to match controls to the needs of local areas or to give the local community a more formal and direct role in water resource management.

Original proposal

The original proposal was to allow local rules to be developed that can vary the basic rules by a process involving the community, local water management committees and the Commission. The scope of the rules would be set out in the new legislation.

Public comments and submissions

The public was very supportive of this concept and interested in how the local water management committees would function.

The way ahead

The original concept is to be expanded and accelerated as a result of the widespread community support. For example, the Commission would like the local water management committees to have an arbitration role where disputes over water use arise as an alternative to the traditional legal process. The arbitration process would be subject to appeal to the Board of the Commission, and ultimately to the Minister. The possible make-up of local water management committees is discussed opposite and further details will be developed in draft legislation.

Outcomes

Increased local management will lead to quicker resolution of disputes, less red tape and flexibility that will improve the value of water resources to local communities.

What happens next

The Commission will recommend that legislation be amended to allow the introduction of local rules. As local rules are developed across the State, the current, more rigid management systems can be replaced. The Commission will supervise this process to ensure that the rules are fair to users and the environment.

"... the system of management planning and licensing should be carried on in a publicly accountable manner which not only provides aggrieved applicants with rights of review before an independent and rational tribunal, but also ensures adequate public input into the management and licensing processes."

— extract from a submission made during the consultation process

The Commission recommends that there be no reduction of basic riparian rights ...

however ...

...local water management committees and the Commission must be able to develop local rules and programs to share the water during droughts and other times of shortage.
— from the detailed report on the consultation process



The Millstream Spring feeds Millstream and a series of pools along the Fortescue River.

*Riparian rights

The need for change

There are inadequate means to control or share water use among riparian landowners when supply is less than required to satisfy all needs. Water resource management issues surrounding riparian rights are also poorly understood, particularly regarding possible environmental impacts and the need to share water wisely.

Original proposal

The original proposal was to enable local rules to be made by local water management committees to control water use by riparian landowners.

Public comments and submissions

Some 40 per cent of submissions on this issue opposed any reduction in basic riparian rights. While these respondents saw the proposal as a reduction in riparian rights, this is not what was intended. There was, however, support for a better, cleaner way of solving disputes over sharing.

The way ahead

Current riparian rights will be retained, but in times of shortage local rules over rationing flows may be introduced by local committees. The Commission will also better inform the community of riparian rights issues.

*** *Riparian land is land alongside a water course and the riparian right goes with the land.***

The land must directly touch the water and there can be no reserve or intervening land between the water and the private land. The owner of the land has the right to take water from the stream for domestic and stock drinking purposes. If the land title was granted before 1914 (or the date of proclamation in proclaimed areas) the owner may also water two hectares of household garden. Riparian rights are not available on land under Crown Lease or on reserves. Riparian rights cannot be transferred to another property.

Good water resource management requires an active manager, addressing the priority issues, not controlling all activity. The proposed reforms are based on setting in place management systems using local input to match the problems and objectives faced by communities in developing and protecting our water resource.
— from the detailed report on the consultation process

Common rights to water

The need for change

Current legislation is not clear about the rights of people to access water for their basic needs.

Original proposal

The original proposal was to allow people to take water from groundwater systems and streams to which they have access for fire fighting, domestic and other basic needs. Where supplies are inadequate or controls are required for resource management reasons, local rules could be established to control and manage the access.

Public comments and submissions

There was general acceptance of the proposal.

The way ahead

The proposal should be implemented through legislative change as outlined in the original proposals.

Ramifications

The need for licensing will be reduced. Non-riparian landowners and the public will have access to water for basic life support subject to new local rules.

What happens next

Proposals to change the legislation will be subject to public review and Parliamentary debate.

The principle of sustainable use should invoke a 'duty of care' on all water users to adopt a reasonable and responsible approach to water use. The legislation should enable local rules to be developed invoking the principles of reasonable and responsible use.

— from the detailed report on the consultation process

Springs, soaks and lakes

The need for change

Use of water from these sources can affect the flow of water in streams and to people downstream who depend on the stream for domestic and commercial water. One person's spring can be another person's riparian right.

