

WATER AND RIVERS
COMMISSION



Government of
Western Australia



Water Law Reform – Guide to Legislative Change

This document is not a Bill to amend an Act of Parliament. It is a guide to assist in the writing of a Bill, and should be read as such. A Bill is a legal statement of the intentions of Government and will reflect the submissions made in response to the Guide. All Bills are open to public review and debate once tabled in Parliament.

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1. foreword

The reforms outlined in this guide provide for a new and flexible approach to water resource management in Western Australia.

As a result, water users, the Water and Rivers Commission and communities will have a greatly increased opportunity to better use and protect our water resources and ensure that the common resource is used for the benefit of all.

As part of these changes it is proposed that local people will have a direct influence on how water is shared between different uses and managed into the future. The new system will also give greater recognition and protection of the rights of individual users who will have greater control and responsibility for their water supplies.

However, the changes to water management will take considerable time to be fully realised. The need to carefully define management objectives that are compatible with the legislative objectives and for local water management committees to develop local strategies and rules to take advantage of the new opportunities will ensure progress occurs at an acceptable and controlled pace.

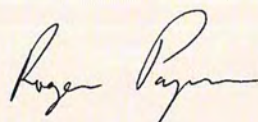
Consultation by the Commission and local water management committees with water users and stakeholders will be an ongoing feature of water resource management in Western Australia.

Existing State and local policies generally represent good management and will not be overturned. They will be the foundation for new policies and rules that take advantage of the new opportunities. We will see a steady evolution in water resource management, protection and development.

The proposed changes represent a new era for the Water and Rivers Commission. Initiatives agreed between the State and Federal Governments will be applied in a way that recognises the unique characteristics and needs of Western Australia.

A critical element in developing change for Western Australia's benefit will be to allow local groups, comprising both water users and government, to set the guidelines and rules by which we will manage water resources. This will mean provision can be made for local needs and the variability of the Western Australian environment.

I commend the proposed changes to you as a significant step forward in water resource management.



Roger F. Payne
Chief Executive
Water and Rivers Commission

August 28 1998



2. introduction

This document is the second of a set of three titled:

Water law reform: Summary of legislative change

Water law reform: Guide to legislative change

Water law reform appendix: Current legislation.

This document presents detailed guidelines to the preparation of a Bill to amend the *Rights in Water and Irrigation Act 1914* to reform water resource management in Western Australia.

This document, in plain language, is an interpretation of what may be contained in draft legislation to go before the Western Australian Parliament for consideration. Its basis is State-wide community input on proposals to update the State's water management laws.

In August 1997 the Water and Rivers Commission launched the consultation process resulting in 158 written submissions and a large number of comments made on the proposals at workshops and meetings across the State.

The Water and Rivers Commission carefully reviewed all submissions and comments and changed its original proposals. The findings are in two Commission reports titled: *Overview, public consultation responses on water reform proposals* and *Water Reform in Western Australia, Allocation and trading in water rights, Phase 1 Consultations, Analysis and response to submissions*.

Those reports outlined the original proposals for reform, key responses to them and the proposed way forward for effective water management in this State. They are available by calling 1800 061 025 or from the Internet at <http://www.wrc.wa.gov.au/about/reform.html>

The plan now is for the Commission to continue its direct consultation with key stakeholders and to conduct meetings where necessary in key regional centres to further explain the proposed reforms. To reinforce the consultations and to coordinate the reforms, the Board of the Commission has established an industry and community based State Water Reform Council. The Council, chaired by a Board member Mrs Jos Chatfield, will review the reforms and advise the Board on them.

The Government and the Parliament will use the issues covered in this guide in the process of drafting legislation. The Commission is seeking feedback from

interest groups and industry bodies through meetings so that legislation can be prepared.

The Commission will be working on the various stages of approval to enable draft amending legislation to be introduced into Parliament as soon as possible. Once in Parliament the legislation will be available for public scrutiny.

