



WATER REFORM IN WESTERN AUSTRALIA

ALLOCATION AND TRADING IN WATER RIGHTS

PHASE 1 CONSULTATIONS

Analysis and response to submissions



WATER REFORM SERIES

WATER AND RIVERS COMMISSION REPORT WR 7

1998



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Water and Rivers Commission
Policy and Planning Division

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Foreword

This report contains the results of detailed analysis of the comments received by the Water & Rivers Commission during the first phase of consultation on proposals to reform laws governing water resource management in Western Australia.

The analysis is based on 158 written responses (received by the end of January 1998) to the paper *Water reform in Western Australia: Allocation and transfer of rights to use water - proposal for discussion*.

This original discussion paper suggested principles for amendment of the *Rights in Water and Irrigation Act 1914*, with the aim of establishing a new water allocation and trading system in the rights to use water in Western Australia.

The report also includes analysis of questions and comments raised about the proposals at public meetings held from August to December 1997 and sets down the approach the Commission is to follow in the second phase of consultation on the law reform program.

The Commission emphasises that the consultation undertaken to date is only the first stage of an ongoing program.

The Commission considers the number and quality of many of the submissions very pleasing.

The community and key stakeholder input has significantly influenced the Commission's views in a number of areas and it believes that an improved and more widely supported reform proposal has resulted.

The Commission has considered the comments from a water resource manager's perspective and this report provides a short discussion and general rationale for the Commission's current position on the issue.

Some of the responses do not resolve all the comments or questions raised. Such issues will require further consultation before the Commission can make recommendations for their resolution.

This document is directly associated with two other reports in the water reform series. The report entitled "*Overview: Public consultation responses on water reform proposals*" (WR 5) provides an overview of the most controversial and important aspects of the proposals. The report entitled "*Water reform in Western Australia: Allocation and trading in water rights, Phase 1 consultation - comments and comment themes*" (WR 8) is a detailed list of all the comments received and comment themes identified in the review.

The Commission has distributed the overview report (WR 5) widely and this report will be mailed to all of those who submitted comments on the water reform proposals. Copies of this report and WR 8 will be provided to anybody who requests a copy.

Information in this report will be used to develop draft legislation to amend the Rights in Water and Irrigation Act, 1914. This report is not the draft legislation.

A guide to the amendments which the Commission considers should form the basis of the new system will be produced in another document and will be subject to further public input.

This document completes the first phase of consultation on the overall reform program. The second phase of consultation will begin with the release of the draft guidelines for legislative reform.



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Summary

The Commission is committed to good water resource management and it believes that the principles of the Council of Australian Government's Water Reform Framework Agreement will improve the economy, water environment and quality of life in Western Australia. The Commission is endeavouring to establish an improved system of water allocation and trading that optimises the reform framework agreement and provides the maximum benefit and security to users and the environment. This can be done by modifying the proposed changes to address the concerns that people may have, not by abandoning change. The next phase of consultation will commence with the release of guidelines for the proposed legislative reform.

Objectives of the Act

The Commission will proceed with preparing guidelines for legislative amendments that include an objectives clause based on the sustainable development principle. All water users, including riparian users, should be subject to a duty to comply with the sustainability objectives and reasonable use provisions of the Act. Stakeholders with an interest in the detailed wording of the clause will be able to contribute during the next phase of the consultations.

Riparian rights

Given the public feedback the Commission now proposes:

- that there be no reduction of basic riparian rights;
- that the rights of licensed users and riparian users in terms of their priority of access during drought periods be determined by local rules;
- that local water management groups or the Commission should be able to initiate efficient dispute resolution processes between users and resolve disputes during times of critical shortage and when there is insufficient flowing water to meet all legal rights;
- that it continues to provide advice and practical assistance to protect banks of watercourses from damage by livestock; and

- that local rules be able to be made to define these requirements.

Common rights to groundwater and streams

It is proposed that a person may take water for domestic and ordinary use, for watering cattle or other livestock or for firefighting from any watercourse, lake, lagoon, swamp or marsh, where there is access by a public road or reserve or from any aquifer to which the person has access. The typical situation will not require a licence. However the use will be subject to local rules which may prohibit the taking of water without a licence.

To protect aquifers it will be necessary to manage the construction of wells in some areas.

Springs, soaks and lakes

The Commission acknowledges the opposition from rural land owners to some changes and will not proceed with proposals that give the Commission greater control over springs, soaks or lakes contained solely on an individual's property. Many of the disputes over such issues will continue to be lengthy and may have to be resolved through the courts.

Farm dams and use of overland flow

In view of the strong concerns expressed, new controls will not be proposed for off-stream farm dams. However, disputes that arise from the capturing of overland flow will have to be resolved through the courts.

Dams on watercourses in proclaimed areas will continue to be subject to the control of the Commission. Licensing will be applied to these dams regardless of their purpose.

Drainage and flood control levees

It is proposed that the construction of drains and control of drainage water may be made subject to local rules. The rules may require licensing of works.

Works to manage flood flows (including the flow of watercourses and the flow of water over floodplains)



should be subject to controls that guide and coordinate landowner initiatives and works. This will ensure that the works can be carried out effectively and with a minimum of damage to others.

Changes will be made to require landowners to comply with any flood management plans produced by the Water & Rivers Commission, local authorities or the Western Australian Planning Commission.

Local rules and proclaimed areas

The Water & Rivers Commission will prepare guidelines for the legislative amendments to enable local rules to fine tune water resource management for local conditions. It will also further develop approaches to how local water management bodies would be constituted and operate, and the range of powers that they may be delegated. All three aspects will be key elements of the Phase 2 consultation program.

Licensing

The Commission believes that licensing information should be available publicly as it bestows a private right to use a community resource and both the user and the Commission should be accountable to the community for their actions.

The Commission intends to prepare guidelines for legislative change that will update the licensing provisions. The guidelines will incorporate policies and guidelines developed by the Commission's advisory committees as well as the principles described in this document. The changes will be based on the concept of licensing the use of water from particular water resources for specified purposes and issuing licences that permit defined activities (including the operation and maintenance of works) that affect the natural flow of water resources. The guidelines will also provide a list of conditions that can be made in relation to these licences. The list will be based on the original proposal with the specific addition of management of flow to support boating and compliance with town planning schemes.

Trading of water use licences

The Commission will proceed with the proposals to allow trading of water licences in areas where the water resources are fully developed and there is a demand for trading. The Commission will undertake

the following projects to define the required changes to legislation and will consult over those changes:

- The Commission will develop an administrative system for dealing with trading applications. The system will provide opportunity for third party interests to be taken into account .
- The Commission will work with the Wanneroo Groundwater Area Advisory Committee and the Wanneroo community to develop a set of local rules for the Wanneroo Groundwater Area that can be a model for other areas.
- The Commission, where possible, will investigate and report on taxation implications of trading and other issues raised in the submissions.
- The Commission will consider, with the relevant advisory or management groups, other areas where the use of water is nearing sustainable limits and trading may bring benefits to water users.

Licence Tenure

The Commission plans to continue with the current practice of issuing licences for specified periods. It would be inappropriate to issue perpetual licences and longer duration licences without clear powers to modify licence conditions during the tenure. The strong opposition to changes in licence conditions expressed in many comments were a contributing reason for the Commission's view. However, long term licences will be issued where it can be shown that there is little risk to the resource or other users. In areas where the risk is high, licences will be issued for shorter periods to allow periodic review.

Early renewal of licences will be possible if the licence holder wants longer access to the water resource before investing in new development or offering the licence for sale or lease.

The Commission intends to reconsider a move to perpetual licences at a later time, recognising that a balance must to be struck between the needs of the water resource manager and the needs of water users.

Planning and allocation of water use

Given the general support for the proposed water allocation planning process, the Commission will develop a formal planning system as part of the legislative reform guidelines.



Further input from key planning agencies and interested groups will be sought before finalising Commission policies and seeking the Government's approval to prepare the legislative amendments for consideration by Parliament.

The Commission will also embark on a public information program for the allocation process to help explain the Commission's role.

Environmental water and sustainable water limits

The Commission will prepare a formal policy statement on environmental water provisions and apply the policy when preparing water allocation plans under the new statutory process proposed for water allocation planning.

The draft policy on environmental water provisions will be available for separate public discussion before it is established as a final policy of the Commission.

Access licences

Access licences are to be introduced to allow water users to investigate water sources in advance of their use so as to promote sound planning and early evaluation of environmental water needs.

The concept will be more formally developed in consultation with water service providers and groups involved in planning of water resource development so as to make specific provision for access licences in the proposed legislative amendments if necessary.

Changing licence conditions and allocations

The legislation should be amended so that conditions under which licences may be subject to change or cancellation are specified.

Further consultation on the processes and conditions is required to develop appropriate legislative provisions.

Appeals against licences

While there is a case to reform the appeal process, no fundamental change need be made at this time. Any new powers granted to the Commission should be subject to the current Ministerial appeal process.

Reasonable and responsible use

Despite the concern expressed by some respondents, the Commission remains convinced that the legislation

should enable local rules to be developed invoking the principles of reasonable and responsible use.

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 guidelines for the legislative reform will include this provision.

The Commission accepts that aspects of the concept require further development. These include:

- refining the overall principles and concept of reasonable and responsible water use;
- ensuring the principles are applied in a fair and equitable way and do not lead to inefficient water use; and
- developing, with the community, acceptable definitions of the principles.

Penalties

The proposals to generally increase maximum penalties will be included in the legislative guidelines.

Emergency directions

The guidelines for the legislative reform will be prepared so that:

- emergency directions are restricted to dealing with temporary shortages only and no permanent reduction in the share of a water resource should result from the directions;
- there is a right of expedited appeal against the direction; and
- restrictions are applied proportionally unless a priority of access to water is prescribed in local rules.

Reporting and monitoring

A requirement to report on water use must be available where there is considerable risk to the environment or other water users because of inappropriate activities of an individual or where the resource is heavily used and precise assessment of use is required.

The Commission will prepare guidelines for legislative reform so that licence holders can be required to report their water use periodically. The requirements should be specified in the local rules or licence conditions and would be applied only when necessary for sound water resource management reasons, in a way that has regard



to the capacity of the licence holder to provide the information.

Charges and beneficiary pays principle

The Commission will identify the costs of licence administration as well as those that relate to the overall management of the State's water resources. These will be subject to independent audit. The Commission proposes that any consideration of the introduction of licence administration or resource management charges be dealt with separately to these reforms.



1. Introduction

1.1 Background

The Commission has embarked on a major reform program to strengthen and improve the Western Australian system of allocation of rights to use water from natural sources. Public consultation on the reform initiative commenced in August 1997 with the release of the first discussion paper WRS1: "*Water Reform in Western Australia Allocation and Transfer of Rights to Use Water - Proposal for Discussion.*"

The need for reform of our approach to water resources management in Australia has been well recognised for many years. A general framework agreement, setting down the broad directions of reform was signed by the Premiers, Chief Ministers and the Prime Minister at the Council of Australian Governments (COAG) in February 1994. This agreement provided each State and Territory with considerable flexibility as to how it implemented the broad reform agenda in their individual jurisdictions. In Western Australia some of the reforms have already been completed, one of which was the formation of the Commission, the State's new body with the sole responsibility to manage the State's water resources.

1.2 Purpose

The Commission's intent in releasing discussion paper WRS1, was to encourage community comment on a comprehensive proposal for reform of our system of allocation of rights to use water. Following this input, the Commission was to review the proposal and make recommendations to Government on the way forward.

This report is an analysis of the public comments and discussions. It includes the Commission's responses to the issues raised and the way to further develop the reform program in the light of the comments received. It will be distributed to all parties who made written submissions and to people who request a copy.

The Commission's proposed way forward, as expressed in this report, will be revised and updated as the process of consultation and reform continues.

1.3 Supporting reports

A shorter document summarising this report (Water & Rivers Commission Report WR5 April 1998c) is also available and has been distributed widely in the community.

A third document, including a detailed listing of all comments from submissions is available on request. The comments are listed by the issue to which they relate and the comment theme under which they were grouped during their analysis. A summary of all the comment themes and the number of responses recorded under each is also included. The comments have been edited in an attempt to remove any information that would indicate who made the comment.

1.4 Report structure

Section 2 of the report provides a general overview of the consultation program, the types of organisations and groups that responded, the range of topics and issues raised, and the general approach used in analysing and responding to the comments received.

Section 3 provides a summary of the general comments to the overall proposal, while subsequent sections address particular issues raised in the submissions. Comments on the consultation process itself are included as Appendix C.

Each section has been written to be self contained. However, the sections have been sequenced to generally follow the original sequence of proposals in the first discussion paper (Water & Rivers Commission Report WRS1, 1997). From the section title and the *Table of Contents* readers interested in particular issues should be able to readily find a summary of the comments received on that issue and the Commission's response to them.



2. Phase 1 consultation — process and reporting

2.1 Introduction

The Water & Rivers Commission is committed to consultation with the community and stakeholders affected by its actions. This is particularly important when major policy reforms are proposed. Effective consultation can create awareness of the need for change, and generate useful input from the community that can lead to better overall reforms. Effective consultation can also assist in the implementation of the outcomes of reform initiatives.

Public support for the water law reforms is critical. Attempts to “tidy up” the many pieces of water law during the late 1980s was unsuccessful, in part because of lack of public awareness of the issues involved. Changes required under the COAG Water Reform Framework Agreement are much more significant and require broad consideration by the community. This need is well understood and public consultation on its implementation is an integral part of the Framework Agreement.

2.2 Phase 1 consultation program

There has been a high degree of interest in the proposed water law reforms. Horticulturalists, farm owners, water service providers, regional development commissions, industry groups and agricultural organisations have been particularly keen to be informed of and discuss the proposed changes. However, many others have been involved, including the public, non-government organisations and government agencies.

The consultation process aimed to:

- inform sections of the community and water users of the reform proposals;
- solicit views on the reforms from interested individuals and groups;
- identify issues the community wants addressed; and

- provide a structured set of views in key issues for the Commission to consider when reviewing the initial proposal.

The discussion paper WR1 (Water & Rivers Commission, 1997a) provided an overall structure for the discussion and review of the reforms in a systematic way.

The consultation involved:

- mailing the discussion paper, supporting material (Water & Rivers Commission, 1997b) and an invitation to be involved to a list of about 500 organisations, groups and individuals;
- holding or attending public seminars, stakeholder group meetings and initial in-depth workshops around the State;
- sending out press releases on the proposed reforms;
- holding meetings with the advisory committees of the Water & Rivers Commission;
- encouraging organisations and individuals to send written submissions;
- continuing to forward the discussion paper and accompanying documents to those who saw advertisements in newspapers or heard about them some other way;
- producing newsletters and distributing them through an updated mailing list of more than 1200; and
- reporting on this first stage of consultation and suggesting modifications to the proposal for a second round of consultation with interested parties.

Between mid August and late November more than 50 public information meetings for community groups and working sessions with key stakeholders were held. The primary aim of these meetings was to explain the consultation process, provide background and explanation of the proposal, encourage individuals to comment and encourage groups of people to prepare written submissions on the proposal.



Meetings were held in Perth and in regional centres where water management issues were of significant public interest. The first series of meetings were arranged in areas where private water use for commercial irrigation purposes was high. The Commission held subsequent meetings on request as other groups became aware of the reforms proposed and were concerned about them. Follow up meetings were arranged in many areas to assist those preparing submissions.

Organisations such as the Western Australian Farmers Federation and the Irrigation Association of Australia arranged meetings and workshops of their members and related groups to facilitate their organisations' responses. Many other groups arranged their own meetings and, where requested, Commission staff attended to provide additional background.

Further information on how the proposals may affect local areas and answers to commonly asked questions at the public meetings were distributed in October, November and December.

2.3 Comments received

The Phase 1 comment period officially ended on November 30 1997 and by mid December a total of 150 written submissions had been received. This report is based on analysis of the 158 written responses received by the end of January 1998. It also includes analysis of the questions raised and comments made about the proposals, as recorded by Commission staff, at the public meetings held from August to December 1997.

The written submissions received after January, 1998 will be considered in the second phase of consultation on the reform program.

Appendix A includes a full list of the individuals and organisations that prepared written submissions. The submissions were received from a wide range of interest groups spanning areas as diverse as irrigation based agricultural industries, the environment, and water service providers to groups with primary interests mainly in livestock and domestic water use. About 44 per cent of the written submissions were from companies or representative groups; the remainder being from individuals or individual businesses. Table 1 summarises the submissions by interest area.

Table 1. Written submissions by interest area

Interest Area	Number
Rural (non- irrigation)	7
Rural irrigation production	43
Mining, commerce & industry	7
Environmental	6
Natural resource management	5
Land planning & local government	10
Legal aspects	3
General/unspecified	74
Water service providers	5

The submissions were also distributed across the metropolitan and rural areas of the State. Understandably, most rural responses came from areas where private water use for horticultural production is significant. The South-West and near metropolitan regions represented 60 per cent of the written submissions.

Only 19 per cent of the written submissions were received from the metropolitan area, although they included important submissions from key water service providers and most peak industry bodies.

Rural organisations, some of which had a metropolitan base, were identified as a separate regional category. The distribution of written submissions by region is shown in Figure 1.



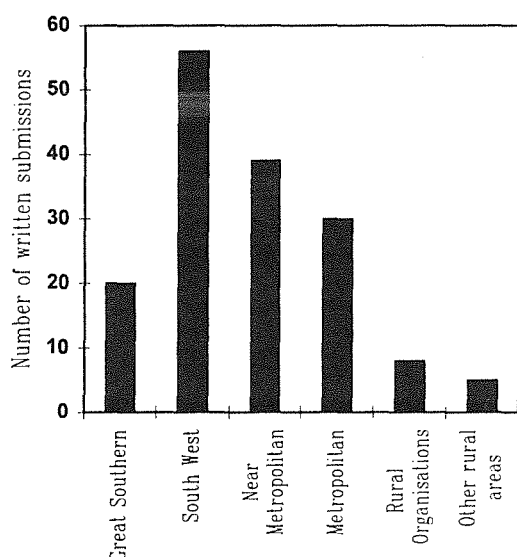


Fig. 1 Written submissions by region

2.4 Collation and reporting

Both the verbal comments recorded at the Phase 1 meetings and the written submissions were classified by topic area and issue. The topics and issues selected were based on the sections of the first discussion paper, as most submissions were prepared as a response to the principles proposed in that document. A major section was included to record the comments received on the consultation process. Provision for general comments were included under each topic and for comments on the proposal as a whole. Other minor categories were defined as necessary.

Each submission and record of public meeting was reviewed, separate comments identified and classified the most appropriate topic and issue. Appendix B includes a full count of the comments received as grouped by topic area and issue.

As Figure 2 indicates most interest was shown in the scope of the *Rights in Water and Irrigation Act*, licensing issues, and paying for the cost of water resource management. Comments received under each issue are discussed in detail in the subsequent sections with the comments on the consultation process included in Appendix C.

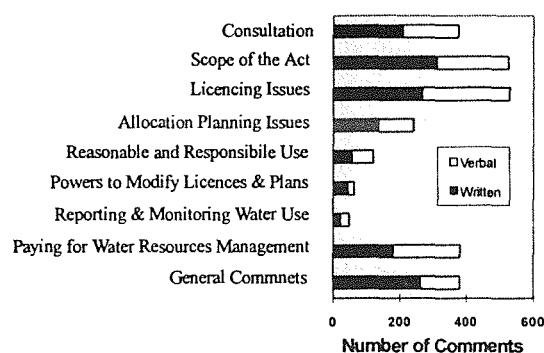


Fig. 2 Comments by topic area

2.5 Analysis and response

2.5.1 Qualitative assessment

A systematic approach to analysing the comments received was required to:

- identify key issues of concern to particular groups or key stakeholders;
- determine the degree of support or opposition to the original proposal; and
- if possible, identify the reasons why respondents held their points of view.

Identification of these three elements provided the background necessary for the Commission to respond and modify the initial proposals given its responsibility as the State's water resource manager.

While the comments can be logically grouped, reviewed and counted, this type of assessment can only be qualitative. There are two main reasons why a full quantitative analysis is not appropriate.

Firstly, single submissions can represent the views of widely differing numbers of people. For example submissions and comments have been made by individuals, several people at a public meeting, a large agency or a community or interest group with many members. At public meetings a comment was generally recorded only once, regardless of whether the point was made by one person or the whole meeting. People were encouraged to combine their views and make joint written submissions. In some cases individuals also prepared very similar submissions to their group and submitted them separately. A number of peak groups submitted the outcomes of workshop deliberations held in different parts of the State which resulted in some valid duplication of comments. In contrast the number of submissions from water supply



and irrigation service providers can count as no more than six, in spite of these organisations supplying the greater part of the Western Australian population with water.

Secondly, classifying comments is never fully objective. It was particularly difficult in this case given the complex issues involved. While extensive reviewing and checking of the classification was carried out, the interaction of the issues, and the way many comments included elements of a number of issues added to the difficulty of objective analysis.

2.5.2 Comment themes

Despite the difficulties and limitations noted above, the following approach to grouping comments under similar themes was carried out and was considered sufficient to achieve the aims of the analysis.

For each issue the comments received were reviewed and common themes identified. These were then re-assessed and fine tuned into themes that reflected either support; qualified support; a neutral comment question or statement; concern; or opposition for the original proposal on the issue in question. The full list of the final themes and the number of comments under each are included with the detailed listing of comments (WR 8).

A qualitative assessment of the degree of support for the original proposal on each issue could be determined by summing the comments in the themes that reflected similar degrees of support. For example Figure 3 shows the degree of support received in relation to the original proposals and is based on the sum of all comments received on the proposals.

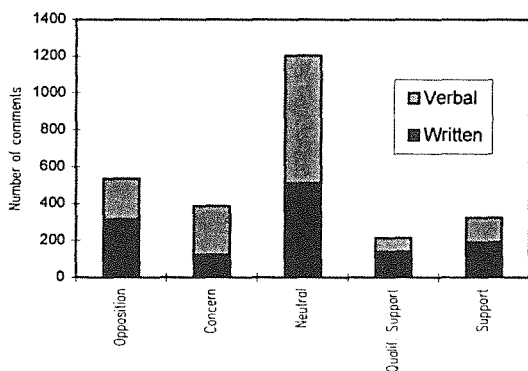


Fig. 3 Overall response to the original proposals

2.5.3 Review

Issues and comment

In each of the remaining sections of this report the issue being discussed is described and the related original proposal is re-stated. The number and nature of the comments received against the issue are described, key themes identified and a number of representative examples of comments received included.

Where sufficient responses were received the qualitative assessment of the degree of support for the original proposal is shown graphically. Comments are also included about regional differences where they were apparent.

The Commission's response

The Commission's initial response to the comments received is then described. The response considers the comments from a water resource manager's perspective and provides a short discussion and general rationale for the Commission's current (and often modified) position on the issue.

Each response is neither final nor comprehensive in that not all the comments or questions raised are addressed. Rather the response forms the basis to start preparation of the guidelines for legislative change and the subsequent consultation phases.

The way forward and outcomes

By building on the discussion and rationale in the previous sub-sections, the way forward states how the Commission plans to progress the issue through the subsequent phases of policy and legislation development.

When addressing some of the issues, a final sub-section is included that highlights the expected water resource management outcomes of the reforms. Where decisions have been made to delay consideration of reform proposals, the expected outcomes are also included.

2.6 Subsequent consultation

The different phases of the consultation process are summarised in Table 2. This report completes Phase 1.

Phase 2 is now under way with meetings being set up with peak councils, advisory committees and local



groups. These will involve direct contact to negotiate and discuss the new proposals and amendments to legislation. Guidelines for the legislative changes, based on the approach outlined in the sub-sections entitled "The way forward" will be prepared and used as the basis for these negotiations.