Original proposal

The original proposal was to extend the Commission's control to include springs, soaks and lakes so that disputes could be resolved more readily.

Public comments and submissions

There was concern over perceived loss of rights to use the water, the need for compensation for the loss and how the controls would be implemented. On the other hand some groups have suggested that more controls are necessary to avoid or resolve disputes over spring water.

The way ahead

About half of those who responded to this matter in the consultation process were opposed to the implementation of additional controls. The Commission has recognised this opposition and has reversed its decision to recommend more control.

Ramifications

Under the new objectives all water users will be required to use water in a sustainable and reasonable way. As a consequence, the problems of free use of these sources will be minimised but some protracted disputes over the use of springs will continue. Recourse to common law will sometimes be the only option.

What happens next

The Commission will recommend that no change be made to legislation to directly increase the control of springs, soaks or lakes contained solely on an individual's property. In time it may be that local water management committees will look at the problem specifically.

The proposal to include controls over springs, overland flow and drainage received 185 comments of which 50 per cent rejected outright the implementation of additional controls.

— from the detailed report on the consultation process

Off-stream farm dams

The need for change

In some parts of the State the construction of big gully dams or building banks to capture overland flow for irrigation can seriously reduce the flow of water into streams and affect downstream users. The current law allows landowners to build dams and tanks to capture overland flow if this does not sensibly diminish the flow of streams in proclaimed areas. It does not say how the limits should be developed or implemented and it is up to the Commission to interpret how the law should be applied.

Original proposal

The original proposal was to allow local rules to be used to govern the use of off-stream dams.

Public comments and submissions

Although there was general support for local rules there was only minor support for any increased powers of the Commission to manage off-stream dams. Many people were concerned with the way in which the Commission might use the new powers.

The way ahead

The Commission proposes no changes to its powers to manage the construction and operation of off-stream dams, thus reversing its original thinking. Small stock-watering, off-stream dams pose little threat to the sustainability of water resources. In time, some local water management committees may seek to define better ways of operating very large off-stream dams.

Ramifications

The current powers to take water outside streams will continue and in some instances disputes over water use will arise due to a lack of clear rights. These disputes may be drawn out and difficult to solve.

Dams on water courses

The need for change

Under the current legislation approval is required for the construction of dams on streams in proclaimed areas, yet there is no clear statement of rights and responsibilities in other areas. The administrative system for approving dams is clumsy. People building dams in non-proclaimed areas may find out only after they have built the dam that they are infringing other peoples' rights.

Original proposal

The original proposal was to provide a consistent approach to licensing dams and to allow construction and operation under local rules.

Public comments and submissions

There was general acceptance of the need for control of dams on water courses and support for local water rules.

The way ahead

It will be possible to make local water rules to manage the configuration and operation of dams on water courses to protect other people and the environment. In areas of intensive water use licensing of each dam may be required.

Ramifications

The rights to build a dam on a water course will be clarified and strengthened with the needs of the community protected.

What happens next

The Commission will recommend that the legislation be changed to implement the new proposal after further consultation. The Commission will provide further information on the impacts of dams on stream flow and habitat.

Works to protect land from flood flow should be controlled for coordination purposes. This will ensure the works are carried out effectively with a minimum of damage to other properties.

— from the detailed report on the consultation process



Plantations under water during the 1995 Gascoyne River flood.

The Commission must become involved in the management of drains and drainage waters. However the requirements will depend entirely on local situations. It is proposed that the construction of drains and control of drainage water may be made subject to local rules developed for different areas of the State.

— from the detailed report on the consultation process

Drains and levees

The need for change

Uncoordinated construction of drains and levees can damage property, rivers, streams and groundwater. Activities such as mine drainage can directly affect groundwater supplies to pastoralists and other water users.

Original proposal

The original proposal was to allow local rules to be made to manage and coordinate construction and make underground dewatering activities subject to licensing.

Public comments and submissions

There was general support for the changes, provided the right to use over-land flow was not diminished.