The guidelines are arranged in the following subject areas:

Act objectives and processes

the parts of the Act that have general application

Water rights

the rights of people to use water

Local rules

the laws and processes to adapt management to suit particular areas

Dams and drainage

diverting flows and collecting water

Licences

the licensing system

Trading

the sale, lease and purchase of licences



Each subject area is divided into items covering a particular aspect of the reforms. The items are always discussed in four parts:

The existing law

This part includes an overview of each section of the legislation that deals with the item. The separate appendix to this report includes the full text of the legislation. The reader may quickly refer to the

relevant section of the legislation in the appendix from the reference details of the section of the Act given in the text.

How the law is applied

A brief explanation of how the law is applied is given to help the reader understand what the law means in practice and what difficulties arise in administering the law.

Proposed law

This part is a detailed statement of what the new law should do. In some cases the current law is included in the statement as the current law will remain an integral part of the new law and the statement would not be complete without it. In other cases only the new law is mentioned. **Items of significant change in practice or law are shown in bold.**

What we are trying to achieve

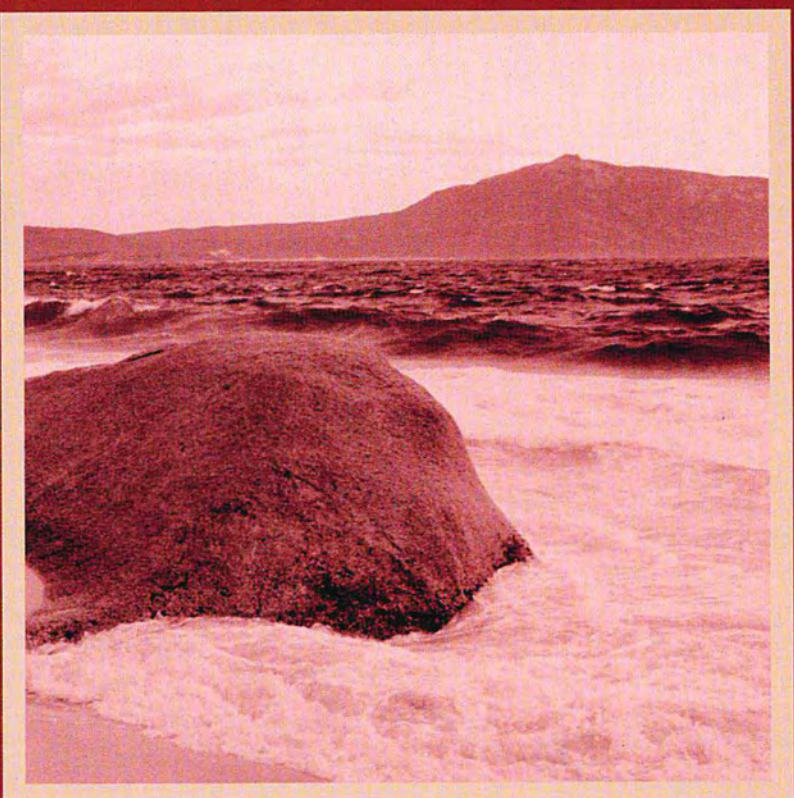
This part explains why the Commission wants to change the law and how the new provisions will be used.

This document also includes a glossary.

For further information please telephone 1800 061 025 during business hours.



act objectives and processes



3.1 definitions

The existing law includes several definitions, some of which it is proposed to change or delete because of specific problems or to clarify a point. Some new definitions should be added.

Irrigation

This following definition in the *Rights in Water and Irrigation Act* is to be deleted as it is misleading and unnecessary. It mentions only watercourses although this is only one of several possible sources of water. The ordinary meaning of irrigation as found in a dictionary is considered adequate for the purposes of the Act.

“irrigation” means any method of causing water from a watercourse or works to flow upon and spread over land for the purpose of cultivation of any kind or of tillage or improvement of pasture, or of applying water to the surface of land for the like purpose.

Spring

The current definition of a spring is:

“spring” means a spring of water naturally rising to and flowing over the surface of land;

Springs are excluded from the management controls that apply to watercourses and wetlands. The definition of a spring must be clear, distinguishing the ordinary percolation of underground water into wetlands and watercourses from the bubbling of water to the surface of the land in a spring. The following definition illustrates how this distinction may be made.