Phase 3 will involve developing examples of local rules for managing water resources during and after the period of legislative reform. The Water & Rivers Commission will work with local groups to review proposed plans and rules in priority areas so that they can be implemented under revised legislation. The Commission is already working with the Wanneroo horticultural community and its local allocation advisory committee to establish local rules for trading in groundwater licences in the Wanneroo Groundwater Area.

Some important reform issues from the water resource management perspective will be deferred in this round.

These need to be addressed in the longer term. Many will necessitate the Commission providing additional information about water law and related water resource management problems to stakeholder and community groups, before further change is likely to be supported. This process will be ongoing and should commence at the end of the initial reform period in 1999.



Table 2. The consultation program - Phases 1 to 4

	Phase 1	Phase 2	Phase 3	Later phases
Objective	Public review of the principles for change	Amending the legislation to allow the change	Establishing local rules to implement the changes	Dealing with long term issues
Time	August to November 1997	May to December 1998	Continuing from February 1998	Starting January 1999
With whom	Wide consultation with groups and individuals, establishing a data base of interested people	Community groups and peak councils (industry councils, regional groups, agencies, special interest organisations)	Local Advisory Committee, special advisory groups and the local interested public	Direct negotiation with groups - industry councils, regional groups, agencies, special interest organisations, political parties.
Process	Explanation of proposals and submissions from public	Wide distribution of material. Direct negotiation over proposal with peak councils and local groups	Working with local community based groups with public review of proposed plans and rules.	Explanation of proposals and submissions from public
Publicat'ns	<ul style="list-style-type: none"> • The proposed principles • Background information • Newsletters and information pack • Reports on submissions 	<ul style="list-style-type: none"> • The law before and after • Policy papers • Existing water rights • Newsletters • Bill to amend the Act 	Draft and final local management plans and rules	<ul style="list-style-type: none"> • The proposed principles • Background information • Newsletters • Reports on submissions
Outcomes	<ul style="list-style-type: none"> • Effective consultation started • Better understanding of community needs • Better informed community • Program of matters to be acted on 	<ul style="list-style-type: none"> • Amended legislation • Supporting policies 	<ul style="list-style-type: none"> • Local rules for water resource use and protection • Management matched to local and State requirements 	<ul style="list-style-type: none"> • Agreement of matters for further reform



3. The overall reform proposal

3.1 Issues

The discussion paper (WRS1) was prepared as a set of principles which could underpin our future law governing the rights to use water. The package was to encourage the community to consider the proposals as an integrated set of measures as this is how they would operate in practice. For example, consider the proposed principle of requiring that, where private rights to use water have been issued, the water should be used in a sustainable way within a reasonable time frame of issuing the right. This principle would operate in conjunction with an ability to trade water in areas where all available water had been allocated.

The key general issues raised during the period of consultation related to the need for the reform now, whether all elements needed to be introduced by December 1998 and National Competition Policy requirements and concern that the current rights to water would be altered.

3.2 Comment

Many people made overall comments on the concept of law reform, the principles proposed and the impacts of the changes. These comments ranged from general concerns to specific comments about the reforms and personal situations and have been grouped into comments on the "overall proposal" and "other general comments".

3.2.1 Overall proposal

The major themes of the 89 comments referring to the overall proposal are shown in Figure 4. As shown in Figure 5 there were 23 comments directly supporting the proposal. Typical examples were: "Agree with the principles in general"; "In theory, water is a vital resource and this is a great proposal; we need to begin to value water"; "I support intended amendments to the Act" and "there is support for the thrust of the proposals." A further 12 comments supported the need for reform but expressed qualifications with some elements of the proposal.

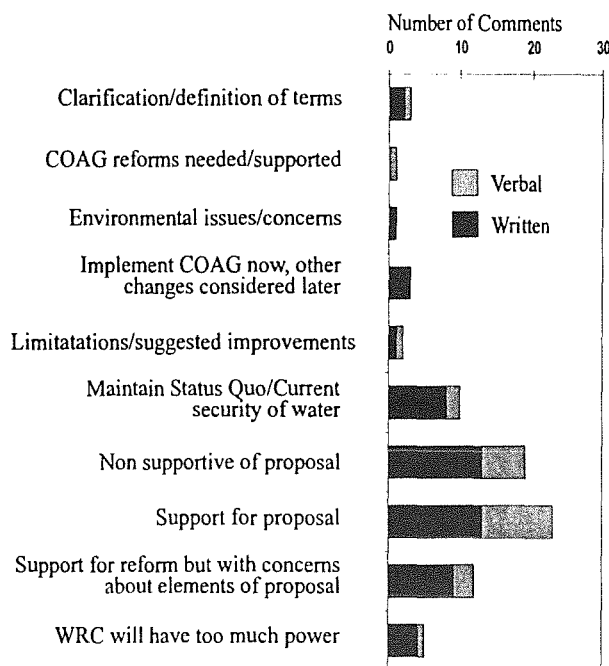


Fig. 4 Comment themes - overall proposal

In contrast 19 respondents did not support the proposal making comments such as: "Don't really agree with the document....."; "I am strongly opposed to the proposed changes (reforms). We have a system in place that has served us well for many years"; "Objection to reform - we strongly oppose the proposed reforms especially considering the considerable capital involvement"; and "I am concerned at the ramifications of the proposed changes to the use of water regulation."

Many of the other themes reflected either concern with the overall proposal or were neutral in nature. Questions requesting further information were common. Examples include: "Give us an example of how the proposal affects us and to what extent it affects us, specifically in Albany"; "Is the legislation ensuring the wise use or redirection of ore pit water in Hamersley National Park?"; and (specific questions) -- "Will the Act be retrospective?"

Thirteen comments specifically argued that the proposed changes to water law should be restricted to those that should be changed under the Water Reform Framework Agreement (The COAG Agreement) by December 1998 and that more time is taken to consider the other related reforms.



Ten comments related to the importance of maintaining the status quo and protecting current levels of security of access to water. Examples include: "We are quite happy with the existing system, without the proposed reforms"; and ".....we feel that the current system is fine and if it needs minor improvement they can be done without the total change as is being proposed".

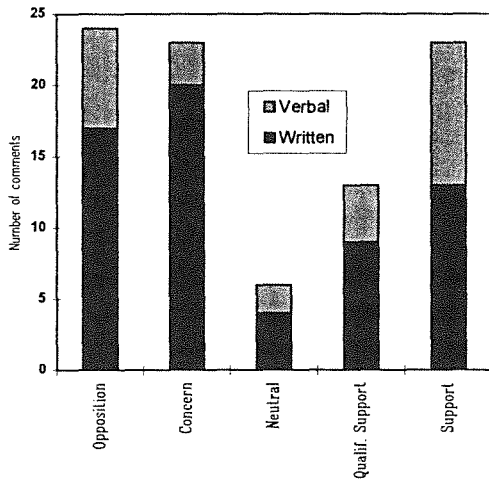


Fig. 5 Response to the original overall reform package

3.2.2 Other general comments

An additional 290 comments were received about general issues and concerns. They were separated from those directly related to the overall proposal but were too general to be easily classified against a specific reform proposal or issue. These were mainly neutral comments or questions (85 per cent) or issues of concern (11 per cent). The full list of themes identified from the general comments on the proposals are included in the third report of the consultation (WR 8) (Water & Rivers Commission, 1998d).

Most comments were specific (91) and related to people's properties, particular regions or were introductory or concluding statements in submissions or letters of transmittal. A further 69 were general comments or statements generally of a neutral type. The key remaining themes related to the need for more information about the COAG Water Reform Framework Agreement (19 comments), general comments not supportive of the proposal (13), issues regarding bureaucracy (11), the Native title issue (10), questions or comments regarding the need for change

(10), and general comments supporting the proposal (7).

The theme related to bureaucracy included comments such as "We see most of the changes, particularly increased management as simply empire building and therefore unacceptable"; "Legislation which provides for greater complexity in the project facilitation process needs to be avoided" and "there is a need for management in relation to the preservation of our water resources." Other comments related to interaction between agencies. A statement complained about the different messages that sometimes come from the Commission and Agriculture WA officers. Another related to the perceived overlap of responsibilities between the Commission and the Office of Water Regulation. A further comment encouraged Commission staff to work more closely with other agencies.

Typical comments on Native Title and Native rights were "How will the proposal impact on Native Title Act?"; "Have the Commission considered the Native Title Act?"; "What implications, if any, does existing Native Title legislation have on the proposed water reforms?" and "Are there connections with Native Title issues currently?". They highlight a general concern about the issue.

3.3 The Commission's response

The Commission considers that much of the concern over change and satisfaction with the present system is a result of individuals being satisfied with their own situation and not being aware of the problems faced by other people and in other places or of the opportunities provided by the reforms. Another contributing factor is the unfounded, but common, concern that the changes will result in a loss of private rights to use water or in a lower standard of resource management. The Commission has taken extreme care to ensure that its proposals do not reduce its ability to properly protect and allocate water and to ensure that the reasonable use of water is made more, not less, secure. The main threat to any water use comes not from the Commission but from other competing water users. The Commission sees its role as ensuring equity and security in water use.

Native title is an issue beyond the scope of these reforms. The Nation is currently addressing the principles that should underlie Native title claims and



until these are resolved it is not possible to consider whether the legislation requires amendment to support the requirements. In the interim, the Commission will endeavour to deal with Native title rights as it deals with other rights to water.

A high proportion of the comments, whether recorded under “other general comments” or under the specific issues discussed in other sections, were questions or requests for more information. Many of the comments were verbal ones made in the early stages of the consultation process. Many of the questions were answered at the time. As people became more familiar with the original intent of the proposals, fewer requests for more information were forthcoming. The written submissions, for example, include less questions and requests for more information than do the comments recorded at the public meetings.

3.4 The way forward

Good water resource management requires an active manager, addressing the priority issues, not by empire building and controlling all activity. The proposed reforms are based on using local input to set in place management systems which match the management controls to the community's objectives for developing and protecting its water resources. The extensive scope for local rule making should focus and reduce, rather than increase, management.

The Commission is committed to good water resource management and it believes that the principles espoused by the Water Reform Framework Agreement will enhance the economy and quality of Western Australia. Rather than minimise changes the Commission is endeavouring to establish a system that optimises the essential requirements of COAG and provides the maximum benefit and security to users and the environment. This can be done by modifying and circumscribing the proposed changes to address the concerns that people may have, not by abandoning change.



4. Water resource management objectives

4.1 Issues

The Water & Rivers Commission is the Crown agency which manages water resources in Western Australia. Community disputes about water use develop and are difficult to resolve under current laws because the basis upon which water should be used and the principles that should be used to settle the disputes are not clear. This situation can be greatly improved if resource management objectives together with the duties and responsibilities of water users and managers are clearly specified in the legislation.

The objectives must consider environmental and social values as well as economic needs, making sure use of water is based on the concept of sustainable development. There should be a clear environmental bottom line.

All rights and activities covered by the Act would have to comply with the statutory objectives.

4.2 Comment

There were 17 comments made about the issue of placing objectives in the Act. The following three themes were identified:

- better definition of the objective required in the Bill (7 comments of qualified support) -
- questions over the need for objectives (3 comments of concern), and
- support for the inclusion of objectives (7 comments of direct support).

The respondents that implied qualified support were concerned about the generic nature of the proposed wording and its potential effect on current and future water resource developments, and the need for careful consideration of the final wording. Examples of the fully supportive comments are: “ Objectives of water resource management - agree” and “... believes the Act requires a purpose which is a combination and balance between people and the environment”

Three (verbal) comments questioned the need for an objectives clause.

4.3 The Commission’s response

The Commission is pleased to see the general support for the concept of placing objectives in the legislation. The proposed wording of the objective, as based on the principle of sustainable development, was commonly accepted except for two submissions. The Commission accepts that final wording of the clause will be very important and must be carefully considered.

Concern about the potential impact of an objectives clause on existing or potential water resource developments is considered unwarranted (refer to the Commission’s current and proposed planning procedures, licensing and environmental water provisions policies, and sustainable diversion limits as discussed in Sections 15 to 18). Such an objective should not limit well managed current development or carefully planned future development.

4.4 The way forward

The Commission will proceed with preparing guidelines for the legislative amendments that include an objectives clause based on the sustainable development principle. Key stakeholders with an interest in the detailed wording of the clause will be able to contribute during the next consultation period.

4.5 Outcomes

Water users and managers will have guidance about their responsibilities enabling them to act more decisively and responsibly. The water resources can then be used to the maximum benefit of the community without jeopardising the environment or future users.



5. Riparian rights

5.1 Issues

As the law stands now there are no means available to the Commission to modify statutory rights such as riparian rights even if the environment, the water resource or other people are being damaged. This means that among water users along a stream some landowners may be able to draw water for domestic and livestock drinking purposes and for the irrigation of a garden of up to two hectares while others have no water at all.

The issue is whether this situation should continue; whether there should be a reduction in riparian rights or whether there should be the means to ration water during shortages so that all users get a share of the supply.

The original proposal was to enable the establishment of a set of sensible controls over riparian water use by:

- placing restrictions on its use if the impacts are serious;
- enabling conditions to be placed on its use; and
- enabling local rules to be made to remove or reduce the allowance for garden irrigation.

5.2 Comment

Figures 6 and 7 clearly indicate that there was a strong disagreement with any changes that reduced existing rights. Of the 63 comments directly related to riparian rights, 20 opposed any proposal to reduce riparian rights outright. Only five directly supported the concept of making rules to modify riparian rights.

Typical examples of the comments in opposition to any change are “scared that riparian rights will disappear, it is very confusing”; “I feel very strongly that current riparian rights cannot and should not be removed by change in legislation” and “while the reduction in riparian rights may be understandable in certain circumstances, the removal or radical reduction of this statutory right should not be possible other than for serious misuse of the right.”

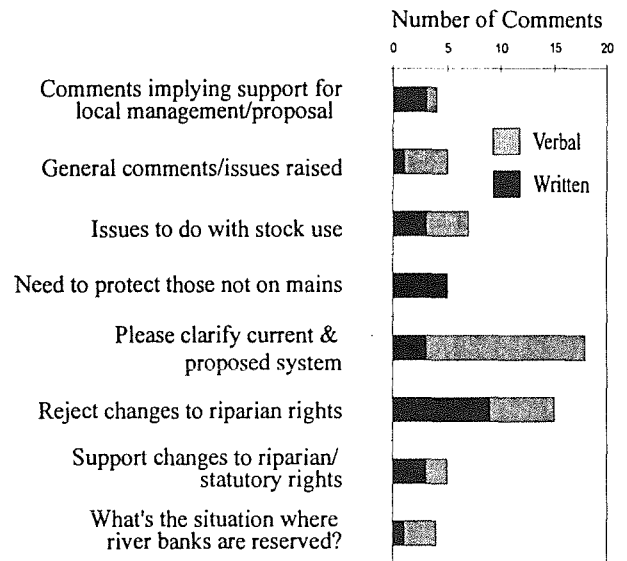


Fig. 6 Comment themes - Riparian rights

From an environmental perspective, however, concerns were raised over the damage caused by livestock access to streams and six submissions wanted this access limited in order to protect the bed and banks of streams. Examples are: “It was also considered that livestock watering from watercourses should be subject to the discretion of the local management group”.

The balance of comments sought further information and details on current and proposed laws and on rights when river banks were located in reserves. One submission recommended that riparian rights be abolished in irrigation districts where water is taken from flows available because of releases from dams.

There were no obvious differences between the written responses from the different regions or interest groups.

Many submissions addressed the issue of compensation if any existing rights were lost. Respondents said any loss of existing rights would impinge on their capacity to earn a living and devalue property. Several submissions suggested that those currently using their statutory rights should have them protected from change and only new users should comply with the new rules.



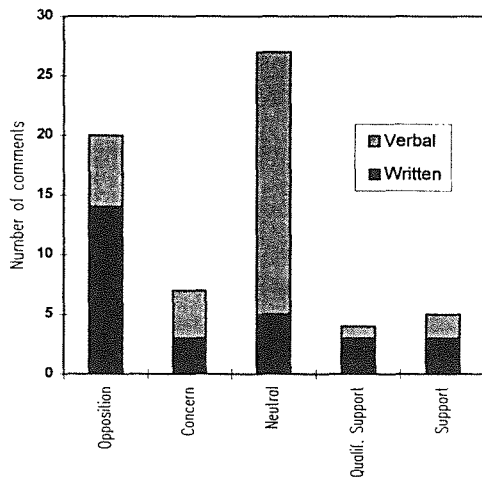


Fig. 7 Riparian rights - Response to original proposal

Other comments (classified under related categories) also emphasised opposition to changing existing rights. (see Figure 8 in Section 8, for example).

5.3 The Commission's response

The Commission acknowledges the strong opposition to any changes in basic riparian rights. However, the reality is that the current riparian right provisions cannot be fully met from the small flows of many South-West streams during the late spring and summer, particularly in periods following dry winters. The Commission retains its view, therefore, that some means of equitably sharing the available water between riparian and other users, and the environment is required at such times.

Any change in riparian rights that will be acceptable to the community will have to be strictly limited to these times of critical shortage. The change would also have to be made through a public process. Strong support has been given to the general concept of being able to prepare local rules to address specific and local water management problems (see Section 11), under other elements of this reform package. The Commission, therefore, remains convinced that the establishment of local rules to share water between users at times when the legal (including riparian) rights to water exceed the available water should be further developed. Clearly, issues such as "times of critical shortage" and "drought periods" will have to be carefully considered when drafting the legislation.

5.4 The way forward

Given the opposition to change as initially proposed and the ongoing management problems if reform does not occur, the Commission now proposes:

- there be no reduction of basic riparian rights;
- that the rights of licensed users and riparian users in terms of their priority of access during drought periods be determined by local rules;
- local water management groups or the Commission should be able to initiate efficient dispute resolution processes between users and resolve disputes during times of critical shortage when there is insufficient naturally flowing water to meet all legal rights;
- the Commission continue to provide advice and practical assistance for the protection of banks of watercourses from damage by livestock;
- all water users, including riparian users, be subject to a duty to comply with the sustainability objectives and reasonable use provisions of the Act; and
- local rules be able to be made to define these requirements.

This approach will be developed into guidelines for the legislative amendments and be further discussed in the Phase 2 consultation.

5.5 Outcomes

Landowners' rights to use water from streams will remain unchanged while there is an adequate supply of water. However, a mechanism for placing limits on use during times of shortage will enable all riparian landowners and licensed users to share the supply.



6. Common rights to groundwater and streams

6.1 Issues

Under current legislation a person may take water for domestic and ordinary use and for watering cattle or other livestock from any watercourse, lake, lagoon, swamp or marsh, where there is access by a public road or reserve.

It was proposed to maintain this right and extend it so that people could take groundwater from these sources for:

- domestic needs, including ordinary household use and irrigating a household garden;
- livestock drinking water, but not irrigation of pasture or water for feedlots;
- firefighting; and
- for any other purpose provided there is no significant impact on the environment, other people, the water body or receiving waters.

6.2 Comment

There was very little direct comment on this proposal, although four comments on related issues implied support for the change. No direct opposition was recorded.

6.3 The way forward

The Commission will proceed with preparing drafting guidelines for this reform.

It is proposed that a person may take limited amounts of water for domestic and ordinary use, for watering cattle or other livestock or for firefighting from any watercourse, lake, lagoon, swamp or marsh, where there is access by a public road or reserve or from any aquifer to which the person has access. The taking of the water is to be subject to local rules which may require a licence if there is a need for close control.

Water may be taken for any other purpose if allowed under a local rule or by licence.

In order to protect the integrity of the aquifers it will be necessary to manage the construction of wells in some areas.

6.4 Outcomes

Non-riparian landowners and the public will have improved access to water resources for the basic life support purposes without the need for licensing. Where controls are necessary because serious problems occur local rules or licensing can be invoked to ensure that the access is equitable and sustainable.



7. Activities that affect water resources

7.1 Issues

The original proposal suggested that the Commission should be able to control a range of activities that affect our water resources and the people who use them.

The activities include:

- taking, collecting, storing or diverting water;
- obstructing, interfering with or discharging into a watercourse;
- building, operating or altering dams on water courses, wells and bores;
- damaging an aquifer; and
- building or operating drainage and de-watering works.

The Commission indicated that local rules should allow activities to be exempt from control if they do not threaten the objectives of the Act.

The specific issues of farm dams off water courses, drainage works and levees are discussed in separate sections.

7.2 Comment

Twenty-seven comments were made on the original proposal relating to the activities that the Commission should have power to control. Four separate themes were identified. The first consisted of three comments of opposition to the original proposal, stating that not all the activities listed needed permission from the Commission. Two of the three comments, argued that small dams (less 1000 cubic metres) on watercourses and access to groundwater “for general farm purposes” should be exempt from controls. They also argued that minor drainage and de-watering that does not impact the environment, and which is administered by Agriculture WA, should also be exempt.

Nine other comments were generally supportive of the proposal.

Thirteen comments sought more clarification of the controls proposed or raised related questions and two comments raised questions about responsibility for managing water quality issues.

7.3 The Commission response

The limited number of comments on this issue and the general support received for the original proposal reflects a general recognition that the Commission should have the powers to control activities that directly impact watercourses and groundwater systems.

Activities would be exempted from controls where the impacts of the activity are not significant or they are controlled by some other means.

Drainage works are being managed in some rural areas by Agriculture WA to minimise soil degradation. Specific powers are required by the Commission to manage drainage and de-watering activity from a water resource perspective.

7.4 The way forward

The need to have the powers to control many activities that affect water resources is clearly essential for any water resource manager. In view of the general acceptance of this need the guidelines for the legislative reforms will be developed for further, more detailed consideration. Some specific issues are addressed in the following sections.



8. Springs, soaks and lakes

8.1 Issues

It was proposed to extend the Commission's powers of management to springs and other natural waters that are not part of streams so that disputes which arise over these matters could be resolved by the Commission or local water management groups making local rules. It was emphasised that the Commission should be able to exempt any use or activity from licensing that does not affect other users or the resource.

8.2 Comment

Comments relating to springs, soaks and lakes were recorded with other issues related to changing the scope of the Commission's controls. This section deals with springs, soaks and lakes. Other issues relating to overland flow and farm dams are discussed in the next section. Twenty different themes were identified from the 210 comments recorded against this issue - termed "Waters subject to control" and are shown in Figure 8.

The degree of support for the original proposals to extend powers of water management to enable control of spring, over-land flow and drainage waters is shown in Figure 9.