The way ahead

Implement the proposal with the proviso that basic rights to use water are not diminished.

Ramifications

Flood plain management and other plans will be needed to guide the construction of private works that interact with each other.

What happens next

Legislative change should be consistent with recommendations from the Minister for Water Resources' Task Force* on flood plain management.

* For more information on the task force please call the Water and Rivers Commission on (08) 9278 0300.



A drain in the Harvey River irrigation area.

Licensing in general

The need for change

Licensing allows commercial operators to use water from streams and groundwater systems. Current legislation is not specific on what conditions should be applied to licensing and what should be considered in a licensing decision.

Original proposal

The original proposal was to list in legislation the matters that the Commission should take into account when considering licence applications as well as the conditions that can be applied.

Public comments and submissions

There was some concern that the lists of considerations and conditions were too all-encompassing, while others asked the Commission to ensure that recreation and social uses of water resources be added.

The way ahead

The lists should be included in the legislation to better guide local water management committees and the Commission in making decisions. The list should be flexible enough to allow for future needs.

Ramifications

Local water management committees and the Commission will make decisions based on better defined legislation, thereby reducing confusion, conflict and red tape.

What happens next

The lists will be included in proposals to change legislation for review by the community before presentation to Parliament.



Collie River measuring flume downstream of Wellington Dam.

Licence trading — tradeable water entitlements

The need for change

Currently licences have been issued on a first-come first-served basis. In areas where water resources have now been allocated there are no formal re-allocation systems that allow changing needs to be met. The current situation means that to purchase a licensed right to water, a person must buy the land. Conversely, to sell a right to water, a person must sell their land as well.

Original proposal

The original proposal was to allow licence holders to sell or lease their right to use water.

Public comments and submissions

Community opinion was polarised on this issue with some areas strongly opposed to the sale of water rights while others (particularly in fully allocated areas) have asked for access to trading. The opposition was based mainly on possible effects on land values, a loss of basic rights and market manipulation.

The way ahead

The introduction of trading will be restricted to areas where there is a clear need and controls are in place to protect third parties. Market rules to control trading will be developed by local water management committees in consultation with the Commission and the community. The legislation should also allow for only licensed entitlements to be sold separately to land. Riparian rights, stock and domestic and environmental water requirements will not be available for sale.

Ramifications

Community benefit is substantial. Irrigators and other water users will have control over their businesses allowing them to match water allocations to their needs. However, relatively little water trading is likely to occur in the short-term, and leasing rather than permanent sale is likely to be the majority of trade.

What happens next

The Commission will recommend that the legislation be changed to support open market trading and local management committees will be established to formulate the local rules.

Water trading has applied in some States for many years. This history means that early mistakes can be avoided in Western Australia.
— from the detailed report on the consultation process

Licensing — tenure and changing conditions

The need for change

The current system of issuing short-term licences (eg five years) is seen by some as hindering investment.

Original proposal

The original proposal was to extend the licence terms subject to the Commission being able to modify the licence during its term (if necessary) to prevent damage to the resource or other users.

Public comments and submissions

There was general support for longer licences from users but concern from other sectors over resolving environmental and water shortage problems which may arise during the licence term. Some water users strongly opposed changes to conditions or termination of licences.

The way ahead

The current practice of issuing licences for specified terms will continue and the conditions under which licences can be changed should be carefully defined in legislation. Long term licences will be issued where it can be shown that there is little risk to the resource or other users. In other areas, where the risks are higher, licences will be issued for shorter periods to allow periodic review. Early renewal of licences will be possible if the licence holder wants extra security before investing in new development or offering the licence for sale.

The Commission will continue to develop this proposal recognising that a balance needs to be struck between the needs of water managers and water users.

Ramifications

In some areas the confidence to invest will increase and the security of a longer licence term will provide a further incentive for sustainable water use.

“...a good licensing system is one that produces largely predictable, rational and consistent outcomes.”