“spring” means a spring of water naturally rising to and flowing over the surface of land but does not include the discharge of underground water directly into a watercourse, wetland, reservoir or other body of water.

It should be noted that both definitions exclude any extra flow of water obtained by developing the spring, such as by digging it out (see the definition of well).

Taking water

Taking water is removing water from or reducing the flow in a watercourse, wetland or groundwater system. It can be achieved in several ways.

to *take* water includes-

- (a) to pump or siphon water;

- (b) to stop, impede or divert the flow of water for the purpose of collecting the water;
- (c) to divert the flow of water in a watercourse from the watercourse;
- (d) to release water from a lake;
- (e) to permit water to flow under natural pressure from a well;
- (f) to permit stock to drink from a watercourse, a natural or artificial lake or reservoir.

Underground water

Underground water, often referred to as groundwater, is not currently defined in the Act. Although the ordinary meaning is suitable it is proposed to clarify the point that the water that percolates into a well is still considered to be underground water. Such water is subject to the controls over the taking of underground water. A definition of underground water, such as that shown below, should be added to the Act.

“underground water” includes water that percolates from the ground into a well or other works.

Watercourse

The current definition of watercourse is:

- (a) *any river, creek, stream or brook, whether artificially improved or altered or not;*
- (b) *any conduit that wholly or partially diverts a river, creek, stream or brook from its natural course and forms part of the river, creek, stream or brook;*
- (c) *any natural collection of water into, through or out of which any thing referred to in paragraph (a) or (b) flows, whether artificially improved or altered or not;*

in which water flows or is contained whether permanently, intermittently or occasionally, together with the bed and banks of any thing referred to in paragraph (a), (b) or (c).

The determination of whether a place where water flows is a watercourse is often subjective. In order to achieve certainty it is proposed that if there is doubt or divided views as to whether a water flow constitutes a watercourse the matter should be able to be resolved by a **declaration** made by the Water and Rivers Commission. The declaration would be made in the form of a local rule and included in the management area plan.



The definition should also be widened to include a reservoir if a watercourse flows into, through or out of the reservoir.

Water resources

Under the current definition water resources include:

- (a) *watercourses, reservoirs, lakes, wetlands, estuaries and inlets, together with their beds and banks;*
- (b) *aquifers and underground water; and*
- (c) *drainage, surface and surplus water.*

This definition which is found in the *Water and Rivers Commission Act 1995* should be included in the *Rights in Water and Irrigation Act 1914*.

Well

The current definition is:

“well” means a pit, excavation, shaft, hole, bore or other opening made for the purpose of obtaining a supply of underground water;

The definition of a well should be changed so that wells include openings that were made for purposes other than to obtain a supply of water but are used, wholly or

partly, for that purpose. Examples include drains, mines, quarries and mineral exploration bores from which underground water is taken. It should be noted that drains that are used to remove surplus underground water may be subject to the controls that apply to wells (see Section 6).

An opening made into a spring or a wetland to obtain an increased supply of water is, under the current definition, a well. This is appropriate as the well increases the draw on the underground water.

A possible definition is;

“well” means an opening in the ground excavated or used to obtain access to underground water.

Wetland

The definition of wetland is to be used instead of the clumsy expression “lake, lagoon, swamp and marsh” that is used in the Act. This change accords with modern practice. A suggested definition for wetland is:

“wetland” means a natural collection of water on the land surface, including lakes, lagoons, swamps and marshes, whether artificially modified, permanent or temporary, that is not a watercourse.



3.2 title of the act

Existing law

Rights in Water and Irrigation Act 1914 – Long title

An Act relating to rights in natural waters, to make provision for the conservation and utilisation of water for industrial irrigation, and for the construction, maintenance, and management of irrigation works, and for other purposes.

How the law is applied

The Act has two functions, defining and managing rights to use water and establishing and operating public irrigation schemes. The title defines the scope and intent of the Act to guide the way its words should be interpreted. The current title is difficult to understand, “industrial irrigation” is archaic and the meaning of “conservation” has changed.