Of the 20 themes identified nine were partly related to the control of springs, soaks and lakes and two were directly related. In the latter category 30 comments were recorded. Twenty-five were strongly opposed to any controls on springs while five supported the proposal. Typical non-supportive comments were: "Freehold title to land embraces rights to water that exist on that land in the form of springs and soaks and reasonable rights to water livestock and irrigation from rivers adjacent to the land"; "If the rainfall causes a run off or begins a small stream in the property in winter or wet season, the landowner must have ownership of that water to

use as he/she decides"; ".....we are totally opposed to the.....bureaucratic management of springs...", and "Landholders must be given basic rights which cannot be challenged for the control of all water which arrives on their property from natural rainfall. The landowner must be allowed store this water or allow it to soak into

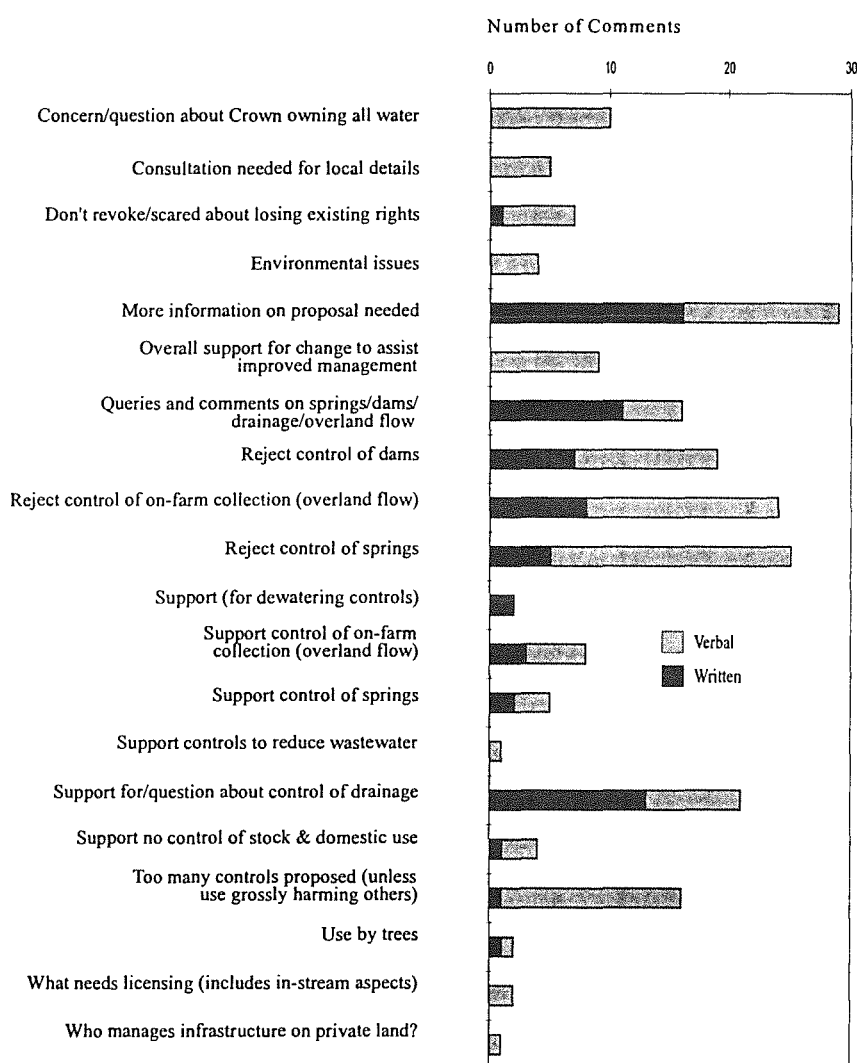


Fig. 8 Comment themes - waters subject to control

soil as he/she chooses."

A strong theme of opposition to additional bureaucratic controls in general (applicable to the proposals on overland flow and drainage waters as well as springs) was also clear (Figure 8).

However, those in support of more controls made comments such as "we support the identification and



environmentally responsible management of springs,” ...and “we agree that the Commission should have the power to control and licence the use of all springs, ... proposal was supported.”

The support for additional controls over the management of water from springs and soaks (and overland flow and drainage) came predominantly from near metropolitan and metropolitan submissions.

Many submissions addressed a perceived issue of compensation for the loss of existing rights. Some respondents believed that landholders’ rights may be reduced and said any loss of existing rights would impinge on their capacity to earn a living and devalue property: “to take away people’sspring water rights will diminish the value of properties by a considerable amount particularly where the water can be put to good use.” Several submissions suggested that those currently using their statutory rights should have them protected from change and only new users should comply with the new rules.

A substantial proportion of the respondents required more details on the proposed changes and their impacts on existing users and their rights.

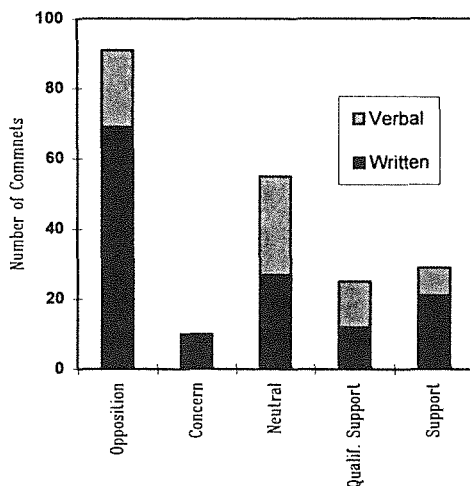


Fig. 9 - Response to original proposal to extend the “waters subject to control”

8.3 The Commission’s response

There is clearly strong opposition from some rural landowners to any proposal for the Commission to have powers to manage the flow of waters rising from springs, soaks and lakes wholly contained within a single property. Under current laws, disputes over the

use of water from these bodies can only be resolved under common law and invariably in the courts. Intervention by the Commission in these disputes is not accepted by most landowners at this time.

There is a recognition that the Commission acting as the State’s water resources manager should have the power to act. This support came from respondents in metropolitan and near metropolitan areas where significant disputes over spring waters are better known.

8.4 The way forward

The Commission considers that disputes over the use of spring waters will increase in the future as pressures on land and water resources increase. These pressures will be greatest in near metropolitan rural areas and future requests for the Commission or local water management groups with delegated powers, to become involved are likely to grow over time. At this stage though, the Commission acknowledges the opposition from rural land owners and will not proceed with proposals seeking greater statutory control over springs, soaks or lakes contained solely on an individual’s property.

8.5 Outcomes

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 uncontrolled use of these sources will be minimised, although some protracted disputes over the use of springs will occur. In time it may be that local water management groups will look at this problem specifically and in some areas seek to develop more practical approaches to dealing with spring disputes.



9. Dams and capture of overland flow

9.1 Issues

Within proclaimed surface water areas landowners are free to build off-stream dams if they do not reduce the flow of a watercourse. Within streams the approval of the Commission is required to build a dam.

Although the rights to use of water are limited in other areas, no legislative controls are placed on obstructing flows or building dams.

Nevertheless the construction of dams on watercourses and big gully dams or banks outside watercourses to capture overland flow for irrigation can seriously reduce the flow of water in streams and affect other users.

Virtually all dams could be considered to impact on water flow to some extent. However the Commission should only become involved where these off stream dams are likely to cause a significant risk to the downstream resource.

It was proposed to extend the Commission's powers of management to allow local rules to be made over off-stream dams (excavated tanks and gully dams) and to change the approval requirement for dams on streams by allowing construction and operation of on-stream dams under a licence or a local rule regardless of whether the stream is in a proclaimed area. It was emphasised that the Commission should be able to exempt any dam that does not affect other users or the resource.

9.2 Comment

Of the 20 themes identified in Figure 8, three were directly related, and nine partly related to the issue of farm dams and the control of overland flow. A total of 51 comments were recorded against the three directly related themes. Of these 43 (about 84 per cent) were strongly opposed to any changes in the Commission's powers to control farm dams and overland flow. Many people were fearful of any controls over these structures. Comments received included: "water stored in dams should have no restrictions at all because it makes good environmental sense to store run-off water for your own use rather than draw from ground water sources", and "Farm dams: It is desirable that farmers

should be able to locate and construct dams on their own properties free from bureaucratic control."

Sixteen per cent of comments supported increased controls.

A proportion of the respondents required more details on the proposed changes and their impacts on existing users and their rights. For example, "will the arrangement regarding dams on private property change?"; "what about where dams are made for tourism and recreation uses in the hills?"

9.3 The Commission's response

Disputes frequently arise over the collection of overland flow when flow in downstream water courses is diminished. The Commission expects such disputes to increase in the future, particularly where the local water use is high (eg for irrigation). However, livestock watering from small, off-stream dams poses little threat to the sustainability of water resources and is unlikely to lead to many disputes. Given the rural community's concerns about the proposal to manage overland flow and the relatively small water resource effect of its use the Commission will not pursue the proposal at this time.

9.4 The way forward

Additional powers to manage the construction and operation of off-stream dams, will now not proceed in this round of water law reform. In time, some local water management groups may seek to define better ways of equitably managing overland flow and large off-stream dams.

Dams on streams should be managed by the Commission or local water management groups and the legislation should be updated to allow licences to be issued and local rules to be made for their configuration and operation where this is warranted.



9.5 Outcomes

The current powers of landowners to take water outside streams will continue and in some instances disputes over water use will arise due to lack of clear rights. These disputes may be drawn out and difficult to resolve. Where this impact increases, local water management groups may choose to develop procedures to move quickly and equitably to resolve disputes.



10. Drainage and flood control levees

10.1 Issues

It was proposed to extend the Commission's powers of management to dewatering aquifers, the flow of drainage water and interference with flood flows of watercourses. Management would be achieved by writing local rules that could control dewatering activity, drainage works, reuse of drainage water and levees that divert flood waters or impede a river in flood.

It was emphasised that the rule should only be made if there was a need for control.

10.2 Comment

Twenty-one comments raised supportive questions or supported stronger controls to promote better management of drainage waters. About ten of these fully supported a wide scope of management especially relating to environmental and drainage issues with the proviso that certain activities of a minor nature such as small dams and minor works be exempt from controls. Examples include "Drainage water control is a great idea"; "As a farmer of 45 years plus in the Capel-Busselton area the major effect on groundwater has occurred since the construction of a large number of drains dug in the 1950-60 years, with no flow control on the drains. We are now experiencing more salinity problems and in some cases lower shallow water tables" and "Drainage and overland flow proposal was supported." Questions posed included why water quality issues were not being addressed in this process.

Some local authorities have concerns about the possible increase in cost if dewatering activities are subjected to controls.

Several respondents required more detail on the proposed changes and their impacts such as "Drainage - to what level would a person require permission for drainage operations? Would this include shallow paddock drains, roadside drains on driveways or drainage of waterlogged areas (eg with a combination of shallow drains and tree planting)?" and "Drainage might be relevant to the rural community; it might be a concern in the wheatbelt, and is a major issue on the coastal plain."

10.3 The Commission's response

There is community support and a need for the Commission to become involved in the management of drains and drainage waters from a water resource perspective. However the requirements will depend entirely on local situations. The Commission sees the current regulatory controls of drainage activities under the *Soil and Land Conservation Act 1946* continuing. Any amendments to the *Rights in Water and Irrigation Act 1914* will be complementary to the current arrangement.

The Commission recognises that management of drainage waters has major water quality implications in some cases. Although the focus of this water law reform initiative is on water quantity management the controls can be designed to address water quality problems. The proposals include provisions to give consideration to issues of water quality and other Government policies in the issuing of water licences. In addition, the Commission is working with the community and other statutory agencies under other initiatives to promote improved land and water management on a catchment by catchment basis. Considerable work is being undertaken on flood plain management and it is possible that specific legislation will be developed in coming years in this area.

10.4 The way forward

It is proposed that the construction of drains and control of drainage water may be made subject to any local rules developed for different areas of the State.

Works to manage flood flows (that is, the flow of watercourses over floodplains) should be subject to controls that guide and coordinate landowner works. This will ensure that the works can be carried out effectively and with a minimum of damage to others.

Local rules should require landowners to comply with any flood management plans produced by the Water & Rivers Commission, local authorities or the Western Australian Planning Commission.



11. Local rules and proclaimed areas

11.1 Issues

Currently there are *proclaimed* areas which are managed more actively than non-proclaimed areas. As most of the significant water resources are now in a proclaimed area the need for a proclamation process is diminishing. Change was proposed, making the same basic set of water resource management rules apply throughout Western Australia, but with the Commission or local water management groups adding to or varying these rules for their particular area. The local rules could allow people to set controls or procedures tailored for a particular area.

The original proposal envisaged that local rules (and policies) would be prepared through open public processes involving close consultation with communities. The rules would provide a clear guide to the use of the Commission's power in particular management areas and would ease the way for devolution of water resource management to local water management groups.

11.2 Comment

11.2.1 Proclaimed areas

The comment themes and degree of support associated with the proposal to change from proclaimed areas to management by local rules are shown in Figure 10 and Figure 11.

Both figures reflect concern about the proposed changes, particularly the idea of dropping existing proclaimed areas.

This issue received less comment and concern than some of the issues discussed earlier in this report. Of the 26 comments received eight expressed the view that proclaimed areas should be retained. A further three emphasised the need to consult with the community about the establishment of any new management area or change in proclamation. Typical reasons for opposition or concern related to the complexity of the change and the confusion this may generate in the community, and that the change may down play the importance of water quality protection areas and the associated powers. Half of the 14 general

comments and questions related to clarification of the current situation and the other half to clarification of the proposal. Only one comment was directly supportive of the change.

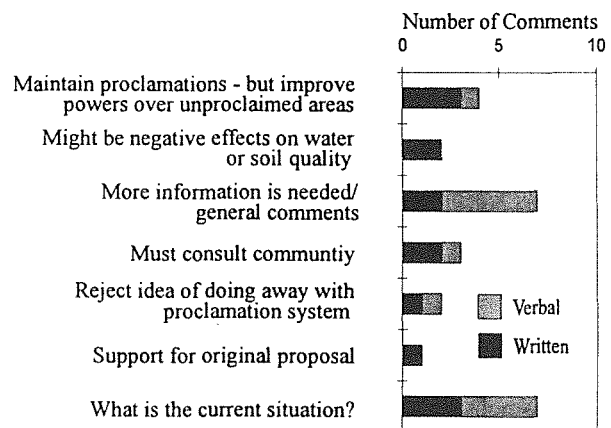


Fig. 10 Comment themes - move from proclaimed areas

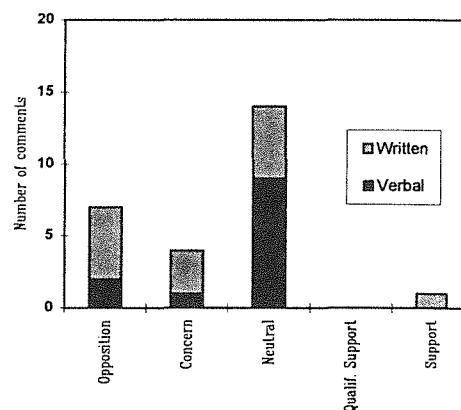


Fig. 11 Response to move from proclaimed areas



11.2.2 Powers to make local rules

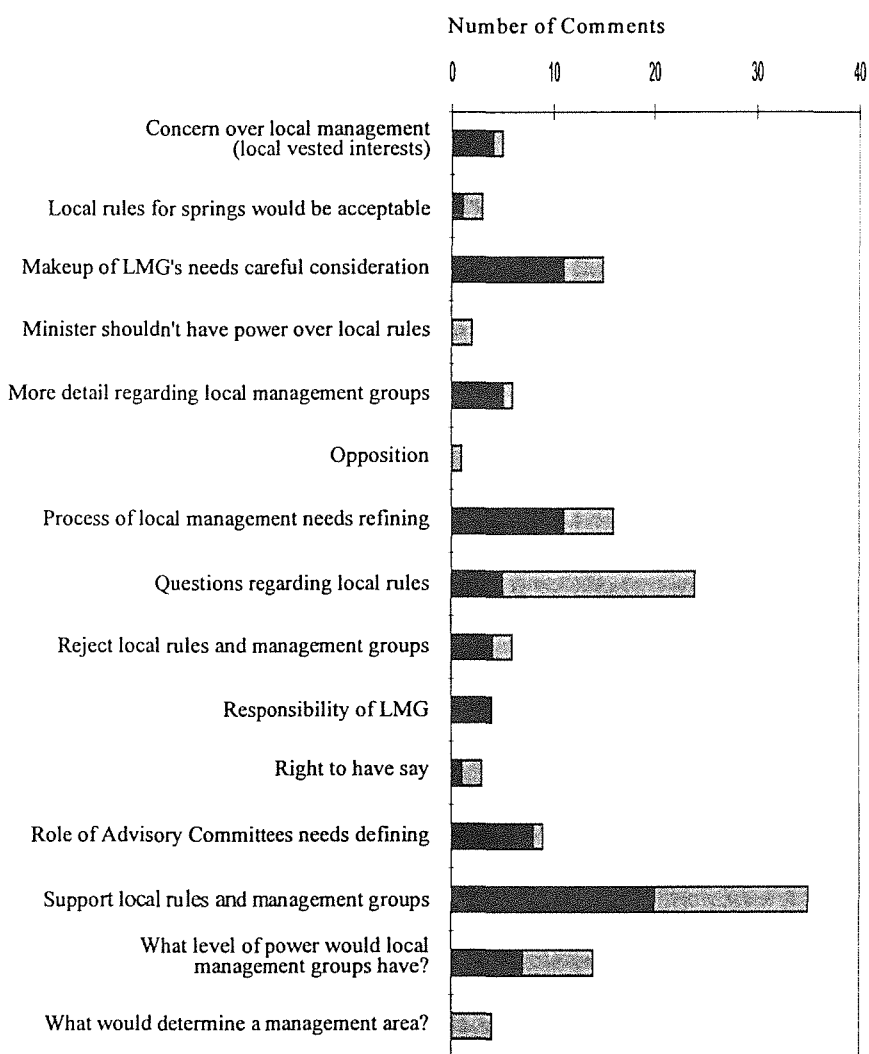
In contrast Figures 12 and 13 show strong support for the proposal to make local rules.

Of the 147 comments received 85 provided either qualified support or support, while only five reflected concern and nine were opposed. Typical comments of support were “Support of local rules because they suit everyone's purpose. It increases security because we haven't been operating with licences until now” and “The need for local rules is important as our area has unique qualities differing from other parts of the State,” highlight the general feeling among respondents.

Those in opposition were most apprehensive about “vested interests” on local water management groups and their capacity to take a broad regional or state wide view on many water resource issues. Of the eight written submissions with concerns and opposition to the proposal, six came from the metropolitan and near metropolitan regions.

The remaining submissions of a neutral nature typically requested more information and details on:

- how the local water management group would be constituted;
- how the local water management group would be managed;
- how the local water management group would determine rules;
- who would determine where or if a local water management group is required; and
- how the local water management group would interact with the local community.



Concern was raised about powers and liabilities of local water management groups and their legal standing. For example “the right to enter private property” and “power to enforce local rules upon individuals” were two questions.

Fig. 12 Comment themes - powers to make local rules

General support was recorded in all the regions with the exception of the metropolitan region where support and concern were approximately balanced.



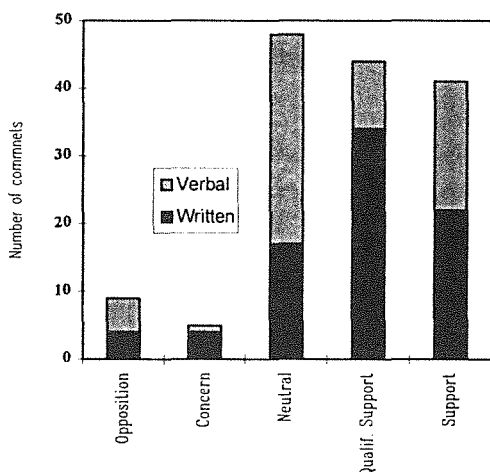


Fig. 13 Response to powers to make local rules

11.3 The Commission’s response

The Commission is committed to promoting local management as a vehicle for the development of local strategies and rules. The Commission considers it necessary to implement good resource management that meets the needs of local communities and protects water resources.

However, the immediate removal of the proclaimed area system would disrupt the current management systems and severely tax the capacity of the Commission and communities to develop replacement rules. Accordingly, the proclaimed area system should be continued as an interim measure, allowing the progressive removal of proclaimed areas as the local rules are written.

The phasing out of “proclaimed areas” is only proposed in relation to the water allocation areas created under *Rights in Water and Irrigation Act*. Irrigation Districts created under the Act and water quality protection areas created under other legislation will not be affected by this proposal.

Questions and concerns about the nature and extent of powers able to be delegated to local water management groups were raised by groups both supporting and opposing the concept of increased local management. The Commission acknowledges that much more information needs to be developed on how local water management groups would be empowered, constituted and operate. These issues need to be developed during the second phase of consultation.

At this stage the Commission considers that flexibility is required in setting up local water management groups. They may evolve from existing groups such as advisory committees, Land Conservation District Committees (LCDCs), catchment groups or local government. The Commission should be able to negotiate with the community to establish a practical process to merge and develop existing advisory committee structures with other local groups to enhance local management of water resources. The legislation should provide for the delegation of relevant Commission powers and responsibilities to such groups.

The Commission’s current view is that rules should be able to cover the following issues:

- taking water during times of shortage, including riparian use;
- taking of water from surface and underground sources for domestic, livestock and firefighting;
- flood control and drainage works;
- all matters subject to licensing, including conditions that relate to water quality;
- protection of foreshores;
- dam construction on streams; and
- conditions and purposes of water use.

Many related issues such as the role of local water management groups in the preparation of allocation plans at sub-regional and regional levels require consideration during the second phase of consultation.

11.4 The way forward

The Commission will prepare guidelines for the legislative amendments to enable local rules to be made in relation to the above issues. It will also further develop approaches on how local water management groups would be constituted and operate, and the range of powers that may be delegated to them. All three aspects will be key elements of the Phase 2 consultation program.

11.5 Outcomes

With the gradual introduction of local rules, water users and the community will have a means to review and change water resource management and use to suit local conditions.



12. Licensing

12.1 Issues

A licence holder has a grant of permission (a legal right) to take water or carry out an activity that affects a water resource in a way which is otherwise prohibited. The licence sets down the length (usually 5 - 10 years) of the right.

From the Commission's perspective, the issuing of licences is the primary means by which it manages the use of the State's water resources. A refusal to issue licences may be necessary to protect a resource from damage or excessive development. The writing of plans and policy by the Commission ensures that the resource is used effectively, competing interests are balanced and the rights of all licence holders are met.

The licensed right carries with it certain responsibilities. These are usually written as conditions on the licence. The current legislation gives no guidance on the conditions that may apply. With the proposed move to trading in water use licences, a clearer understanding of who can hold a licence and how the licensed right may be defined, is required.

The first discussion paper (Water & Rivers Commission, 1997) included proposals as to who can hold water use licences and listed the type of conditions that may be applied to a licence. These aspects are summarised below.

It was proposed that any person may hold a licence to use water provided that person:

- has legal access to the water source (the person need not own the land on which the water source exists);
- has the intention and means to use or supply the water for a worthwhile purpose; and
- is able to demonstrate that taking and using the water will be sustainable, efficient and environmentally acceptable.

The nature of the right to use water is defined by the conditions of the licence and the legislation, rules and regulations to which the licence is subject. The proposed conditions most directly related to the

definition of the quantity of water able to be licensed for use are:

- the maximum amount of water that can be taken;
- the maintenance of flows or levels in the water resource;
- sharing of water during drought or water shortages;
- strategies to be followed in the operation of water supply or water use systems; and
- how the water may be used.

Licence conditions will be set according to the needs of the licence holder in relation to the needs of other users and the objectives of the Act. Common conditions are likely to relate to:

- the protection of a watercourse, wetland, or aquifer;
- the efficient use of water and water resources; and
- monitoring, sampling, analysis and reporting on the impacts of use.

The full list of proposed licence conditions is given on pages 10 and 11 of the first discussion paper (Water & Rivers Commission, 1997).

12.2 Comment

Comments about licensing in general, and relating to who can hold a licence, what activities should be licensed, how a licence should be defined and the conditions that could be attached to a licence were recorded under three broad issues discussed below.

Many statements, comments and requests for more information were received at the public meetings and through written submissions over the relationship between water rights as defined by licences issued under the *Rights in Water and Irrigation Act* and the rights associated with freehold ownership of land. These comments were recorded under a number of issues considered most appropriate to the way the comment was initially raised. Considerable overlap and interaction exists in the comments recorded under each issue. The relations between the rights is discussed in relation to "Who can hold a licence" in the



sub-sections below, and is discussed in the context of “Transferability of Licences” in Section 13.