— extract from **Water Resources Law and Management in Western Australia**

Using water rights

The need for change

Western Australian water resource management is founded on protecting the rights and investment of people who put water to productive use. Those who hold licences but do not use the water eventually have to give up the licence when it is required by others.

With the move to tradeable licences it is doubly important to prevent speculation in water rights and market manipulation through holding water rights for which there is no use.

Original proposal

The original proposal was to put in place powers for the Commission and local water management committees to ensure that water is used, transferred or re-allocated.

Public comments and submissions

There was strong support for measures that minimise speculation. However, there was widespread concern that a use-it-or-lose-it concept could lead to inefficient use and water being taken away from landowners unfairly. There was also concern that the Commission would allow people to come onto private property to get unused water.

The way ahead

In a fully allocated system water should be productively used or transferred to where it can be used. The current practice of developing local policies to govern how long unused water can be kept before the advisory committee may require the water right to be transferred should be included in the local rules developed by local water management committees. Unneeded water will be leased or sold rather than just taken away, giving people who reduce their use a financial reward for any reduction in the water allocation.

The requirements to use water are to apply only to large scale commercial or irrigation uses, not to domestic, stock, riparian or small irrigation requirements.

Neither the Commission nor the committee will have the power to allow any person to enter private land.

Ramifications

People needing water will be able to access unused supplies by buying or leasing the water. Speculation in trading water licences will be prevented.

Charges

The need for change

Water resource management costs cover investigation, planning and allocation of water shares, licensing, monitoring and dispute resolution. Management is aimed at making wise use of the ecosystem that provides the water. Historically management costs have not been paid by the users. COAG, among others, promotes a general thrust towards beneficiary pays concepts being adopted in resource management and the removal or clear identification of subsidies.

Original proposal

The original proposal was to vary the scope of charges, in line with COAG and National Competition Policy, so that any new charges could be introduced equitably. This meant that the legislation should allow for the possibility of licence fees, some costs for non-licensed use and a possible fixed resource management charge. The overriding objective was to lay the basis only for the equitable sharing of costs between users and beneficiaries.

Public comments and submissions

There was considerable support for the concept of user pays and equity. However, concern that new charges would be an unreasonable burden on irrigators and would not be applied fairly generated strong opposition by some. Seventy-eight written comments expressed opposition or concern with the proposal while 36 supported the changes, others commented without suggesting a preference.

The way ahead

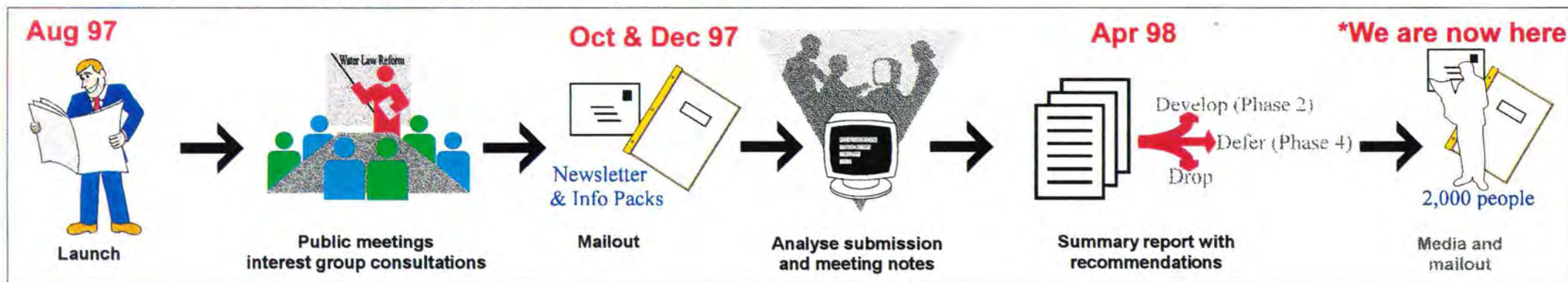
The Commission is to identify the direct costs of licence administration as well as those that relate to the overall management of the State's water resources. Any consideration of licence administration or resource management charges would then be subject to agreement in Parliament separate to the COAG reforms. Under the current system, city and town water users subsidise others by paying the largest portion of the total costs of water resource management. It is also noted that subsidies can continue under the COAG commitments provided they are clearly identified.