12.2.1 Who can hold a water use licence?

Although only six comments were directly recorded against the above issue, there was an overall strong theme that licence holders should be restricted to those who own land with access to a water resource. This was reflected most strongly in concerns about the separation of land and water “titles” noted in Figure 12 (see Sub section 12.2.2 below) and discussed in Section 14.

Typical comments indicated that the licence should be “tied to the land,” and that no “outsiders” should have access to private property and therefore access to water, unless by consent of the land owner.

One peak body opposed the requirement that a water use licensee should have to demonstrate a “worthwhile” purpose for the water. The submission argued that the Crown would be a poor judge of whether a purpose was “worthwhile” and considered that markets are far more effective in making such judgements.

One submission sought specific clarification as to whether a person could run a water leasing business, by holding water use licences, but not land on which to use it.

12.2.2 Licensed rights - definition of rights

The five comments relating to the scope of licensed activity centred on arguing that water use for normal (non-irrigation) farm use should be exempt from licensing.

Four comments sought a clearer and specific definition of licensed rights. One submission sought a “clear specification of the reliability of the available water to be defined on the licence” and suggested the approach used in other States where a secure component of the allocation is defined and is available in virtual perpetuity while a less reliable component is only available in years of above average rainfall.

Other comments are discussed under similar themes in other sections of this report.

Figure 14 lists the themes and number of comments recorded against each theme in relation to licensed

rights and their definition. The number of comments under the themes of “Land owners right to control entry of potential licence holder” and the comments relating to “Separation of land and water rights - concern/opposed” highlight the interest and concern on this issue.

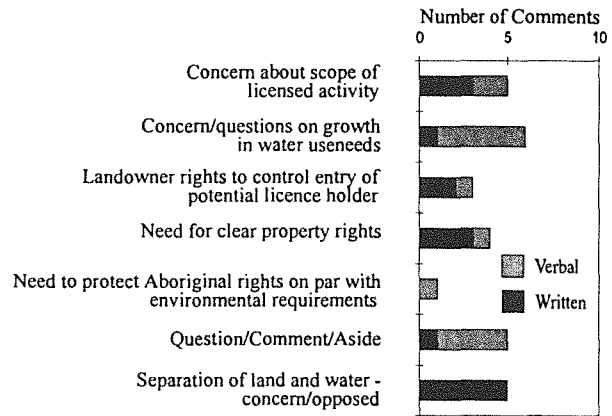


Fig. 14 Comment themes - licensed rights

12.2.3 Application and licence conditions

Figure 15 lists the themes in the comments received relating to the licence application process and the range of conditions that may be applied to licences.

Questions about the process of application and issuing of licences and concerns about the list of conditions that may be imposed were the most numerous written comments received.

The overall degree of support for the original proposals is shown in Figure 16.

The major area of opposition or concern was that eight respondents considered the conditions were too encompassing and potentially too prescriptive, or should not include provisions for charging licence fees. Comments received included statements that conditions on licences should be minimal and restricted to those necessary to ensure compliance with legal and administrative requirements; and that constraints to trading should be removed and restricted to conditions relating to implementing environmental requirements only.

Others supported the list of potential conditions although a number specifically objected to the inclusion of fees and charges as a condition. Typical comments include remarks such as “conditions to be imposed are acceptable”; “however the provision for payment of fees and charges.....do not agree” and “payment of fees and charges not supported.” Many



people required more information before they could support the proposal.

Respondents highlighted two additional items that could be added to the list of conditions that may be attached to licences. These dealt with navigational and recreational requirements of water bodies and

after getting a licence when there is plenty of water?" and "how would a licence be structured by way of quantity?" were asked and answered at public meetings.

12.3 The Commission's response

The Commission acknowledges the community concerns for some of the proposed licensing arrangements. These concerns are understandable although they must be balanced with the need of the water resource manager to have the capacity to operate in the overall community interest.

There is a need to more clearly explain the Commission's licensing powers and to fine tune the proposal to respond to some of the concerns raised. It should be remembered that the existing Act provides virtually no guidance as to what conditions may or may not be defined. Many of the proposed conditions listed in the original proposal are already being applied in many areas of the State, and are operating successfully.

Many of the questions that water users have over the practicalities of licensing

can be answered by "General Principles and Policy for Groundwater Licensing in Western Australia" (Water Authority, 1990) and Water Facts Sheet 5 (Water & Rivers Commission, 1998e) which will soon be available. These documents can be obtained through Water & Rivers Commission offices. Management plans written for individually proclaimed areas provide further details on the available water and local licensing policy. A discussion paper in the Water Reform Series (Water & Rivers Commission, 1998a) is also in preparation and will provide further background on the future licensing proposals.

Despite the above concerns, the current level of support for the licensing proposals is encouraging and, with some fine tuning during the Phase 2 consultation, the Commission sees that the general approach to reform of the licensing process should proceed.

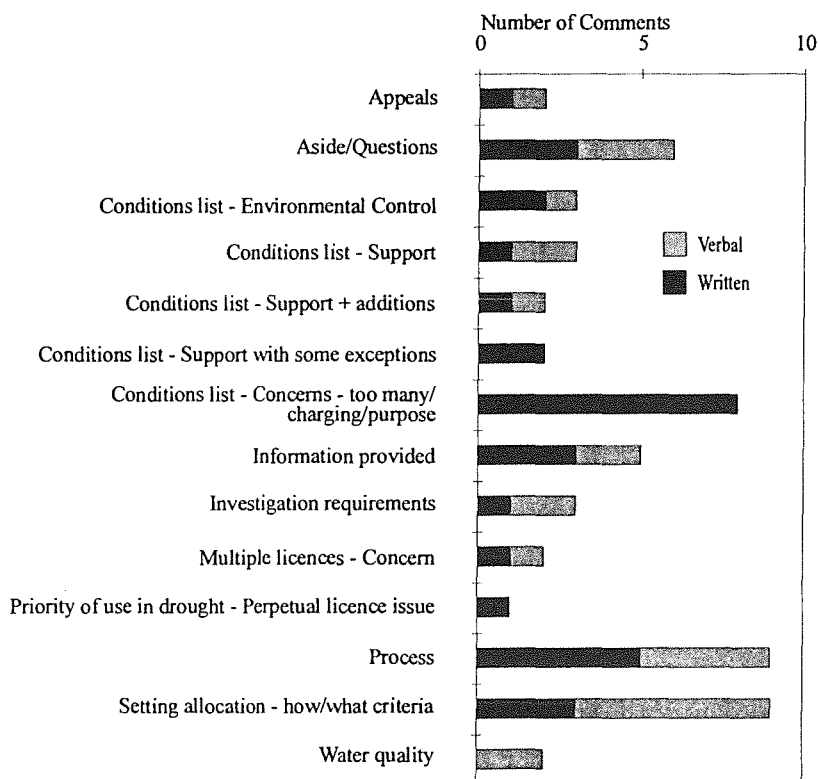


Fig. 15 Comment themes - licensing applications and conditions on licences

watercourses and conditions that may be required to address town planning scheme constraints.

Many sought clarification of 'grey areas.' These included issues such as conditions that were beyond the power of the lessee to "control" and the questioned who could hold a licence as discussed above. Questions were also asked whether licences would be issued to individual irrigators within irrigation distribution systems such as the Ord River Irrigation Area. Individual irrigators in these areas used significant amounts of water but were supplied by one distributor with a single water use licence.

Finally, practical information on setting allocations was highlighted as a need. Questions such as "how do you work out how much a property uses?"; "when you assess an irrigation area, do you make an allowance for people with tanks?"; "what if I want to increase use



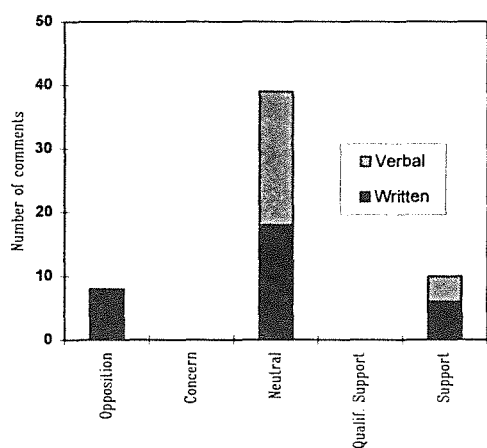


Fig. 16 Response to licence application process and conditions

The Commission maintains its view that any person may hold a licence to use water provided that person:

- has legal access to the water source;
- has the intention and means to use or supply the water for a worthwhile purpose; and
- is able to demonstrate that taking and using the water will be sustainable, efficient and environmentally acceptable.

The Commission maintains its view that holders of water use licences should have the intention and means to use or supply the water for a worthwhile purpose. There was widespread concern over speculation in water trading (see Section 13) and only one submission argued that an unfettered market open to all should be promoted. The Commission never sought, and does not believe it should have the power to grant legal access by one person to another person's property for the purpose of getting access to water. A licence issued by the Commission does not carry any right to enter another person's land. Access to water diversion sites can only be gained with the consent of the landowner or under some other legal power. For example, water users at Carnarvon hold licences to take groundwater from the Crown-owned Gascoyne River bed and many people pump from rivers adjacent to but not part of their property. These people can do this because the land or the owner allows the entry. Miners may obtain access to land on which water is found by seeking a Miscellaneous Licence issued under the *Mining Act*. The licence is granted by the Mining Warden who obtains the views of the land owner before making a decision.

Licences are also to be required for defined activities, as proposed in Sections 7 and 11, that can affect the natural flow of a water resource. Such licences will typically be held by the owner or responsible operator of a structure (dam, drain, well etc) causing the effect on the water resource and may not involve the use of water. There is a growing need to clearly separate the licensing and operation of such structures from the licensing of the use of water from water resources. Already there is a need to licence the operation of the large dams owned by the Water Corporation, a water service provider, separately from licensing the water use by South West Irrigation, (a cooperative of irrigation farmers), responsible for distributing the water to its members. In the Manjimup area some farmers are seeking to transfer water stored in their dams that is surplus to their needs in a particular summer to downstream neighbours. In such cases the operation of the storage is separate from the final diversion and use of the water. Provision to control both the operation of the upstream reservoirs and the actual water use will be required through distinct types of licences.

A two tier system of water use entitlements is being promoted by the Commission and used in cases where irrigation farmers receive water from a distribution cooperative that holds the water use licence. The individual customer obtains a water entitlement through customer contracts with the cooperative or as shares in the overall water use licence held by the cooperative.

The Commission believes that licensing information should be available publicly as it bestows a private right to use a community resource and both the user and the Commission should be accountable to the community for their actions.

12.4 The way forward

The Commission intends to prepare guidelines for legislative change that will update the licensing provisions. The guidelines will incorporate policies and guidelines developed by the Commission's advisory committees as well as the principles described in this document. The changes will be based on the concept of licensing the use of water from particular water resources for specified purposes and issuing licences that permit the carrying out of defined activities, such as the operation of dams on water



courses and the maintenance of flood control levees that affect the natural flow of water resources. The guidelines will also provide a list of conditions that can be made in relation to these licences that will be based on the original proposal with the specific addition of navigation and town planning schemes.

The guidelines will be subject to further review by peak bodies and community groups as part of the Phase 2 consultations.

12.5 Outcomes

The resulting system of licensing and the conditions which can be applied to licences should be clear to all those with an interest in using or protecting water resources.



13. Appeals against licences

13.1 Issues

It was proposed to retain the current appeal system with slight modifications to suit the proposed arrangements. An applicant may appeal to the Minister against any decision of the Commission to refuse, issue or modify a licence. Any person affected by a direction may appeal against the direction. In the future appeals will be decided in accordance with the objectives intended to be added to the Act.

13.2 Comment

Of the 12 comments received on appeals against licences half expressed a need for change. It was felt that as water resources become more valuable, incorrect decisions and corruption of the decision making process may occur. An independent appeal process was therefore suggested to provide all parties with a fair hearing. A number of submissions thought that the process needed to be isolated from the Minister. One argued that decisions would often be politically difficult and have elements of conflict where the Minister would have to rule between agencies reporting to him. Further opposition to appeals to the Minister were made on the grounds that these tended not to be open and that they “substituted the rule of man for the rule of law.”

A suggestion was made that disputes between members of the public which are resolved by the Commission should be dealt with by the local advisory committee or by the Commission taking account of the advice of the committee. Third party appeals were also identified as a need to be incorporated into the process. Comments such as “why is there no third party appeal in the process?” and “the Act does not seem to be moving towards third party appeals, why not?” indicate this need.

It was suggested that the right of appeal should be extended the decisions of the Commission concerning major issues of allocation of water for consumption uses; allocation of water; licence application refusals; licence conditions, revocation of licences, and the implementation of other forms of penalties.

Three comments supported the proposal to retain the existing appeal process.

13.3 The Commission’s response

The submissions highlight the need for the current water licensing appeal system to be subject to major review. The Commission supports the need for such a review but believes that it should be carried out as part of a wider review of other natural resource management and planning appeal systems in Western Australia. Any wider review will be a major undertaking and should be left to a later time and dealt with as a separate project.

13.4 The way forward

While there is a case to reform the appeal process no fundamental changes need be made at this time. Any new discretionary powers granted to the Commission should be subject to the current appeal process.



14. Trading of water use licences

14.1 Issues

A specific requirement of the Water Reform Framework Agreement of COAG is that each state has a mechanism in place to allow trading of water entitlements by the end of 1998. This would allow irrigation and industrial entitlements to be bought, leased or sold without having to purchase the land to which the entitlement applies.

This proposal is also very significant in that it will give water users an additional option to make a living from their water licence. They would be able to lease or sell entitlement when not needed. This system of trading has operated successfully in other parts of Australia for many years.

Obviously a number of controls would need to be in place before trading could occur, particularly:

- buyers and sellers must have lawful access to the water;
- riparian rights, stock and domestic and environmental water allocations could not be sold;
- all transfers would be assessed by the Commission for acceptability;
- price would be agreed only between the buyer and seller; and
- transfers would be limited by the physical constraints of how far water can move eg within the confines of one aquifer.

The original proposal set out the concept of trading in water use licences and outlined how market rules to govern the trade could be established. Means of defining market rules in water allocation plans will be explained in the third discussion paper in the water reform series (Water & Rivers Commission, 1998a). The panel opposite shows the benefits that can result.

14.2 Comment

A total of 264 comments were recorded in relation to the issue of "Transferability of licences" and a further 15 recorded in relation to the issue of "Conditions before transfers can occur." The themes identified are shown in Figure 17.

Comments from the key themes are discussed below.

Potential for trade

Tradeable water licences will give people new opportunities in areas where water is fully used.

A person changing from market garden to grapes will no longer need the whole entitlement. Part of the entitlement can be sold and the money used to help finance the vines.

A farmer changing from potato growing to blue gums can sell or lease the water and potato licences to another farmer who wants to take up irrigation.

A nursery owner, wanting to expand, can buy water rights from neighbours who want to sell. The nursery would not have to shift to a remote area, away from its customers.

A retired couple whose farm is their superannuation can sell or lease their irrigation water rights and stay on the farm. They won't have to move to town to fund their retirement.

An irrigation distribution co-operative that has saved water through lining its channels can sell its surplus water entitlement to industry or another water service provider.

14.2.1 Support

Twenty-one comments directly supported the transferability of water use licences. Examples included: "transferable water entitlements will probably be the way to go; don't see any great dangers, sounds fair and logical"; "the committee supported transferable water entitlements and encouraged prompt implementation"; "biggest single benefit out of proposal is transferable rights. At least you don't actually lose your water if you can't use it because of sickness or whatever. Make a profit rather than not getting anything"; "can become more efficient and sell the surplus"; and "trade in water is intended to lead to the optimal use of water by industry." A further 15 comments supported transfers with conditions or qualifications or provided qualified support. For example, one respondent supported the idea of tradeable water entitlements but had concerns with assessments of licence applications and the



compensation process. Five of the 15 supported regional and local input into setting the market rules.

supports the concept of owners of water allocations being able to freely trade and transfer a part or whole of their entitlement to another party, on terms and

conditions which were mutually satisfactory, but within clear minimal constraints.”

Finally, support was given for transfers after full consultation and under strict conditions. It was suggested that conditions need to take into account the social, economic and environmental impacts that may result from these policies. Further, transfers within catchments and aquifers should be subject to physical and environmental constraints.

14.2.2 Market operation

Three sub-themes were identified under the general theme of market operation or the mechanism that would be used to manage any trade. Of the 54 comments recorded, 70 per cent were questions about the transfer process, 20 per cent were statements or neutral comments and 10 per cent were concerns that the transfer process was a means by which government could apply more charges. Questions and comments related to how transfers would be administered and assessed, the sale of transfers, transition

periods, registration and compensation, to highlight a few. Many of the comments received required more information on the mechanisms such as “how will transferable water entitlements be bought and sold (actual mechanism)?”; “how would the process of unused water transfers work?”; “how long would a transfer last?”; “who would coordinate the sale of transferable water entitlements?” and “how do you manage the transition from one user to another?”

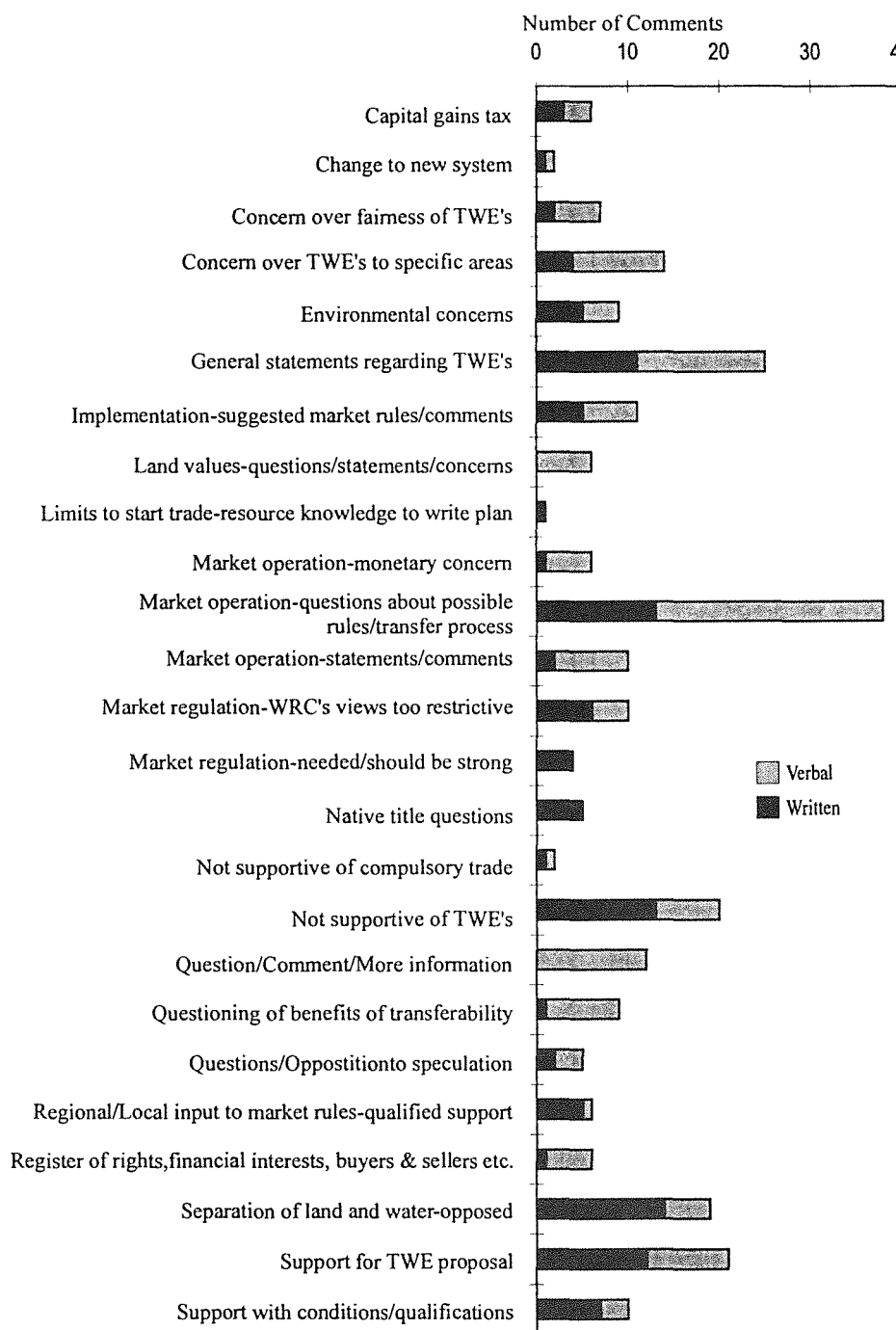


Fig. 17 Comment themes - Transferability of licences

Comments that suggested this included: “transfers can be mediated by the local water management group”. Others supported transferable water entitlements but highlighted the need to impose limitations to avoid over-commitment or under-utilisation of water resources. One of the comments received: “...strongly



Under related themes a further 25 general statements and 11 comments on the implementation of TWEs were also recorded. Additional comments were also made on the commencement of trade and the need for a register of rights and financial interests to assist buyers and sellers operating in the market.

There was concern and suggestions over who would be responsible for transfers. Examples include: “when there is intense competition who makes the decision?” and “of prime concern was possible effects of transferable water entitlements on quality of land and water supplies, particularly if transferable water entitlements are allowed to operate unchecked.”

As noted above some, submissions argued that local water management groups be given the power to set rules regarding transferable water entitlements. However one person felt that transfers of water allocations should not be left to local bargaining allowing people to choose to not use or sell their allocation. It was stated that the Commission should not try to abrogate its responsibility.

14.2.3 Market regulation

As shown in Figure 17 there are comments that consider the Commission’s proposals to regulate trade through market rules to be too restrictive and others that emphasise that market rules should be strong.

Comments suggesting that the type of regulation proposed is excessive include the following “If you want a market, then you have to trust it...”; “appears to be a very managed market”; and “the WRC should...redirect its policy approach...to foster effective and efficient operation of water markets, rather than relying heavily on regulating / controlling water licences.” In contrast comments such as: “Market rules supported” and “concern was raised over the possibility of speculation. How much emphasis would be placed on market forces?” reflected support for clear rules in which markets should operate.

14.2.4 Separation of land and water

Nineteen comments opposed to the separation of land and water titles were recorded against the issue of “Transferability of licences” and complement the concerns raised under the licensing section (Section 12). Examples included: “...we totally oppose separation of land and water title”; “water right should be attached to a title” and “land and water titles should

not be separated but be part of the land title as I believe it is now”. Other respondents were concerned at the separation suggesting that land titles must show if water entitlement has been sold or leased; whether a person receives two titles when land with water is bought; if the allocation is reviewed; and whether it is necessary to have separate titles for water and land in order to establish a transferable water entitlement system. More information was sought about the separation creating a new asset subject to capital gains tax. Questions also arose over land sales and whether a licence would automatically transfer to the new land holder.

14.2.5 Land value

Some respondents identified land value as a concern and some said land values would decrease as a result of selling water and therefore raised the question of compensation. Comments highlighting this theme included: “Value of land decreases if you sell your water”; “value of land declines if allocation sold”; “could these changes affect property values and would there be any compensation?” and “what happens to the land value if I die half way through a lease that I’ve leased out to someone?”

Other general themes in opposition to transferability of licences included those with environmental concerns (9), opposed to speculation (5), questioned the benefits of trading (9), opposed to compulsory trade (2) and generally opposed to trading (20).

The statements of general opposition ranged from not seeing a need for licences at all; arguing a need for people to be able to store water for aesthetic and emergency reasons and not being required to use it; and stating that transferable water entitlements have no practical application in their area. Some believed that water should not be a tradeable commodity and felt that trading arrangements would add to the current problems rather than solve them.

14.2.6 More information on transferable water entitlements

Other general questions or statements were also recorded, mainly from the public meetings, seeking general information about transferable water entitlements. They included comments such as: “People see transferable water entitlements as taking away their rights”; “what if you have sold your water,



someone who buys your land doesn't have any" to questions such as "are transferable water entitlements just for irrigation areas?"; "does transfer of rights contribute to urbanisation?"; "can a person with a licence use water on another property" and "can you allow transfers as a once off or does it have to be applied throughout a region?".

Questions related to selling of entitlements were also recorded. Typical examples were: "what if someone applies for a licence and doesn't use the water? They may just want to sell it"; "is our water going to be sold to outsiders?"; "wouldn't a lease system be better than selling?" and "if you get older and take it easier and want to sell some water it might affect your pension." More information was identified as being needed about the sale of water from bores.

14.2.7 Degree of support for transferability of licences

Figure 18 summarises the overall support for transferability of licences to use water.

While there is more concern and opposition to the introduction of trade in verbal comments, there is much less difference in the written submissions. There were also regional differences in the written responses. Similar rates of support and opposition were recorded in the metropolitan, rural peak bodies and the near metropolitan areas. Opposition was strongest from the Gascoyne, Great Southern and South-West regions.

14.2.8 Conditions before transfers can occur

A further 15 comments were recorded separately relating to the conditions that would be required before transfers could occur. Key themes identified related to the criteria to start a market (3), the need to have a mechanism to recognise existing financial interests in the land and water titles (2), and the starting allocations of a market (8).

Typical questions relating to starting allocations were "who would give initial allocations?"; "how would one get an allocation?"; "how would initial access / starting up the market happen?" and "on what basis would allocations be issued?"

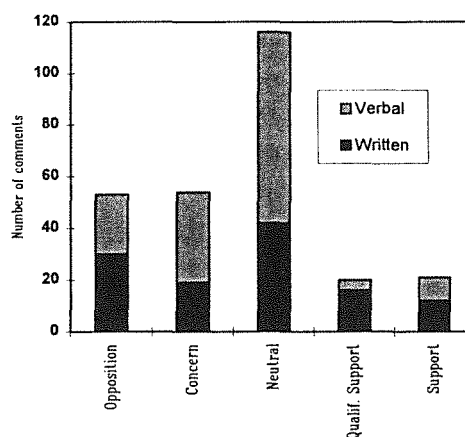


Fig. 18 Response to transferability of licences

14.3 The Commission's response

The comments on the introduction of transferable water use licences were both numerous and extensive. They reflect a wide range of interest in the underlying concepts of a market system.

Many of the concerns were expressed by people attending their first information session on the proposed water reforms at the start of the consultation program. The concept of TWEs was new to many and not surprisingly more information was sought about the details.

A system of trading in water use licences is only of value when there is competition for water that cannot be satisfied. This occurs when water from the nearest water resource has been fully allocated and the cost of transporting water from the next available resource is very expensive. In the Western Australian situation there are only a few places where people are actively seeking water use licences and are unable to obtain them. It is in these areas where the introduction of transferable licences (or TWEs) can help.

The Commission considers that those people who do not have an entitlement to use water should not be denied the opportunity to obtain a supply. Tradeable water entitlements are the fairest mechanism by which the water use rights can be redistributed among those wishing to use water in the future. All interests are protected as no person will be forced to sell or lease and would only do so if the benefits outweighed the costs.

Nevertheless the Commission acknowledges the concerns of many respondents and will only promote



trading in areas where there is a clear need and controls are in place to protect third parties.

Market rules will be developed by local water management groups in consultation with the Commission and the community. The rules fall into two categories:

- those required to protect other private interests, eg mortgages on the land, access to the land where the water is found, prevention of speculation; and
- those required because of water resource constraints or local resource management objectives, eg monitoring, environmental impacts, concentration of water demand, impact on stream-flows, saline intrusion into groundwater systems, limits to distance of transfer etc.

Local rules for trading could include provisions relating to limitations to transfer of unused allocation; and to the tradability of the licence (eg whether the allocation is or is not tradeable).

Trading is only one option and laws should be developed in a way that gives the Commission and local communities the means to develop alternative re-allocation systems if trading is not appropriate.

Some of the questions and concerns raised about trading in water use licences were addressed at the public meetings, although clearly many issues remain. It is not appropriate to try and answer all the outstanding issues here. However, before trading is introduced there is a need for further investigation and explanation of the following issues that are of concern to the community:

- separating water use rights from land and impact on land value;
- explaining the practical applications of trading;
- implications for capital gains tax;
- conditions required to implement markets;
- protection of third parties and the environment; and
- establishment of local rules by a process that is satisfactory to all parties.

As these issues are addressed, the Commission is confident that support for trading will grow, and that

this key commitment of the COAG Water Reform Framework Agreement can be met.

Indeed, the detailed discussions Commission staff have had with some parties since formal submissions closed have, in many instances, reduced the level of concern over the introduction of trading.

14.4 The way forward

The Commission will undertake the following projects to define the required changes to legislation and will consult over those changes.

- The Commission will develop an administrative system for trading licences that will provide protection for third parties, enable changes to licences to be made, include legal requirements and set up the forms and procedures necessary for efficient trading.
- The Commission will work with the Wanneroo Groundwater Advisory Committee and the community to develop a set of local rules for the Wanneroo Groundwater Area that can be used as a model for other areas.
- The Commission will, where possible, investigate and report on taxation implications of trading and other issues raised as concerns in the submissions.
- The Commission will consider, with the relevant community groups, the areas where use of water is reaching sustainable limits and where trading may have a role in the foreseeable future.

14.5 Outcomes

Western Australian water users will have a fair way of getting access to water in areas where the resource is already fully used enabling them to profitably respond to changes in technology and markets and to more confidently plan for the development of their enterprises.

Clear and well publicised rules of trading that protect third parties and the environment will enhance water resource management giving an overall community benefit.



15. Licence tenure

15.1 Issues

Currently licences are issued for a fixed period, usually five to 10 years. Although normal practice is to renew licences when they expire there is no guarantee that a new licence will be issued or that it will be issued under the original conditions. This enables the Commission to periodically update the licence conditions to meet current water use practices and environmental water requirements.

The Commission plans to extend the life of licences to:

- provide greater security for investment in major projects that require a long term reliable water supply; and
- reflect a clear and strong property right in water to facilitate its trade in new water markets.

Two approaches were originally proposed in the first discussion paper (Water & Rivers Commission, 1997) to respond to these pressures. These were:

- To move to perpetual licensed rights provided that:
 - the water resource manager had a clear power to change licence conditions when necessary; and
 - there was a probationary period before the confirmation of a perpetual licence.
- To maintain the current fixed term licences but allow licences to be extended at any time before expiry, updating the conditions at the time of renewal.

15.2 Comment

The submissions on this issue were separated into those directly relating to perpetual licences (29 in total) and the remaining 39 which were centred mainly on the issue of longer duration licences. Figures 19 and 20 show the comment themes identified in both groups while Figures 21 and 22 show the respective degree of support for each approach.

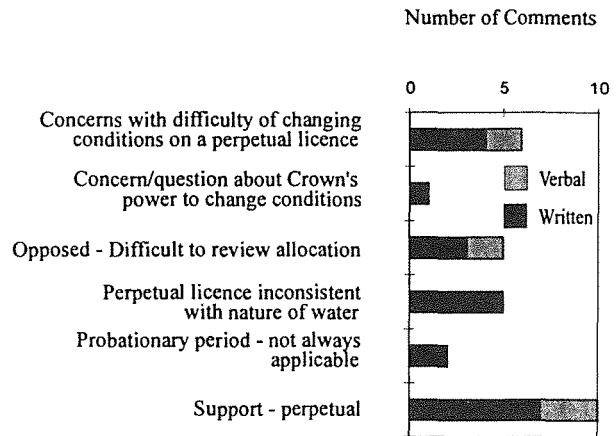


Fig. 19 Comment themes - perpetual licences

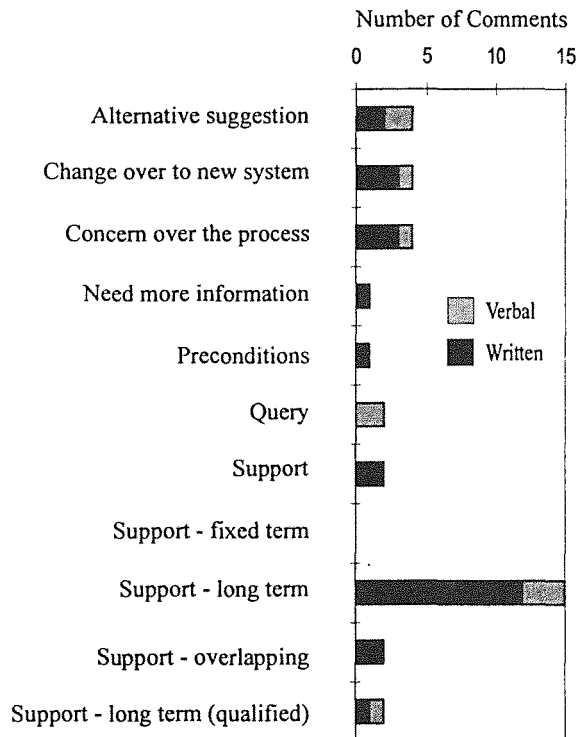


Fig. 20 Comment themes - longer term licences

Many submissions expressed concern or outright opposition to making licences perpetual or longer on the grounds that this would bestow an unwarranted windfall gain on the current licence holder and would make it more difficult to respond to changing conditions and environmental needs.

However there was strong support for extending the licence period and some support for issuing licences indefinitely. Two submissions specifically supported the adoption of a process whereby the licences were



issued for 15 to 20 years but can be renewed before expiry. The need for guaranteed access to water for profitable investment was a common reason for seeking longer licence periods.

Comments that expressed qualified support for longer licences indicated concerns relating to the need to review and change conditions; the need to update reporting requirements; and the need for initial auctioning of licences to avoid the windfall gain problem. One submission suggested that perpetual licences be restricted to water service providers and another that the Commission issue permanent licences and then actively trade in licences to manage overall water use.

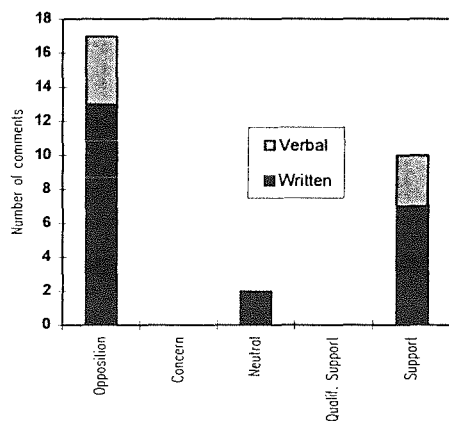


Fig. 21 Response to perpetual licences

Opposition to perpetual licences was strongly metropolitan and near metropolitan based.

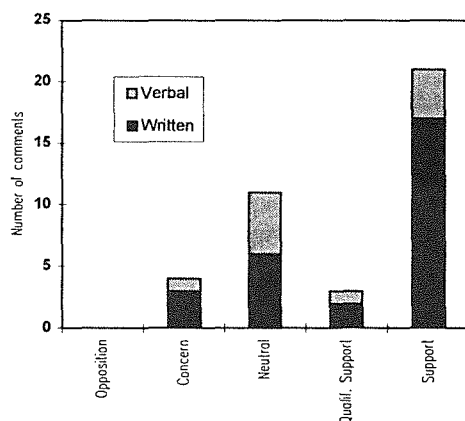


Fig. 22 Response to longer duration licences

The expressions of concern with longer duration licences were only recorded from the South-West (1) and from the metropolitan region.

15.3 The Commission's response

Sections of the community are strongly opposed to any change in licences during their currency (see Section 18), especially without compensation. However many are also seeking longer duration licences (see Figure 22). Others are concerned that the Commission may forgo important powers to respond to changing circumstances if it is too generous in the issuing of long duration or perpetual licences.

Given the diversity of views and legal concerns over the strengthening of powers to change licence conditions during a licence period, the Commission considers that it is premature to lengthen licence tenure without a ready acceptance by licence holders that they must adapt to changing requirements.

15.4 The way forward

Accordingly, the current practice of issuing licences for specified periods will continue. 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 risk is high, 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 through the second phase of consultation and recognises that a balance needs to be struck between the needs of water and environmental managers on the one hand, and water users on the other.

15.5 Outcomes

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. In other areas licence security will not change and trading and investment must continue to be made on the assumption that the current practice of the Commission to support existing use at the time of licence renewal will continue.



16. Planning and allocation of water use

16.1 Issues

The Commission currently carries out water allocation planning studies to establish its approach to licensing water use in particular regions of the State. These plans have no statutory backing and only guide the Commission in its approach to issuing licences. The COAG Water Reform Framework Agreement requires all States to make specific provision for the water needs of the environment in their water allocation processes. Past practice in Western Australia has been to determine water management regimes that protect environmental values dependent on groundwater systems before determining the available water for consumptive uses. These practices are being extended to surface water systems and need to be formalised to meet the COAG Agreement by December 1998. Water allocation plans are also required to set the local rules about trading in water entitlements¹ and make them widely known so that people are well informed when seeking to purchase water entitlements.

The water allocation process and procedures for making policies and rules were outlined in the first discussion paper. The proposal involved a period of public review of draft policies or rules, analysis of comment and submissions to determine any changes and approval by the Minister. More details are to be provided in the third discussion paper of the Water Reform Series (Water & Rivers Commission, 1998a).

The panel opposite lists a range of recent water allocation plans of the Commission. These currently guide the Commission's approach to issuing water licences. However they are not required to be reviewed publicly and are not approved by the Minister.

The proposal implied a statutory basis for allocation planning and raised issues such as how water allocation

plans would interact with other Government planning processes. Key issues are how allocation plans would interact with statutory planning of the Ministry for Planning and local Government, how and if they would be assessed under the *Environmental Protection Act, 1986* and what responsibilities the Minister for Water Resources and the Minister for the Environment may have in approving such plans.

Examples of Water Allocation Plans

Regional Scale

The Perth- Bunbury Draft Regional Allocation Plan (Western Australian Water Resources Council, 1991)

Sub-regional scale

East Gnamangara Environmental Water Provisions Plan (Water and Rivers Commission, 1997b)

Proposed Harvey Basin Surface Water Allocation Plan (Water and Rivers Commission, 1998)

Management Area scale

Swan Groundwater Area - Groundwater Allocation Plan (Water and Rivers Commission, 1997c)

Busselton-Capel Groundwater Management Plan (Water Authority of WA, 1995)

16.2 Comments

There were 86 responses made specifically on the proposed water allocation and planning framework and a further 59 comments were made on the content of plans, excluding comments made specifically on setting sustainable limits on the divertible water and on making water provisions for the environment. These aspects are discussed separately in Section 16.

Most responses on planning issues were received from the Commission's advisory committees, grower organisations, farmer representative bodies, resource development interests and water service providers.

¹ Water use licences are the usual way in which water entitlements are defined. Trading of water entitlements would result in new or changed water use licences but no increase in the total water licensed unless the trade results in changes to the water balance, such as by increasing recharge.



Major submissions were received from the Department of Resources Development and the Water Corporation.

Figure 23 shows the number of comments received under the major issues that are discussed in detail in the following sub-sections. Most submissions included comments on the planning system or the content of plans that implicitly support a water allocation planning system. Most, however, were recorded as neutral comments.

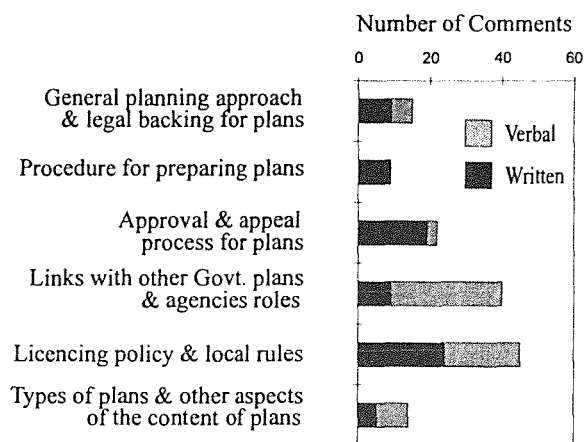


Fig. 23 Key comment areas on the allocation planning process

The full comment themes can be found in the detailed listing of the comments received (Water & Rivers Commission, 1998d).

16.2.1 The general planning approach and legal backing for plans

Fifteen responses were specific to the overall planning system or directly addressed the proposal to provide stronger legal backing for allocation plans.

Six submissions were directly supportive of the general planning framework, with two others providing qualified support and suggesting improvements. Six respondents provided neutral comments, two raised issues about the research and investigation needs to carry out planning studies. A further two respondents considered they needed more information before they could make comment.

Only two responses were received that strongly questioned the planning system and objected to the establishment of a stronger legal backing for allocation plans. In one case concern was related to the perceived additional power that allocation plans would assign to the Commission. The other respondent had no confidence that Government agencies could allocate

water to beneficial users and that an auction or tender system would be preferable.

16.2.2 Procedures for preparing plans

Nine comments were received on the procedures for preparing plans. While one raised concerns about the power of the Commission and another sought more information, the remaining seven comments supported the proposals with varying degrees of qualification and suggested improvements. For example, “regional and sub-regional allocation plans should be developed before determining allocation and licensing decisions which may preclude other options” and “the WRC should review its proposed planning approaches to ensure all major stakeholders in the water industry participate in multi-disciplinary planning teams to develop regional, sub-regional and local water allocation plans.”

One submission emphasised the critical importance of procedures for the preparation of plans and argued for them to be open and transparent. Some considered the proposals too prescriptive and one response argued that “the procedures should be streamlined to avoid possible duplication, particularly with the *Environmental Protection Act* processes and thereby seek to avoid any unnecessary financial burden on the private sector.”

Suggested improvements included the establishment of multi-disciplinary planning teams of water industry and other major stakeholders to develop the regional, sub-regional and local water allocation plans.

16.2.3 Approval and appeals process for plans

Nineteen comments were received about an appeals process for plans and one on the approval process for plans.

Six respondents sought the establishment of an independent tribunal to consider appeals against Commission plans, including the proposal to establish a professional independent appeals tribunal. Concern was expressed about the difficult position the Minister for Water Resources may find himself in when the Water Corporation and the Commission inevitably had different positions on controversial water allocation issues.



Three submissions, from current advisory committees of the Commission, supported the current licensing appeals process to the Minister. Another submission explicitly recommended the inclusion of third parties in appeals on plans and an additional three recommended local community and stakeholder input.

A further six submissions sought better definition or more information on the proposed appeal process.

16.2.4 Links with other Government plans and agencies' roles

Forty comments were made on the linkage of water allocation planning with other aspects of government planning. These were grouped into themes relating to links with local government, State planning agencies such as the Ministry of Planning and the Department of Resources Development and links with natural resource management agencies such as Agriculture WA and CALM, and related agencies such as DEP. The numbers of responses against each theme are shown in Figure 24.

Of the responses related to interactions between land planning and water allocation planning nine argued for stronger input from the Water & Rivers Commission to land planning and development approval processes. Respondents considered that this should occur either at the local government or State planning level and through both allocation planning and licensing controls. In contrast two submissions considered that the allocation planning system may unnecessarily constrain land use change or other industry initiatives.

Two further comments questioned whether local government would be interested in becoming involved in the management of water resources. In one case strong views were expressed that land zoning controls had not been appropriate in the past and hindered rather than helped sound land and water use planning. The need to support integrated land and water planning decisions at the regional scale was implicit in many comments.

One submission was particularly critical that no formal mechanism was proposed to integrate new statutory regional schemes under the *WA Planning Commission Act* and the proposed regional water allocation plans. Another comment, however, noted that aspects of water allocation and protection planning were already being incorporated in statutory regional schemes.

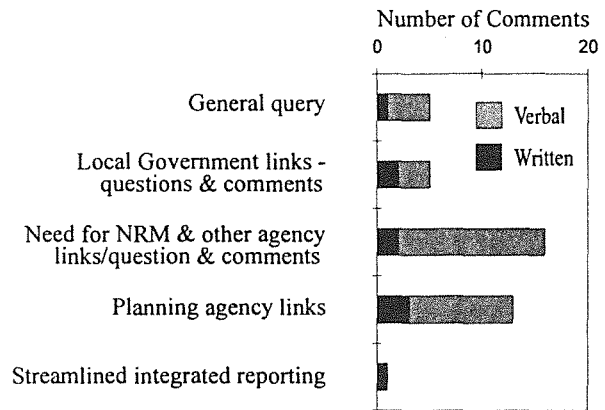


Fig. 24 Comment themes - links with other Government plans and agency roles

The need for adequate resources to examine water demand projections leading to sound water allocation planning was emphasised in one submission. The Commission was encouraged to be pro-active in soliciting water demand projections through the Government agencies responsible for resource development. The need for a streamlined planning, environmental reporting and management process to avoid possible duplication was also promoted. Concern was also expressed about the staffing levels necessary to carry out thorough allocation planning to the detail proposed and emphasised the need for completion of planning processes so as not to delay development opportunities for the State.

Sixteen comments were made on general questions asked about linking water allocation plans with the other natural resource management responsibilities of Government. Three comments were specifically made about the need to link decisions in allocation plans with decisions of the EPA. In two of these comments the existing administrative processes and instruments available under the *Environmental Protection Act* were considered sufficient linking mechanisms. In contrast three other comments argued that coordination was poor and by implication needed to be improved.

One respondent complained that agencies had different criteria (presumably when considering projects for approval) and that one set of criteria across Government should be available. Another respondent saw the potential of water allocation plans as a trigger to promote integrated action with other natural resource management agencies.



16.2.5 Types of plans and other aspects of the content of plans

Fourteen responses were received which directly related to the proposed types of plans and their general content. All implied the need for planning with seven either supporting the types of plans proposed or making suggestions about specific aspects of their content. These were supportive of the contents proposed with the exception of one submission that emphasised the importance of waters of non-potable quality to the industrial sector. Four comments related to the need to have clear links and/or consistency between plans and one emphasised the need to specify which plan would prevail in cases where plans, prepared at different scales and times, were inconsistent.

16.2.6 Licensing policy and local rules

Forty-five respondents referred to licensing policy and local rules as they relate to the content of allocation plans. Twenty-four raised issues or stated their views on the priority of allocations and who should govern licensing policy. Three were concerned with equity in initial allocation, two of whom were concerned that the efficient water user should not be penalised. One raised concerns over “vested interests” influencing allocation decisions at the local scale if local management was promoted without controls.

16.2.7 Summary of responses

Despite some dissenting voices, there was general support for water allocation planning with explicit and implied support to give allocation plans a stronger legal basis. Although the number of responses was limited there was support for dealing with the licensing policy, market rules for trading licences and local rules for managing water resources in allocation plans.

Many respondents requested more detail of the planning and appeal process proposals, while others were critical of the prescriptive nature of the hierarchy of proposed plans. Respondents were keen to see land and water planning more closely integrated. Some sought fully integrated approval processes with Environmental Protection Authority and the Department of Environmental Protection and more effective natural resource management linkages. While mechanisms which promote integrated resource management exist and were preferred to establishing

new mechanisms, others considered that more integration could be promoted and existing mechanisms used more frequently and effectively.