Ramifications

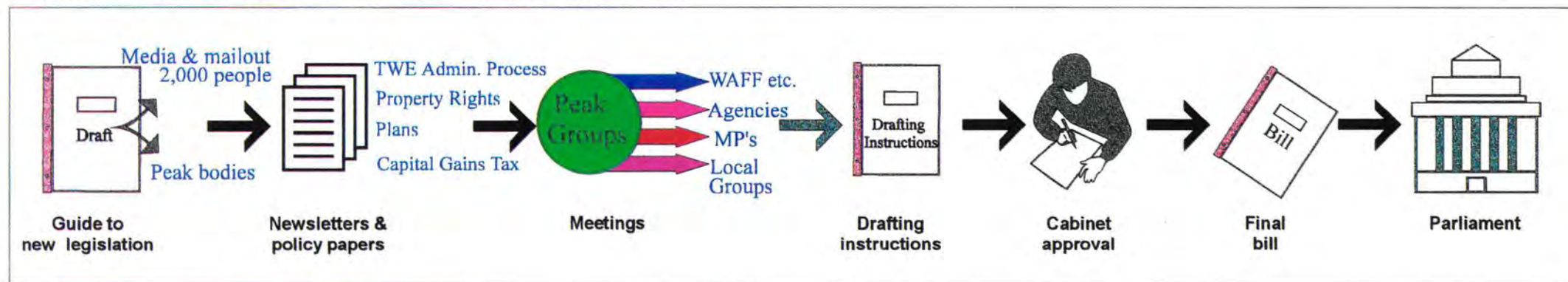
The COAG water law reform proposals can continue without introducing water management charges. Once costs are identified, further consultation can take place.

The Consultation Process

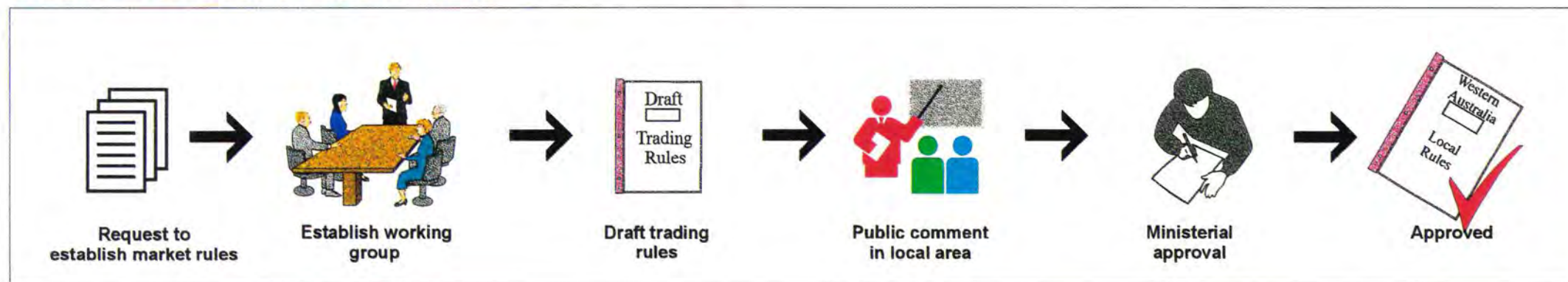
PHASE 1 - BROAD CONSULTATION AND SUBMISSIONS



PHASE 2 - TO FOCUS ON PEAK BODIES AND AGENCIES



PHASE 3 - TO FOCUS ON LOCAL AREAS (Parallel to Phase 2)



The Commission is committed to serious consultation. The Commission's original proposals on water law reform have been modified in light of submissions and comments received to date from the community. Public consultation identifies and deals with concerns, values and needs of the public so that these can guide project development. It keeps the public informed. It also helps find out what effects the proposals may have and what alternatives there may be.



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