16.3 The Commission’s response

The Commission agrees with the general thrust of the comments made on the proposed planning system. The major comments related to the detailed processes of preparing allocation plans. Many of these may not be specified in the draft Bill but developed in the regulations or in a scope statement for a plan’s preparation. Such aspects, as foreshadowed previously, can be further developed with key stakeholders during the Phase 2 consultations.

The aspect most at issue and likely to affect the drafting of the Bill is the approval and appeal processes to be used. Comments strongly favoured clear community and stakeholder input to appeals against plans or the establishment of an independent tribunal to review draft plans.

The Commission does not consider that there is a need for an independent appeal tribunal for allocation plans. The Commission supports community and stakeholder input to the preparation of plans and believes that they should have an opportunity to comment on any significant revisions prepared by the Commission following a first round of stakeholder input. This two stage process and the facts that;

- the plans will be subject to review by the Minister;
- the Commission has only water resource management responsibilities, with no vested interest in water development interests; and
- the resource management objectives and factors to be considered in making allocation decisions are to be set out in the legislation;

are considered to be adequate safeguards of procedural justice.

Moreover, from a legal perspective, plans are of a law making nature establishing general rules which are applicable to many people (water users) and are not executive in nature. They are therefore more appropriately the responsibility of the Minister accountable to the community and to Parliament. As indicated previously, actions and decisions made by the Commission that arise from the plans will be subject to appeal.



16.4 The way forward

The Commission considers that a formal Ministerially approved planning system should be developed during Phase 2 consultations. The writing of plans should be done if there is a need for a plan and according to the priority of the need. The plans could be initiated by the Minister, the Commission or the local water management group. In the absence of a plan, water allocation decisions will be made by direct application of the objectives and provisions of the legislation and the local requirements.

Further input from key planning agencies and stakeholder groups will be sought in finalising Commission policies and in preparing the legislative amendments for consideration by Government.

16.5 Outcomes

The following key outcomes are expected from the new water allocation planning system:

- A clear set of allocation planning instruments that set water allocation licensing policy of the Commission at a range of scales (from regions that cover a number of river basins to localised areas defined to assist local water resource management);
- Integrated administrative procedures that will facilitate public review and environmental assessment of allocation plans;
- Clear and formal positions of the Commission and the Minister of Water Resources on the values and future uses of specified water resources to provide input to and trigger other Government planning processes and integrated catchment management initiatives that will protect these values; and
- Community support for the processes involved in the development, documentation and legal establishment of local rules for the management of specific water resources and for the re-allocation of water through tradeable markets.



17. Environmental water and sustainable diversion limits

17.1 Issues

Central to managing water resources in a sustainable way is the determination of the quantity of water that can be safely diverted from any particular water resource without unacceptably damaging social and environmental values. Explicit determination of the water needs of the environment is a key element of the COAG Framework Agreement on Water Reform. In relation to the proposed water allocation planning system this means the Commission must determine the environmental and in-situ water values worthy of protection, the water regimes necessary to protect these values and the resultant sustainable diversion limits that can be used for consumption. The approach proposed involves making initial estimates of environmental water provisions early in the planning cycle so that over-allocation of water is avoided and resource development planning can proceed without unnecessary delay. The early estimates will be updated as more information becomes available and as the demand for water increases.

Major issues raised in the Phase 1 consultation period included the means of determining environmental water provisions, who is responsible for their review and approval and how they should be updated.

The proposed allocation process involving these concepts was outlined in the first discussion paper and will be further developed in the third discussion paper (Water & Rivers Commission, 1998a).

17.2 Comments

A total of 95 comments were recorded on the adoption of environmental water provisions (74) and the associated concept of sustainable diversion limits (21). The key written comments were received from the Commission's advisory committees, grower organisations, farmer representative bodies, resource development interests and water service providers.

24.2.1 Environmental water provisions

The themes identified under environmental water provisions are shown in Figure 25.

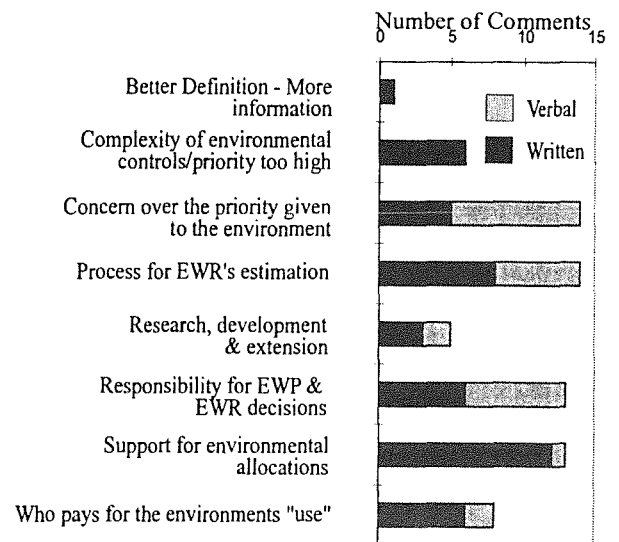


Fig. 25 Comment themes - environmental water provisions

A mixed response was reflected in the comment themes. Six comments indicated criticism of the complexity of environmental controls or the higher priority given to environmental water relative to water used for productive purposes. A further eight expressed concern about the costs of making water provisions for the environment. Typical comments were "Who pays for the environment's use?" implying that either environmental costs should not be too 'excessive' or that compensation should be considered if existing water uses were adversely impacted by environmental water requirements. Other examples included "do we need to 'reinstate' environmental water requirements? If so there will be huge problems...", and "how much water will you require to be in the creek at all times and at what points and times will the measurements be taken?"

In contrast, 14 comments reflected concern that the environment was not given enough priority.

Thirteen comments provided direct support for the proposed approach of making provision of water for



the environment before the quantity of divertible water is determined.

Five respondents reflected the need for extensive and continuing research, investigation and educational work if the task of providing water for the environment was to be done adequately.

Many questions were also asked (13) about who was responsible for the decisions on water allocation to the environment. These were commonly recorded at the public information meetings early in the consultation program.

One respondent sought an absolute commitment by Government to all COAG Framework agreement requirements by their direct inclusion in the legislation. This came from a fear that, as some elements of the farming community were opposed to trading of water entitlements, the associated environmental safeguards may be weakened or made unworkable during implementation.

One water service provider argued for a self-managed approach to implementing environmentally responsible management with Government agencies setting the standards and (environmental) management objectives. Another service provider considered the proposals did not clarify the respective responsibilities of the Commission, the EPA, and service providers in relation to environmental matters generally. Other comments sought a clearer commitment to coordination between agencies involved in environmental management and a recognition of the variable nature and complexity of environmental water needs.

The overall degree of support for the proposed approach to environmental water provisions is summarised in Figure 26.

24.2.2 Setting sustainable limits for divertible water

A further 21 comments were recorded against the related subject of “setting sustainable limits for divertible water.” The themes were similar to those above with five of the 16 neutral responses highlighting the need to base decisions on sound research and development information. All but one accepted the concept. Four expressed direct and unqualified support.

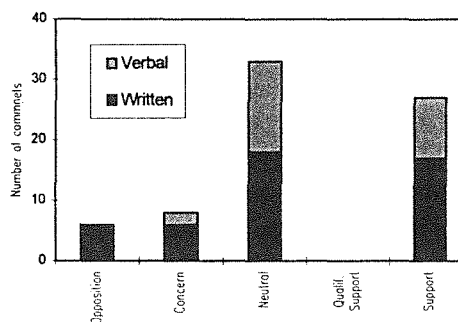


Fig. 26 Response to environmental water provisions

Three of the comments related to the need to address sustainability in the context of other natural resource management (land conservation and environmental assessment) controls. The remaining comments related to who was responsible for determining limits to divertible water and how they should be set and updated.

17.3 The Commission’s response

Respondents were supportive of providing water for the environment, although many were concerned about the social and economic implications of ill-considered environmental water allocations. No significant objections were obtained to the concept of establishing environmental water provisions as the first priority when allocating water. The subsequent estimation of ecologically sustainable diversion volumes, after ensuring that the environmental water provisions are met, was also generally supported. This is not surprising as the approach has been an integral part of assessing sustainable groundwater abstraction rates in Western Australia for many years.

The Commission has also opposed any trade in environmental water allocations. While different to the approach advocated in some States, this proposal has not been seriously questioned and reflects that WA has few areas where over allocation is a major management problem and the difficulty in turning an environmental characteristic into a tradable commodity.

Most concerns were related to the potential for arbitrary environmental allocations and raised questions about the methods, information base and responsibilities for making environmental allocations. Resolution of these concerns relate to the adequacy of the professional skills and staffing levels of the Commission and related agencies such as the Department of Environmental Protection.



The Commission considers that the respective roles of the Commission and water service providers in relation to their environmental responsibilities is clear. Where the Commission is proposing the development of a water resource for future consumptive uses (usually in a water allocation plan), it should be responsible for arguing that the planned use is “sustainable.” When a service provider or project proponent seeks to develop the resource as a defined “project,” the proponent would usually require approval of the “project” under the *Environmental Protection Act, 1986*. In seeking that approval the proponent could draw on the allocation plan to support its case. It would, however, need to update the expected impacts of the “project” as now defined on water resource and environmental values and address the impacts of any ancillary works that may not directly affect water resources.

The Commission also considers that the initial proposal was correct in assigning final accountability for water allocation and environmental impact approval to the Minister of Water Resources and the Minister for the Environment respectively.

The Commission sees its role in balancing the needs of the environment with the needs for water resource development as central to its responsibility to the current and future generations of Western Australians. Delivering on this element of the Water Reform Framework Agreement is a key priority for the Commission.

The other issues of concern, were mostly unrelated to amending the legislation.

17.4 The way forward

The Commission will formalise its current approach to determining environmental water provisions and ecologically sustainable annual diversion volumes through preparing a formal policy statement on environmental water provisions and applying the policy when preparing water allocation plans under the new statutory process in water allocation planning.

The draft policy on environmental water provisions will be available for separate public discussion before it is established as a final policy of the Commission.

The guidelines for the legislative reform will include provisions for the preparation of allocation plans.

17.5 Outcomes

The establishment of a statutory water allocation planning system, complemented by a formal Commission policy statement on environmental water provisions should lead to:

- a clear understanding of the principles, procedures and review mechanisms used in establishing sustainable water resource management regimes in Western Australia;
- documentation of the water provisions made to protect environmental values of water resources, the monitoring established to check their effectiveness and the outcomes; and
- facilitate the integration of government planning activities in the areas of natural resource management, land planning and resource development.



18. Access licences

18.1 Issues

Access licences provide for the future use of water from a new source development project. They are issued to developers who have a need to plan for and secure their long term water requirements. Holders of access licences are therefore likely to be restricted to those with responsibility to plan for public water supply services and strategic industries with large and long term water demands. This new licence type has been proposed to promote water resource investigations early in the project planning cycle so that adequate water provision for the environment can be made. Mechanisms to alter conditions or transfer the licence have also been proposed to minimise the anti-competitive impacts of an access licence.

An access licence would usually be issued only after an allocation plan had been prepared, the ecologically sustainable diversion limits from the water resource had been assessed and the acceptable uses of the water determined.

Before an access licence is granted the Commission will determine a reasonable planning time frame for which water access licences may be issued - this will depend on anticipated regional and local demands on the source - and consider other sources available for development, water entitlements available through transfer, water conservation and efficiency measures employed by the applicant, the soundness of the development plan and any representations from the Coordinator of Water Services. If the source is not developed in accordance with the program or the development program is altered, the access licence must be transferred or surrendered or an application made to vary the development program.

If, because of unexpected or unplanned changes in management requirements or demand, the Commission considers that the source should be reallocated or used by another person, the Commission may require that the access licence is transferred, resumed subject to fair compensation, or shared. If one of the parties involved is a water service provider the Commission will liaise with the Coordinator of Water Services on any

decision to change an access licence and in establishing any compensation or transfer price.

18.2 Comments

Five comment themes were identified from the 33 comments received regarding access licences. They are shown in Figure 27. Figure 28 shows the degree of support for the concept.

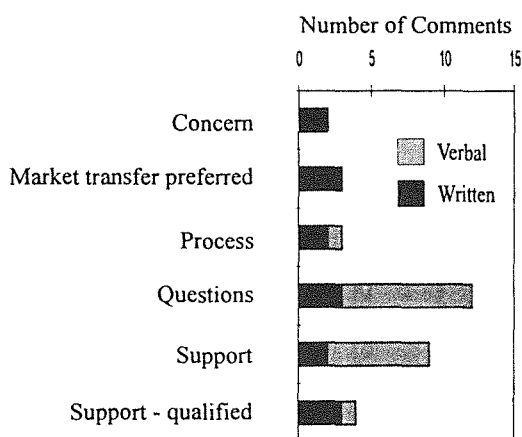


Fig. 27 Comment themes - access licences

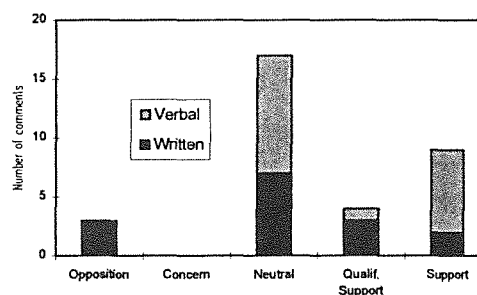


Fig. 28 Response to access licences

Nine respondents supported access licences, a further four provided qualified support. No respondent opposed the whole concept, although three either argued for or preferred a more market oriented approach.

Questions and concerns were raised about the impact of access licences on other users, including the need for affected landowners to be specifically advised of proposals that might affect their land; the likelihood of unforeseen developments arising during the access licence life and the need to reserve water for ordinary growth in water use.



Submissions proposing stronger means of ensuring interested parties were advised of access licence applications, were balanced by a wish to maintain confidentiality and intellectual property aspects of water development proposals.

Three comments were made on the transfer of access licences, one opposing transfer and the other recommending that the transfer price be at the market price with windfall profits being returned to the Commission. One submission suggested that one way to enable a “reasonable” economic return on the development costs of a resource was to allocate the “tradeable rights to the full sustainable yield” of the resource to the access licence holder.

Two submissions suggested that the time frame should be extended to meet the needs of the user and the other suggesting greater flexibility to deal with uncertainty in the development program.

One submission opposed use being made of water by a second party before the water is required by the access licence holder. One submission pleaded for a simple process of allocation.

The Office of Water Services emphasised the need for the Commission to define the proposed use and service provision area to which the access licence would apply and to consider the requirements of the Coordinator of Water Services in any decision to reallocate an existing access licence.

18.3 The Commission response

The major stakeholders involved in large scale water source developments were supportive of the concept of access licences although both the Water Corporation and Department of Resource Development qualified their support. Both suggested changes to the original proposal.

The Commission believes that a temporary licence should be able to be issued to enable second parties to make use of water already allocated under an access licence but not yet used. Clearly the primary purpose of the access licence is to facilitate sound planning for water source development, not hinder it. Any temporary licence would be secondary to the rights of the access licensee and would be subject to objection by the access licensee.

The Commission does not wish to promote speculation in future water resource development or actively promote future trading in access licences. Rather, orderly development of the water resource will be promoted by setting allocation decisions in a regional planning context, having due regard to the local water needs and value of the development. It is for this reason that the Commission insists that all applicants for the access licence must justify their long term need for the resource.

The proposal to advertise an access licence application enables people with a long term interest in the resource to make submissions to the Commission. In making its decision the Commission will address the relevant considerations (*page 10 of WRI*) in assessing licence applications and pay particular attention to the views of the Coordinator of Water Services in relation to current or planned public water supply operating areas.

The Commission is confident that advising other interested parties can be done in a way that does not unreasonably compromise the confidentiality or intellectual property rights of the original applicant.

The Commission will develop open and accountable processes for the issuing of access licences. Where two or more major future users are seeking an access licence to the one resource, the access licence can make explicit provision for sharing the resource.

While a negotiated joint venture to investigate the resource may result it is possible that one applicant would be issued with the access licence. Where the unsuccessful applicant demonstrated a legitimate long-term water demand, the Commission would require the access licence holder to plan to meet the other user’s need.

The original proposal highlighted the need to change access licences in response to changing circumstances. The need can arise if the holder’s source development program changes in response to their own or their customer’s demand patterns, or if unexpected or unplanned changes in demand occur. Review of the licence may be initiated by either the holder or the Commission. The Commission will encourage negotiations between the existing access licence holder and any new users seeking a large water supply and may bring forward the proposed development, changing the access license holder if necessary. The Commission may change the access license holder due



to the requirements of Government policy for competitive development of new water distribution services or when new major resource development projects necessitate a change to the regional and sub-regional allocation plans.

Where a change in the access licensee is required, the Commission believes that its original concept of fair compensation or a negotiated transfer price between the existing holder and any new source developer is preferable to an open market in tradeable access licences. The transfer price of an access licence, should be based on fair compensation for incurred costs. Some sharing of the surplus value of the licence may be appropriate. A market is not appropriate for long-term water development projects as only a limited number of companies or agencies would be active in the market. The Coordinator of Water Services can play a role in establishing a fair transfer price if one of the parties is a water service provider. Examples are to be developed with the key planning stakeholders as to how access licences may operate in different situations during the Phase 2 discussions.

The suggestion that the applicant should notify those directly affected by an access licence are supported. The requirement will be incorporated into the process for dealing with licence applications.

18.4 The way forward

The original concept can be further developed along the lines of the above discussion to satisfy the key stakeholder groups involved in forward planning of water resource developments and water service provision. The current legislation does not preclude the Commission issuing an "access licence" and this opportunity will be taken up as needed and introduced through allocation policy development.

The Commission will develop the concept of "access licences" and make specific provision for them in the proposed legislative amendments.

This is considered necessary as the concept is different from the usual water use licences and is being introduced to promote improved forward planning and early environmental water provision in a way that is not anti-competitive. These are essential elements of the COAG Water Reform Agreement that should be clearly facilitated in the revised water law.

18.5 Outcomes

Finalisation of the access licence concept should:

- provide the confidence to an "access licence" holder to invest in further environmental and engineering studies to firm up the available resource and clarify the most appropriate way to design the development;
- ensure that detailed studies of the environment can be carried out before final environmental decisions on the project are made; and
- ensure that the ability of the Coordinator of Water Services to promote competition for water supply services is maintained.



19. Changing licence conditions and allocations

19.1 Issues

As the law stands the options available to the Commission to modify water rights if the environment, the water resource or other people are being damaged or adversely affected include:

- changing the licence conditions under the powers of the *Rights in Water and Irrigation Act*;
- making regulations under the Act;
- changing the licence conditions when a licence is renewed; and
- refusing to renew a licence.

The Commission relies primarily on the limited licence tenure or changing licences at the time of renewal to ensure that water users adapt to the changing requirements of responsible and sustainable water resource use. This approach is preferred to changing licences during their currency.

Changes to the licensing regime, through changing either the statute, local rules, regulations or Commission policies on issuing licences, affect the way people use water. The processes for change and the changes themselves must be fair to the users, providing a stable climate for investment and development.

It was proposed that the Commission have the right to change the licence in the interests of good water resource management, including the amount of water allocated. It was not intended that there would be a right to compensation for the changes.

The key process for changing licence allocations and conditions of use in a particular area would be by review of the appropriate water allocation plan. The review would correct and update the sustainable limit of available water. As discussed in the previous section such reviews would be conducted in the public arena and the new plan would also be subject to approval by the Minister.

It was also proposed that a licence could be cancelled by a court of law if the licensee failed to observe the

licence conditions or any other obligations under the Act.

If a water allocation is necessarily required for public purposes and the licence holder refuses to transfer the licence for a fair price it is proposed that the licence be compulsorily transferred, subject to the payment of fair compensation.

19.2 Comment

19.2.1 Changing licence conditions following updates of sustainable diversion limits

As shown in Figure 29, five separate themes were identified in relation to changing licence conditions and updating estimates of sustainable diversion volumes. While there was support for the Commission to have the power to respond to changing circumstances, most respondents considered that compensation should be paid if any existing rights were affected by change.

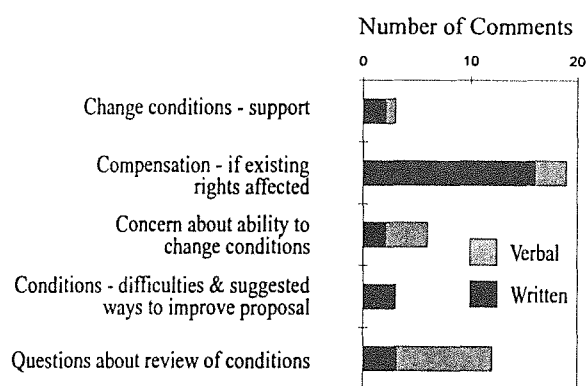


Fig. 29 Comment themes - updating sustainable diversion limits and changing licence conditions

Examples of supportive comments included “the ability to change licence conditions is fine and understandably needed” and “there should be provision for directly changing the conditions.” However, there were comments that highlighted objection to changing licence conditions. The more common comments were



typified by: "...objections to changing of licence conditions whenever and however the Commission liked, problems with threats to livelihood" and "if you change the conditions of the licence you are changing the conditions, but it is the grower who is paying the price."

Concern was also reflected in comments such as "...recently we have seen a major problem with the application to renew licences. In the intervening period between the granting of a licence and its time for renewal, various government departments have changed the criteria that applications need to meet. It costs many thousands of dollars in planning strategies and nearly the same again in requirements and conditions before renewal would be granted."

The degree of support for the original proposals for updating sustainable diversion limits and environmental water provisions, and changing licence conditions is shown in Figure 30. No significant regional differences were apparent.

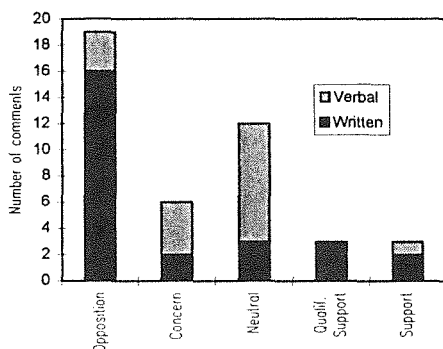


Fig. 30 Response to updating sustainable diversion limits and changing licence conditions

The opposition was dominated by respondents who considered that compensation should be paid for any changes to existing "rights."

19.2.2 Cancellation, resumption or surrender of licences

A total of 31 comments were received relating to this issue.

Responses were again dominated by expectations of compensation if rights were reduced (10), concern for the impact on the licensee (6) and simple opposition (3). Typical comments were that "the right of WRC to take back licences was dangerous" and that "licence cancellation, resumption and surrender is too heavy

handed." One of the three supporting comments argued that licence holders should be obliged to comply with their legal obligations as detailed on the licence. Other submissions focussed on the process of altering the licences and justice issues associated with licence termination with comments including "how are the public to be convinced that rules will be consistent, eg for revoking rights?" and "regarding licence cancellations by a court of law, the group respectfully suggests that there should be more means of independent arbitration before such action is implemented."

Submissions relating to compensation called for "a detailed, fair and equitable proposal...to address compensation" and "where licences are resumed...fair compensation which includes all development costs borne by the licence holder and payment to enable the licence holder to access alternative water supplies or to re-establish into an activity which is not water dependent."

Five comments addressed the criteria under which licences may be changed. Matters of concern included the grounds for changes, who sets the terms, consistency of rules, arbitration and the time available to adjust to new conditions or sell water rights, before action is taken.

One respondent felt that it is not appropriate to cancel licences for minor to moderate breaches of licence conditions which are better dealt with by a system of financial penalties, similar to that proposed for breaches of environmental conditions described in the *Environmental Protection Amendment Bill 1997*.

19.3 The Commission's response

Water resources are dynamic, the flows have long and short period fluctuations and it is not appropriate to set fixed conditions or allocations. Any attempt to do this would be very restricting as it must necessarily be geared to the worst conditions and cannot make use of the larger flows that occur from time to time.

The Commission cannot protect users from the impacts of changes in climate, environmental protection standards and legal requirements. Users must accept the risks associated with their use of water resources and adapt to changes in water availability. The uncertainties of water availability are already implicit in current water licences. It is not realistic for users to



expect the Commission to guarantee water availability for all future time, especially as water rights are given free of any access charge.

It is always open to Government to assist if the changes required are onerous or beyond the capacity of the those who must change. The State Salinity Action Plan is an example where the Government, on behalf of the community, assists and promotes change to improve the viability and sustainability of farming.

The Commission considers that any right to use water is subject to the water being available and the water users exercising a duty to care for the resource and for each other. As a resource approaches full development, allocations should be considered to be a share of the resource, fluctuating as the total resource changes. If the conditions of use change, all users collectively must adapt to the new conditions to ensure that the resource is used in a sustainable way and within acceptable limits of damage to the environment.

Exceptions to equally sharing in the changes may be appropriate when the change has been precipitated by the actions of an individual or single group of water users or a priority of right to water has been established by legislation or local rules. The Commission or the local water management group has the responsibility of deciding what changes are required and how they should be implemented. The process for change must be fair and strike a balance between the needs of all groups and the environment with the changes being developed on a local basis with local negotiation. Any changes proposed by the Commission or a local water management group should only be ratified after consultation with the community and be subject to a right of appeal by licence holders.

On the other hand if the share in the use of the resource is required by another person then there is a need for compensation to the person giving up the right. There are two mechanisms for this to occur - by trading (in which case the compensation is paid directly by the purchaser) and by resumption (where the compensation is calculated by an independent person). The Commission believes that compensation should be paid for transferring the rights to another user but not for changing rights in response to changing water management requirements.

19.4 The way forward

The Commission recognises that there is a need to provide more information on existing allocation rights and make it clear to users that specific water volumes cannot be guaranteed. In addition the Commission will revise its policy and document the process for reviewing sustainable diversions and environmental water provisions. This will be a feature of further policy papers and newsletters during Phase 2 of the consultation process.

The Commission maintains the view that changes in sustainable diversion limits and related changes in licensed quantities are part of the natural uncertainty that currently exists. Increasingly, the best current estimates of the reliability will be included in the definition of the licensed right.

The conditions under which licences are subject to change or cancellation should be specified in the legislation. The following are proposed:

- where the licence provides for variation;
- if there has been an alteration to the sustainable yield, water allocation rules or policies governing the licence;
- to prevent a reduction in the quality of the water in the resource;
- to prevent damage to an ecosystem;
- when there is insufficient water to meet the demand; or
- when a person takes water in excess of the allocation, contravenes or fails to comply with a condition of the licence or uses water taken pursuant to the licence for an illegal purpose,

the licensee may appeal to the Minister against a decision of the Commission if the decision is considered harsh or unreasonable.

Furthermore a licence should be able to be amended by a court of law for breach of the law or a breach of licence conditions. Such action should only be contemplated if a fine is inadequate to enforce compliance with the law.



20. Reasonable and responsible use

20.1 Issues

The proposal suggested a 'duty of care' should be imposed on water users. This would encourage all water users keep up to date with practical and technological improvements in water use and act responsibly with respect to the impacts of water use on the environment, the resource and other users. To achieve this it was suggested that principles be developed to guide the user. These included the requirements that water use be:

- sustainable - meaning that the water and environmental needs of future generations are not compromised;
- beneficial - that the water is put to good use;
- efficient - the least amount of water required is used;
- necessary - the most suitable source of water is used; and
- harmless - nobody is unduly damaged by the use.

The proposed legislation will enable the Commission and local water management groups to establish rules and make decisions based on these principles. The Commission will have necessary powers to investigate whether the principles are being followed. If the Commission believes the principles are being violated it may issue directions or modify the licence, requiring specific actions to be taken to get compliance.

20.2 Comment

The comment themes for the 120 responses to this issue are shown in Table 3 and are grouped into those identified from the five components of the overall concept and the overall concept itself.

Most respondents were concerned with the principle of beneficial water use and with the overall concept, particularly the fact that water allocation might be unfairly lost.

Areas of concern related to rights, compensation and impacts. For example "... have rights to use all water on horticulture property, but only using half now because trees are young, will we lose it?"; "will 'use it or lose it' principle mean you lose half your allocation if you don't use it?"; "is there a value on the water that

is taken off a person because they are not using it? do they get compensated?"; "what happens if..... doesn't use all its allocation?"; and "if you couldn't work for a couple of years, what would happen to your allocation?" highlight some of the concerns raised. Also included were a number of other issues such as concern over the "use it or lose it" principle aggravating salinity and concern over competition between users and the environment during droughts.

Respondents suggested that the principle does not promote water efficiency. Comments such as "use it or lose it doesn't encourage demand management therefore encourages people to use as much water as possible"; "use it or lose it principle doesn't seem to be any incentive for efficiency" and " 'use it or lose it' must be revised or you will discourage efficiency" highlights this finding.

A need for more information was highlighted. Questions raised concerned sustainable limits, whether the new Act would deal with unsustainable mining and if Perth bore users were having an impact on the environment and horticultural development. More information was also raised as an issue for the overall concept of reasonable and responsible use.

A number of concerns were highlighted regarding harmless water use. Concerns included what the Commission would do if somebody upstream affected another person's water, who would get precedence over water if someone else's off-take was affecting another and what the Commission would say about a property with a crested weir which showed the same amount coming on to the property as going out.



Table 3. Comment themes - reasonable and responsible use

Comment Theme	Number of Comments	
	Written	Verbal
Overall concept		
General questions/More information wanted	1	6
Market Preferred	1	0
Qualified Support	1	1
Support for Community Empowerment/ user self regulation	3	2
Support for overall concept	1	2
Support Implied	1	0
	8	11
Sustainable		
Information on sustainable practice	2	3
Legislation questions	2	0
Suggested Definitions	3	1
Support for water sustainability	4	1
	11	5
Beneficial		
Comments/Statements	2	5
Concern over "use it or lose it" concept	9	9
Definition/development of concept needed	2	11
Disagree with concept -Monetary concerns	1	3
Disagreement with "use it or lose it" concept	6	2
Does not promote water efficiency	3	3
More information regarding implementation needed	0	1
Support -qualified by reasonable time-frames	0	2
Support for "Use it or lose it"	1	2
	24	38
Harmless		
Concern/questions of effect of water use on others	0	4
	0	4
Efficient		
A Question/Suggestion	3	1
Concern over regulatory/licensing system	1	1
Flexibility of WRC to change	1	1
Monitoring efficiency	5	1
Support for improved efficiency of water use	5	0
	15	4
Total	58	62

Finally, respondents showed general support for improved efficiency of water use. This was suggested through comments such as "...supports the increased efficiency of water use and notes that it is included as one of the objectives of our strategic plan";

"...conscious of the need to adopt best practices in irrigation as the quality and yield of tubers can be adversely affected by over or under watering. Proper and efficient management of our water resources therefore is critical in the ability of WA to be self



sufficient in fresh food” and “...recognises that improved efficiency of water use is an important objective for all water users, in the drive to achieve more sustainable water use. The...supports COAG’s view that market mechanisms are effective means to achieve this.” The overall degree of support for the reasonable and responsible concept is shown in Figure 31.

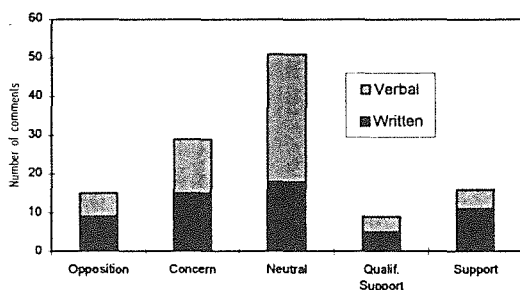


Fig. 31 Response to comments on the reasonable and responsible use concept

20.3 The Commission’s response

Through the Phase 1 consultation period the concept of reasonable and responsible use gained greater acceptance. However, further explanation of its value and the way it is to be applied is clearly required before it is implemented.

It appears many users do not realise that reasonable and responsible water use principles underpin modern water resource management as it is practised in WA. To date these principles have been universally adopted by advisory committees and the Commission but seldom publicly explained or promoted effectively.

If the balance between the principles of reasonable and responsible use is lost they can lead to impractical and unreasonable requirements. The application of concepts such as “necessary,” “efficient” and “harmless” must be carried out in a reasonable way to assist the community deal with problems, not create new difficulties or lead to abuse of power.

The courts have established principles that any resource manager must follow when it makes decisions to ensure the necessary balance is kept. The Commission must:

- take all relevant matters into account;
- act reasonably;

- avoid policies that lead to uncertainty; and
- base its decision on evidence.

It must not:

- use its powers for purposes outside its functions; nor
- take into account matters that are irrelevant.

These principles highlight more than any other the compromise that is necessary for good resource management. No principle can be blindly applied, there must be sound judgement and open processes of policy development and review. The manager must make decisions based on values that are accepted by the community. The principles are a foundation for sound decision making but they require sensible application.

Without these principles there would be no means available to the Commission to prevent people who do not have a beneficial or necessary use for the water from holding large quantities to the detriment of other water users. There would also be no grounds for refusing an application by one landowner to take all the water, leaving none for others.

The Commission considers that the principles of reasonable and responsible use give practical guidance to the application of the proposed objectives. This is especially important as rules based on the principles will be developed by local water management groups.

Rules based on the principles should be established on an area by area basis. Different mixes of the principles will apply under differing local requirements. For example in an urban area of readily available wastewater a local rule may reserve high quality natural waters for domestic supplies.

Other rules may limit the amount of water a person may hold, preventing speculation. Factors such as project security, crop type, hydrologic, agronomic and horticultural market variations all need to be considered by the local water management committee in developing such a rule.

20.4 The way forward

For the reasons outlined above, the Commission remains convinced that the legislation should enable local rules to be developed invoking the principles of reasonable and responsible use.



However, matters needing further development include:

- provision of information to the public on the overall principles and concept of reasonable and responsible water use;
- addressing how the necessary use concept in conjunction with the ability to trade surplus water entitlements promotes efficiency and how fairness and equity will be ensured;
- addressing specific concerns of water users to their personal situations; and
- developing, in conjunction with the community, acceptable definitions of the principles.

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 guidelines for the legislative reform will include this provision.

20.5 Outcomes

The proposal will generate:

- General understanding in the community that water resources are important to the community and ensure that they are not squandered or wasted;
- Management systems that ensure no person suffers because a person is unfairly hoarding the available supplies; and
- A sound basis for making rules to ensure the productive use of water according to local requirements.



21. Penalties

21.1 Issues

The maximum penalties under the Act are in the range \$500 to \$2,000 with maximum daily penalties for continuing offences of \$50 to \$200. It was proposed to increase the maximum penalties ten times as the current penalties are only adequate for minor offences.

21.2 Comment

Only two comments were made on this proposal. They were: “if licence holders breach licence conditions then they should be subject to a range of penalties - formal warnings followed by an increasing scale of financial penalties for slight to moderate breaches, through to revocation of licences for serious breaches;” and “the statement on penalties needs to be far more detailed. The complex changes to the *Environmental Protection Act* underline the need that, to deal fairly with people, there are many aspects to consider. If the issue is environmental damage, then any legal action should be taken under the *Environmental Protection Act*.”

21.3 The Commission’s response

The Commission accepts both comments. It prefers to issue warnings before imposing penalties, taking court action when this is the most appropriate way to obtain compliance with water resource management law. A range of penalties be available to deal with a range of offences and the courts will discount penalties for minor or first offences. The courts will be able to revoke licences if the monetary penalty is an inadequate deterrent.

Environmental matters should be dealt with under the *Environmental Protection Act*.

21.4 The way forward

The proposals to increase maximum penalties ten times will be drafted into the legislative guidelines and will be subject to further review through the Phase 2 consultation period.



22. Emergency directions

22.1 Issues

The Commission should have the power to issue directives to resolve problems in an emergency when significant damage is occurring or likely to occur to a water resource or water users. The original proposal also sought powers for directions if this was necessary to meet the objectives of the Act. The directions could be issued to any water user and may specify conditions and limitations under which water is stored, diverted, taken or used. Directions relating to emergencies must have a limited life, generally no more than one year. Any person affected by a direction may appeal against the direction or a consequent decision to modify a licence.

It should be noted that current legislation allows directions to be issued if a person is not complying with the Act by taking surface water to which he or she is not entitled. The directions cannot be issued in proclaimed areas where licences specify rights. As directions are a useful means of defining rights in specific circumstances it is intended to develop the concept for more general application. This would allow directions to be issued where it is too clumsy to make a local rule.

22.2 Comment

The proposal that the Commission could have the power to issue emergency directions was not opposed by any of the five submissions received on this matter. The submissions, however, suggested that the power should be constrained as follows:

- emergency directions be restricted to dealing with temporary shortages only and the definition of what constitutes an emergency should be developed;
- no permanent reduction in share of a water resource should result from the directions - permanent change is best managed by voluntary transfers;
- there is a right of appeal against the direction;
- if restrictions are not applied equally, details of the priority of access to water are required; and
- details of the minimum acceptable flows and monitoring methods should be defined.

One submission proposed that compensation be payable to people whose access to water is restricted.

22.3 The Commission's response

The Commission accepts all recommendations except that relating to compensation. If the Commission is to be held liable for shortages of water the Commission must protect itself by restricting access to water so that shortages do not occur or by establishing a fund for compensation payments during droughts. Neither of these options is likely to lead to the best economic outcomes for water users.

22.4 The way forward

The guidelines for the legislative reform will be prepared so that:

- directions can be made by the Commission or the local water management group to enforce the provisions of the Act and local rules as appropriate;
- directions be subject to appeal;
- directions dealing with temporary shortages should make no permanent reduction in the share of a water resource;
- there be a right of expedited appeal against emergency directions; and
- restrictions are applied proportionally (within water use classes) unless a priority of access to water is prescribed in local rules.



23. Reporting and monitoring water use

23.1 Issues

It was proposed that water users should be required to report periodically on their use of water. This would clearly establish and define their right to continuing use of the water, indicate compliance with the licence and provide the data necessary for the good management of the resource.

Licence holders could be required to provide information including:

- the volume of water taken (this could be estimated or metered);
- the place of diversion and place of use; and
- how the water was used.

The information requirements would be specified in the licence or by relevant policies and rules.

If reporting is also required under the *Environmental Protection Act* this will be taken into account on setting the reporting requirements under the licence.

23.2 Comment

A total of 47 comments on this issue were recorded and were categorised and analysed in relation to reporting of water use, the specific issue of metering and other general reporting issues.

The themes are summarised in Table 4 and the overall support shown in Figure 32.

23.2.1 Reporting on water use by the licensee

Of the 21 comments recorded on the specific topic of reporting of water use by the licensee five were supportive either directly or through qualified support. A further three comments implied support although they were classified as neutral remarks as they also reflected some concerns.

The qualifying comments were usually related to the details of likely requirements and whether such reporting was necessary in all cases. "...The Committee agreed with the concept of monitoring reports, but believes there may be a need to variation in the level of reporting required. A standard form or

format has been suggested." One submission emphasised that careful development of the reporting procedures would be required if the proposal was to be effectively adopted by growers. Of the remaining eight comments none were in outright opposition although four were concerned about the costs (both financial and time) associated with such reporting. The remaining submissions sought more information or were general questions.

Table 4. Comment themes - reporting and monitoring water use

Comment themes	Number of comments	
	Written	Total
Alternatives to meters	0	3
Better definition - more Information	0	2
Concern - but implied support	0	2
Concern - costs and paperwork	2	3
Concern - costs, expertise and conflict	1	1
Question	0	3
Support	1	2
Support - qualified/ suggested improvements	5	5
Reporting by water user	9	21
Alternatives to meters	1	1
Better definition - more Information	0	3
Determination of allocation (how)	1	1
Opposition	1	3
Question/implied concern	0	4
Required when TWEs are operating	0	2
Support - qualified	4	4
Metering water use	7	18
Compliance monitoring	1	1
Monitoring support	3	5
Question	0	1
Suggested improvements	1	1
Other reporting uses	5	8
Total	21	47



23.2.2 Metering of water use

In relation to the specific issue of metering water use 18 comments were recorded.

Five comments provided qualified support for metering and two additional respondents considered metering was necessary before transferable water entitlements could be introduced. Three of these supported metering on the basis that it would promote water conservation and efficient use. Another provided qualified support indicating that metering could only be justified where it was economically feasible and offered water resource management benefits. It was not supported in regions of low water demand where use was limited to small quantities of livestock and domestic water.

One written submission argued that every effort should be made to use alternatives to meters and an additional three were opposed to meters and questioned their accuracy. This was supported by three other verbal comments recorded under the general reporting issue above.

23.2.3 Other reporting issues and summary comments

Eight general comments on monitoring were made and related as much to monitoring the resource as monitoring actual water use. They either acknowledged the importance of monitoring to resource management and supported the need for it to continue or made suggestions to improve monitoring and reporting processes.

Respondents were of the general view that reporting on water use was justifiable where it can be shown to be cost effective from a water resource management perspective and where the costs do not affect the viability of the licensee's business. While metering was recognised as necessary before transferable water entitlements could be introduced effectively, it was not strongly supported, particularly when the amount of water use, relative to the available resource is small. The costs and accuracy of meters were questioned, alternatives suggested and metering was often seen as a last resort.

Rural organisations were generally supportive of the need for stronger monitoring and reporting requirements.

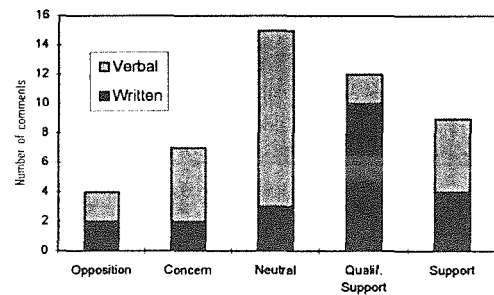


Fig. 32 Response to reporting and monitoring proposals

23.3 The Commission's response

In response, the Commission (like most of the respondents) recognises that the level of reporting and monitoring will need to be tailored to suit the different local needs. Further development of the processes, procedures and detail of reporting requirements will be required. The Commission believes that as the pressure on water resources continues to increase, the amount of reporting and measurement of water use required for sound management will increase.

Despite little enthusiasm for metering in some quarters, the Commission sees its introduction as increasingly necessary as demands increase, particularly where trade in water entitlements is to be introduced. Metering is already a requirement for water supply utilities, most commercial users other than irrigators, irrigators taking more than 500,000 kL a year and all users in the Carnarvon Groundwater Area.

The Commission accepts the need to ensure that the costs of monitoring are not excessive and need to be specifically defined in particular areas. This can be done through the adoption of local rules.

23.4 The way forward

The Commission will prepare the guidelines for legislative reform so that licence holders can be required to report their water use periodically. This would be applied when necessary for sound water resource management and in a way that has regard to the financial viability of industries dependent on water. Monitoring standards should be specified in the local rules for any particular area and in the licence conditions for individual projects.



23.5 Outcomes

Water users will measure or estimate their water use and will have a sound basis for improving the efficiency of their use, be able to substantiate their use of water and be able to justify the sale of surplus allocation to other users. The Commission and local water management groups will have access to information that will enable greater protection of users and better management of the resource.



24. Charges and beneficiary pays principle

24.1 Issues

The National Competition Policy and the COAG Water Reform Agreement promote user-pay funding and the removal of subsidies. Australian Governments have discretion as to how far they implement the user pays concept in the water industry and may elect to retain some subsidies where they consider full cost charging inappropriate. However, where subsidies are to be kept, the Water Reform Framework agreement requires each Government to make them clear.

The existing legislation in Western Australia already provides for licence applications and issue fees. It also provides for a royalty charge to water service providers and charges for services provided by the Commission. At this stage only a small proportion of the administrative costs are currently recovered from surface water licence holders in some areas. No fees or charges are paid for groundwater licences in Western Australia and no royalty charges have been required from water service providers.

It was originally proposed that the following additional powers to raise charges should be provided in the legislation:

- water use charges on licensed users to cover the costs of water resource protection, investigation, monitoring and management;
- water use charges on non-licensed users, such as riparian landowners to make a contribution to the cost of managing the resources and protecting their rights; and
- a fixed resource management charge or rate on landowners. This was proposed as a suitable way to finance local water management groups.

The proposal also indicated that discounts should be made to the standard fees and charges where licensees have contributed to water resource management through their own investigation and monitoring efforts.

24.2 Comment

Table 5 summarises the number of comments received that addressed issues relating to paying the cost of water resources management. Not surprisingly most people wished to obtain a clearer picture of the likely size of any future water resource management charge and how the charge may be structured.

Table 5. Paying the cost of water resource management

Issues	Number of comments	
	Written	Verbal
Existing powers to charge	0	3
Fixed resource management charges	13	6
General charging issues	163	187
Water charges for non-licensed use	4	4
Total	180	200

24.2.1 Fixed water resource management charges and charges for non-licensed use

Approximately 10 per cent of the comments were directly related to the advantages or disadvantages of a fixed management charge or charges for non-licensed use.

Nine of the 19 comments specifically on fixed water resource management charges were questions about the basis or structure of any new charge. While they were usually neutral questions, many implied some concern primarily because of the uncertainty of the cost structure. Two comments supported fixed management charges if the revenue raised was used for local management. One comment raised concerns that the fixed management fee was simply a new State tax.

Eight comments were made on the proposal to be able to charge non-licensed water users. Three comments were in direct opposition to any charge on riparian use or other livestock and domestic uses. While there was



one comment in support of charging riparian users, the remaining comments were questions implying concern if new fees were charged.

24.2.2 General charging and the beneficiaries pays principle

More than 90 per cent of the comments on charging issues were classified under the title "general charging issues."

Figure 33 shows the main themes identified from these comments.

Opposition or concerns about new charges were common. Fifty-two comments were recorded that simply stated opposition to new charges or the user pays concept. Examples include: "...extra costs worry us..."; "the committee of the ... is absolutely opposed to the imposition of licence fees for groundwater and surface waters" and "...paying for the use of this water is out of the question." Others provided reasons for their concerns. Fifteen (15) considered that new charges would affect the viability of current water reliant industries and that, by implication or direct statement, there was a case for continued cross-subsidies. Eleven considered it "just revenue raising" or "...just another slug from the government," while a further 17 were concerned about possible increases in the future.

Forty-four comments were concerned about equity in charging. Examples include: "is it fair or reasonable to expect commercial users to contribute while domestic users are subsidised?" and "how would you deal with equity issues in unlicensed areas..." While these were

classified as questions or statements, many of them implied that the rural community was being unfairly targeted for more price increases. This view was often expressed strongly as indicated by the following example: "...to apply the 'user pays' principle only to selective minority groups such as farmers, would be totally inequitable and a total cop out." Rural

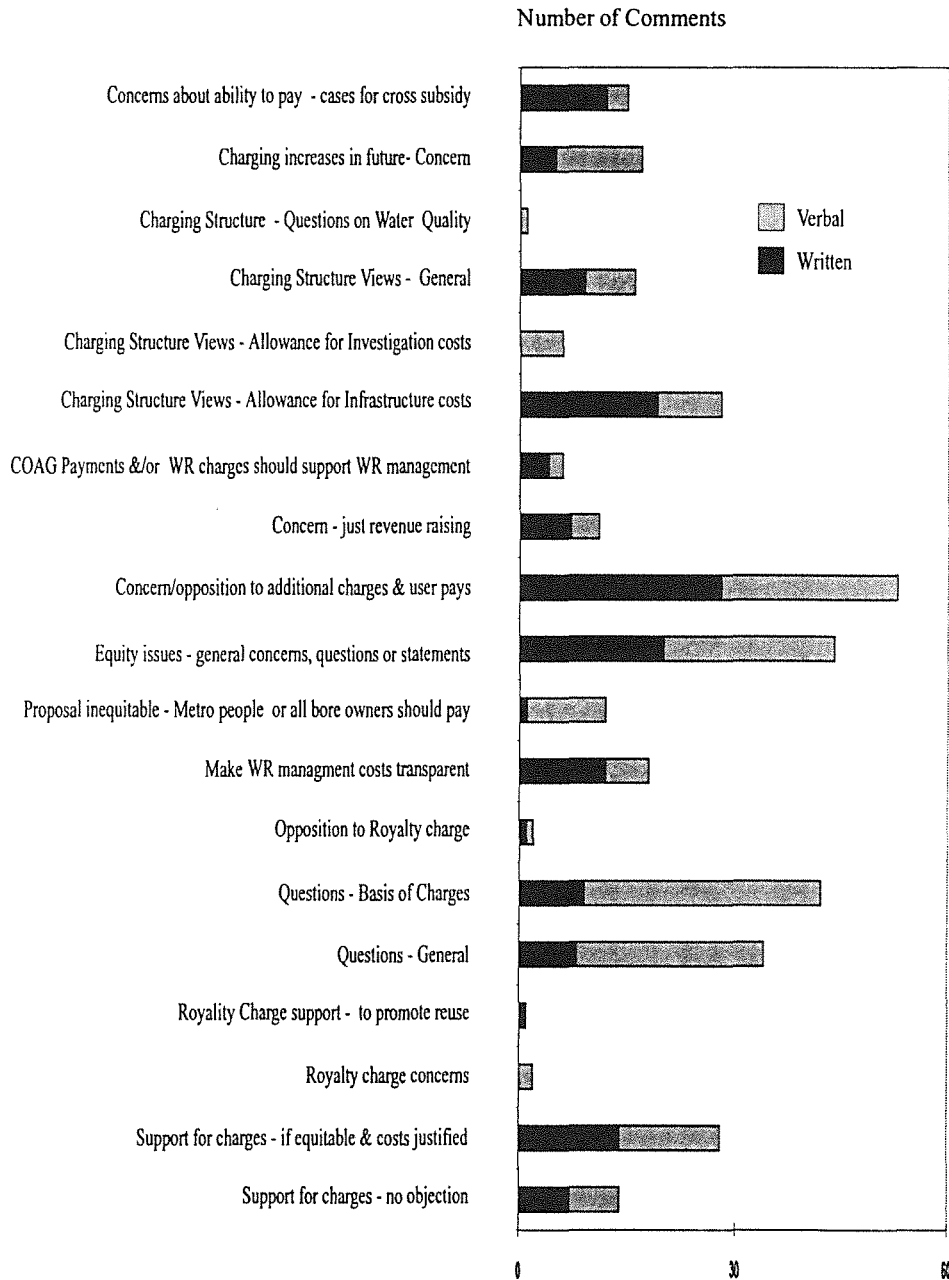


Fig. 33 Comment themes - paying the cost of water resources management

respondents' most common objection was that they considered it unreasonable that metropolitan bore users would remain unlicensed while rural bore users had to be licensed and pay. The sentiment that the



Commission “should increase charges on the metro users and exempt country people,” was often expressed.

Fifty-one comments were recorded against the general theme of the “charging structure,” with a number of sub-themes also apparent. Twenty-eight comments specifically considered that allowances should be made for those who have invested in their own infrastructure to obtain a water supply. For example “we spent money creating the water source now we will have to pay for it...” and “recognition needs to be given to privately-financed infrastructure/concessions provided.” Six other comments sought allowance for investigation costs while a further 15 were general statements on how charges should be structured.

Twenty-eight expressed qualified support as long as charges were equitable and cost justified. Typical of these comments on equity was the following: “...equity should apply to the concept of cost recovery, growers should contribute only for commercial use and that taxpayers should pay environmental costs.” Other comments on this theme emphasised the need for the Commission to justify its costs if charges were to be introduced. A total of 18 separate comments were recorded on the theme of the Commission making water resource management cost transparent.

Fourteen respondents supported the charging proposals with statements like “charges make people think more about efficiency and water re-use...” and “water is a valuable resource and we should pay for its use...”

The support for equitable charging regimes came from country and metropolitan areas. However it was only in the written submissions received from the metropolitan area where support was greater than the concern or opposition. The overall degree of support recorded against the issue of “general charging issues” is shown in Figure 34.

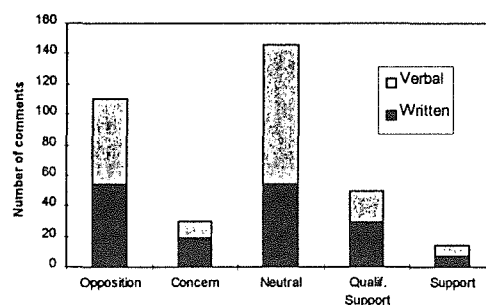


Fig. 34 Response to “general charging issues”

Other comments received were statements of views on specific issues or sought answers to specific questions including the following:

- “...where money is raised directly from water users, it should go directly back into covering water resource management costs, even down to “a catchment by catchment basis”;
- questions about “transparency” of charging, specifically what it meant and how the Commission would achieve this;
- that the introduction of charges was due to drainage rates being stopped;
- what services they would get for their money and how much the actual costs were likely to be;
- that water for livestock and domestic use should not be charged; and
- positive and negative statements on royalty charges.

24.3 The Commission’s response

Most water users do not wish to pay additional costs for their water. This is not surprising, particularly when most are generally unaware of the background work the Commission performs in investigating, planning and managing water resources.

The Commission sees that water resource management is becoming more complex, and the community’s demand for a professional water resource management services will increase in the future. For example, as resources approach full utilisation and trading in water use licences is introduced, poor quality resource investigation, environmental evaluations and estimation of sustainable divertible limits may well have significant financial ramifications on water users.

This increased demand for resource management services is occurring at a time when the pressure on the State’s revenue fund is also increasing. The Commission therefore believes that it is in the longer



term interests of water users to contribute towards the cost of water resource management.

The Commission recognises that it has a major task in providing the community with more information on the costs and benefits of water resource management and options for the recovery of those costs.

There are many misunderstandings about water resource management charges and how the current service is funded. These misunderstandings are reflected in many of the comments received. For example there appears little understanding of the difference between costs of water resource management and the cost of building the infrastructure to develop and use the resource. All water uses, including those that have “saved the Government money” by developing their own infrastructure, rely on the Commission to share and manage the overall water resource so that there is water available to fill their dam or well.

Domestic water users are treated the same in metropolitan and rural areas - they are not licensed unless unusual conditions apply such as very low water availability or difficult bore construction conditions.

The Commission was pleased to see solid support for the concept of equity in water resource management charging. This support was conditional on justification of any charges and the Commission recognises that such justification will be required before new water management charges could be introduced.

The water service charges of the Water Corporation are structured to provide a dividend to Government. Approximately \$20 million of this dividend is passed on to the Water & Rivers Commission to partially fund to its water resource management activity. City

customers of the Corporation, and their commercial and industrial customers in particular, are currently paying a disproportionate amount of the water resource management costs of the State.

Overall the comments on the introduction of charging, particularly in the written submissions, indicate that further study and consultation are required on:

- information and examination of Water & Rivers Commission services;
- information about the purpose of charging;
- the likely costs involved; and
- current cross subsidies.

24.4 The way forward

The Commission does not intend recommending any change to legislation over charging as part of this parcel of water reform measures.

As part of the program to communicate the costs of water resources management to the community the Commission will adopt accounting procedures that identify the costs and deployment of funds in water resource management.

The Commission will identify the direct costs of licence administration as well as those that relate to the overall management of the State’s water resources. These will be subject to audit.

Any consideration of licence administration or resource management charges would then be subject to agreement in Parliament separate to the COAG reforms. It is also noted that subsidies can continue under the COAG commitments provided they are clearly identified and this may well be the final outcome in most cases.



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26. Appendix A - Individuals, groups and organisations that made written submissions

Table A1. People who made written submissions

Group, company or person	Locality
Advisory committees	
Canning-Wungong-Southern Rivers Irrigation Adv Com	Armadale
Carnarvon Groundwater Advisory Committee	Carnarvon
Swan Groundwater Advisory Committee	Bullsbrook
Wanneroo Groundwater Advisory Committee	Wanneroo
Ag based rural ind. (non- irrigation)	
IS & SF & CI Slee	Busselton
Pemberton Districts Aquaculture Association	Manjimup
The WA Farmers Federation (inc.)	East Perth
Commerce and Industry (non-ag)	
Dennis Neil	
Great Southern Development Commission	Albany
The Chamber of Minerals and Energy of WA Inc.	Perth
Western Power	Perth
Environmental	
Conservation Council of Western Australia	Perth
Manjimup Water Reform Working Group	Manjimup
Serpentine River Group	Mardella
The Oyster Harbour Catchment Group	Albany
Walpole-Tingledale LCDC	Walpole
General Interests/Other	
Trevor R Addis	Albany
Anthony D Allen	Subiaco
Henry Raymond Anderson	Collie
RC Auston	Mundijong
ML, DA & SO Avery	Nannup
Vaughan & Chris Bellanger	Walpole
Kevin Bligh	Busselton
D Brennan	Dunsborough
J Brown	Manjimup
M & P Cala	Subiaco
Brian S Clegg	
R Credaro	Carbunup
Ron Dean	Gingin
David M Dempster	Denmark
K J Drew	Cowaramup



Group, company or person	Locality
John & Barbara Dunnet	Nannup
Brian Ede	Manjimup
Murray Edmonds	Busselton
Geoff & Maria Evans	Osmington
Michael & Carol Eves	Bedforddale
Colin Goldsmith	Bedforddale
DC Hardwick	Mundijong
BJ Hawkins	Greenwood
Astrid Herlihy	Kalamunda
RF Hickson	Keysbrook
DJ Hunt	Yallingup
Ian Hunter	Bedforddale
David Hutton	Capel
TF Hutton	Capel
Gerald E Jones	Bedforddale
Charlie Knezovic	Caversham
Walter Lenz	Bedforddale
HM & J Lewis	Armadale
R Marshall	Manjimup
Cecilia McConnell	Geraldton
Beryl Meulenbrook	Denmark
O & A Mueller	Wembley Downs
TB & J O'Callaghan	Bedforddale
Ian Parker	East Fremantle
Stephen Pasen	Bedforddale
WJ Posthuma	Bedforddale
Katie Preece	Bedforddale
John & Robyn Prowse	Capel
Ray Rees	Denmark
Ray Rees	Denmark
Ben Rose	Manjimup
Vladimir Rudez	Herne Hill
RG Scotland	Wellington Mills
Chris, Catherine & Mark Scott	Nannup
KH Scott	Busselton
GJ Sharp	Denmark
Bob Sherwood	
D J Standish	Denmark
Michael Kane Taylor	Bedforddale
WE & SA Thompson	Manjimup
BJ & EM Walters	Busselton
William Max Wellstead	Bremer Bay
Frank Wood	Bedforddale
PA & M Wren	Karridale
Ross Young	Walpole
Aust. Institute of Valuers & Land Economists (Inc)	South Perth
Bedforddale Creeks Advisory Committee	Armadale
Country Regional Councils Assoc. of WA	Hillarys



Group, company or person	Locality
D & VG Tomlinson & Son	Gairdner
Fraser Real Estate	Dunsborough
Manjimup Water Reform Working Group	Manjimup
Margaret River Water Reform Submission Team	Karridale
Neergabby Community Association (Inc.)	Gingin
Nerrigen Brook Access Agreement	Bedforddale
Potato Growers Association	West Perth
South West Private Property Action Group	Augusta
Walpole LCDC	Walpole
Irrigation for Agricultural Prod.	
John Allbon	Bickley
Ian Brandenburg	Lake King
Rodney Byl	Bedforddale
Andrew & Antje Byl	Bedforddale
Ben Darbyshire	Donnybrook
KJ Drew	Cowaramup
Parry Eardley-Wilmot	Binningup
C Genoni	Dunsborough
Peter Hyde	Armadale
David Keast	Kalamunda
PE Letts	Lower Chittering
AH & M Littlely	Karragullen
Eric Lytton	Leederville
Bruce Teede	Carnarvon
Tim Negus	Margaret River
Michael Guido Padula	Walliston
John & RA Russell, Wells	South Fremantle
Ralph A Sala Tenna	Carmel
KH Scott	Busselton
Kevin Smith	Busselton
GA Swain	Narrikup
B Martella & Sons	Kirup
Edgecombe Bros Pty Ltd	West Swan
Fawcett Orchards	Serpentine
Grape Growers Association of WA (Inc.)	Midland
Gt. Southern Horticultural Development Council Inc	Albany
Irrigation Association of WA (Perth water users workshop)	Leederville
Irrigation Association of WA (Donnybrook water users workshop)	Donnybrook
Irrigation Association of WA (Peak body response)	Leederville
M Katich & Sons	Caversham
Manjimup Vegetable Export Growers	Manjimup
Margaret River Fruit & Vegetable Growers' Assoc.	Karridale
Marybrook Potato Growers Association	Busselton
Potato Growers Association	West Perth
Rainbow Coast Commercial Horticulturalists Inc.	Albany
Rainbow Coast Commercial Horticulturists Assoc Inc (subsequently withdrawn)	Albany
South West Development Commission	Bunbury
South West Table Grape Growers Association	Brunswick Junction



Group, company or person	Locality
St. Andrews Medical Group	Midland
The Great Southern Wine Producers Association	Mount Barker
The Irrigation Association of Australia Ltd	Leederville
The Shire of Donnybrook-Balingup	Donnybrook
WA Fruit Growers' Association	Canning Vale
Legal	
University of WA	Nedlands
University of WA	Nedlands
University of WA	Nedlands
Local Gov & land planning	
Don Burgess	Gidgegannup
David Keast	Kalamunda
Michael Moran	Kronkyup
Agriculture WA	Bentley
City of Armadale	Armadale
City of Gosnells	Gosnells
Department of Land Administration	Midland
Gingin Shire	Gingin
Shire of Manjimup	Manjimup
Shire of Nannup	Nannup
Mining & Exploration	
Department of Conservation and Land Management	Narrogin
Department of Resources Development	Perth
WMC Exploration	Belmont
Natural Resource Management	
Shire of Gingin	Gingin
Swamp Road Catchment Group	Gairdner
Water & Rivers Commission	Albany
Stock & Domestic	
R Burnside	Denmark
RG Heckler	Witchcliffe
Ian & Noelene Slee	Busselton
The Pastoralists & Graziers Assoc. of WA (Inc.)	Belmont
Water Service Provision	
Aqwest Bunbury Water Board	Bunbury
Busselton Water Board	Busselton
South West Irrigation	Harvey
Water Corporation	Leederville



27. Appendix B - Number of comments by topic and issue

Table B1. Numbers of comments by topic and issue

Topic	Issue	Written	Total
Consultation	Other	48	61
	Presentation of proposal and discussion papers	44	80
	Procedural issues	44	97
	Publicity	7	25
	Time-frame concerns	46	78
	Trust	18	33
	Total	208	374
Management of Water	Activities to be controlled under Act	18	27
	Local rules that modify rights	81	147
	Management areas, proclaimed areas	14	26
	Objectives of the Act	7	17
	Other control or scope issues	18	30
	Riparian rights	28	63
	Scope of water controlled	139	210
	Special agreement Act rights	5	6
Total	310	526	
Rights in Water	Access licences	15	33
	Applications and licence conditions	32	57
	Conditions before transfers can occur	3	15
	Licence tenure	22	29
	Licensed rights - definition of right	15	29
	Licensing appeals	8	12
	Local rules on licensing (or lack of it)	4	6
	Other /general	3	10
	Statutory rights	10	14
	Transferability of licences	119	264
	Who can hold licence	3	6
Total	262	514	
Allocation Process	Appeals against plans	19	21
	Approval process for plans	0	1
	General planning issues	8	11
	Legal backing for plans	1	4
	Links with other Govt. Plans and agencies' roles	9	40
	Procedures for preparing plans	9	9
	Total	46	86



Table B1- continued

Topic	Issue	Written	Total
Content of plans	Environmental water provisions	47	74
	Licensing policy and local rules	24	45
	Other planning aspects	4	12
	Setting sustainable limits for divertible water	14	21
	Types of plans	1	2
	Total	90	154
Reasonable and responsible use (duty of care)	Beneficial (use it or lose it)	24	62
	Efficient	15	19
	Harmless	0	4
	Overall concept	8	19
	Sustainable	11	16
	Total	58	120
Modifying licences and updating plans	Cancellation, resumption and surrender	19	31
	Emergency directions	5	5
	Reviewing and updating sustainable diversion limits or environmental water provisions	26	43
	Total	50	79
Monitoring water use	Measuring water use	7	18
	Other reporting issues	5	8
	Penalties	2	2
	Reporting by the licensee on water use	9	21
	Total	23	49
Paying for management	Existing powers to charge	0	3
	Fixed resource management charges	13	19
	General charging issues	163	350
	Water charges for non-licensed use	4	8
	Total	180	380
General comments	General comments	198	290
	Overall proposal	63	89
	Total	261	379
Grand total:		1488	2661



28. Appendix C - Comments on the consultation process

28.1 Issues

Comments received regarding the consultation process highlighted a number of important issues which need addressing. For example, many respondents were concerned with the amount of time available for consultation and the procedures used in the consultation process. Not all comments were negative. Many respondents expressed their appreciation at the opportunity to be involved in the consultation process and look forward to future involvement.

28.2 Comments

28.2.1 Time frame

A number of respondents felt that the consultation process was too short and needed extending. Comments such as “the lack of time allowed for a response is quite reprehensible on the part of your department”; “time and consultation on the proposal will need to be extended if it is to be useful and not antagonise the voters at large” and “more time for discussion is necessary” highlighted this concern.

Comments received made it clear that people wanted and needed more notice of the consultation stages and completion dates. This was suggested by comments like: “it was too late and too little, word of mouth was the only way knowledge of the meeting got around” and “...general feeling of not enough notice and not enough time to prepare a case.”

28.2.2 Other consultation issues

In contrast to comments highlighted above, many respondents were positive about the consultation process. Most appreciated the chance to put their views forward and were looking forward to their involvement in the next stage. For example: “...our council looks forward to further discussions with regard to appropriate implementation details for our area on the COAG requirements for transferable water entitlements and environmental water allocations”; “thank you for the opportunity of participating in this review”; and “the WA region ... is pleased to have had

the opportunity to be involved in the consultation stage of the proposed reforms to WA water laws.”

Comments concerning COAG requirements being met were also received. Respondents stated that the COAG requirements for full and open education, consultation and negotiation must be carried out. Further, the need to negotiate elements of the proposal regarding COAG requirements was highlighted.

Comments that referred to the negative aspects of the consultation process mainly related to procedure. For example, “...the fact that the process was at best ill-informed and poorly constructed...”; “those present were unanimous in their condemnation of the process adopted by the Commission” and “this water reform discussion process is a failure and the document should be rejected outright...” suggest this finding.

28.2.3 Procedural issues

Concerns over procedural issues of the consultation process related to modified proposals and the proposed Bill to amend the *Rivers in Water Irrigation Act* being available for public review. Comments addressed this concern and ranged from requests to review the draft legislation when it became available, to who will actually see the modified proposals before they go to Parliament.

A further issue that arose within procedural issues was the method of consultation. Comments questioned the method of consultation with regard to actual time needed, representative groups being involved and the positive and negative aspects of workshops.

Finally, the level of community input was highlighted as an important concern to some respondents with suggestions that:

- all water users need to be fully informed of the consultation process and be part of the consultation and negotiation process;
- certain interest groups were not included on the original list of consultation meetings and that others were ignored; and
- local input is a necessity.



28.2.4 Presentation / Discussion paper

In response to the presentation/discussion paper, respondents felt a need for more detail. This ranged from detail on the legislation to changed rights, to more detail on implementation and the proposed process of consultation. Also included was the necessity of definitions such as local water rights and ecologically sustainable development, without legal jargon. Further, the discussion paper was considered too vague by many respondents.

A frequent response was that it was hard to understand. Respondents felt the proposal was confusing, needed to be more concise, needed language that was understandable, that it was not user friendly and needed simplifying. The tone of the discussion paper was also raised as a concern where respondents felt the proposal looked and sounded too final rather than a draft that was open for discussion.

28.2.5 Trust

The main concern regarding trust dealt with public input. Comments received questioned whether their input would make a difference. For example “how can we be sure our views will be taken into account?”; “to what extent will our voice make a difference?” and “recently put in public submission about ... and it seemed to make no difference although we put in a lot of effort” demonstrates this concern.

Some respondents suggested the process led to distrust. This finding was highlighted through comments such as “you (the government) can do what you want anyway”; “we have recommended changes and public servants have gone away and just done what they wanted anyway” and “unfortunately the process has led to a considerable amount of distrust as to the Commission’s motives.”

28.2.6 Degree of acceptance of the consultation program

The various comment themes were assessed and assigned a degree of acceptance with the consultation process in a similar way to the degree of support discussed in the main text. The resultant overall degree of acceptance of the consultation process is shown in Figure C1. It reflects the general concerns with the consultation process discussed above.

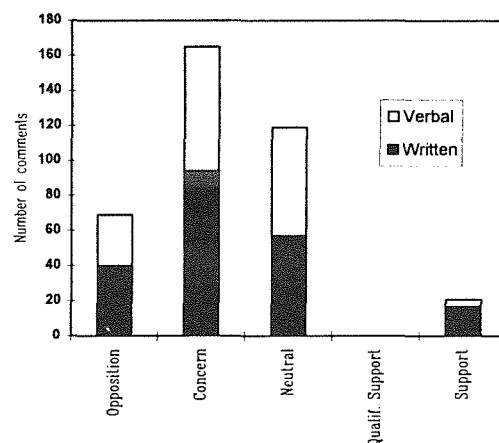


Fig. C1 Response to acceptance of the consultation process

28.3 The Commission response

The Commission acknowledges that the consultation process could have been structured more effectively. However, as the Phase 1 consultation progressed, the program was adapted to respond to people’s concerns as they arose. The second and third phases were developed after considering this feedback. The Commission emphasises that the consultation undertaken to date is only the first stage of an ongoing program.

Nonetheless, as indicated in Figure C1, a high level of concern (written and verbal) regarding the consultation process remained. The Commission has reflected on these concerns to ensure they are taken into account in the subsequent phases.

Future consultation material will need to:

- give more information and detail on the reforms proposed;
- be written in a manner that is readily understood by the majority;
- include clear definitions;
- indicate how they fit into the overall reform and consultation process;
- let the public know their input will be taken into account; and
- be distributed to the appropriate audience.



28.4 The way forward

The Commission considers the number and quality of many of the submissions very pleasing. The community and key stakeholder input has significantly influenced the Commission's views in a number of areas and it believes that an improved and more widely supported reform proposal will result.

The Commission has distributed the summary report widely and this report will be mailed to all of those who submitted comments on the water reform proposals and to anybody who requests a copy.