Proposed law

A possible title for the Act is:

An Act relating to rights, management, use and protection

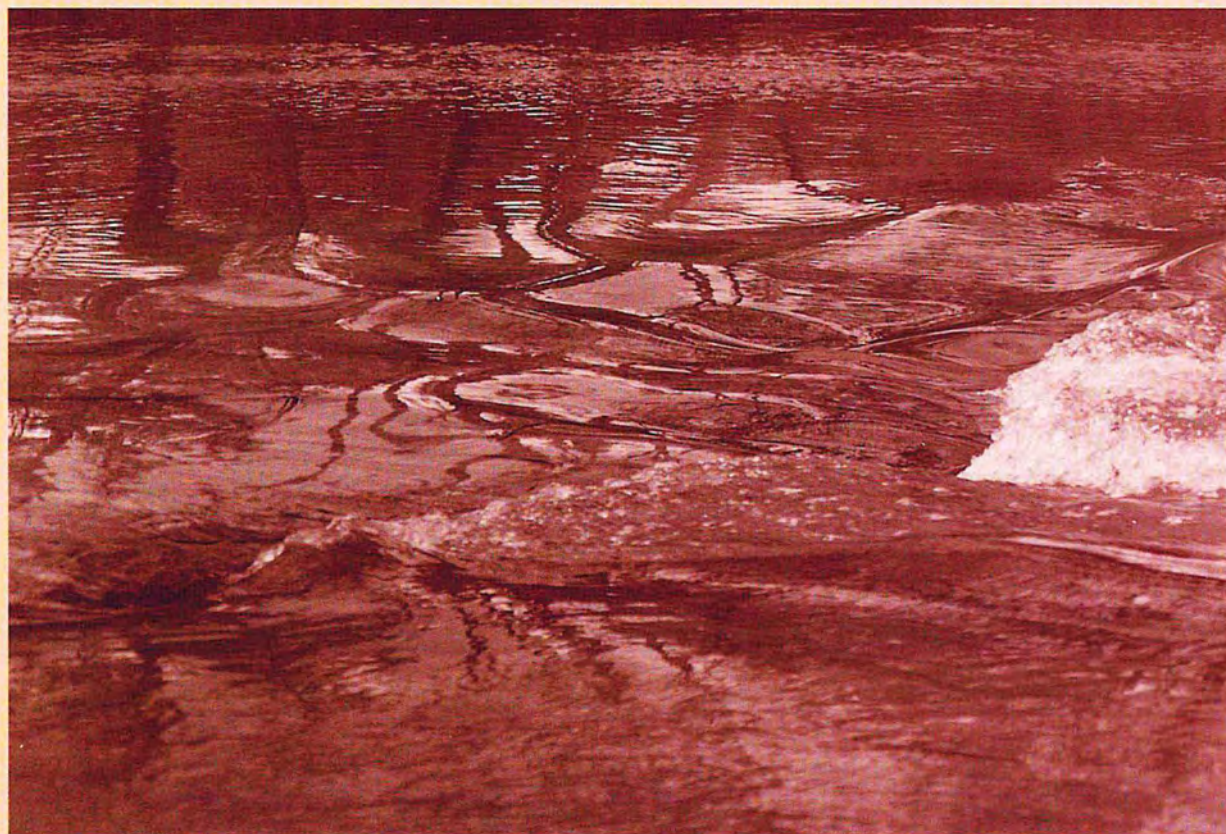
of water resources and for irrigation schemes and other purposes.

The title should be read in conjunction with the objectives of the Act.

What we are trying to achieve

The title of the Act should be widened to recognise that water resources consist of more than just water, they include the bed and banks of streams and wetlands, the flood plains and the associated ecological systems and the aquifers of underground water. This will enable the Act to deal with water resource components (the water, bed, banks etc), systems (rivers, aquifers etc) and processes (flow, contamination etc).

The Act should be widened to apply to natural waters and supplementary flows. More and more rivers, wetlands and aquifers are being modified by dams and recharge works. Drains and sewers are being recognised as valuable water resources.



3.3 objectives

Existing law

The *Rights in Water and Irrigation Act* provides the Commission with powers to manage water use but sets no objectives, other than the title, to guide the way those powers should be used.

How the law is applied

The Commission has adopted corporate objectives aimed at managing water resources to achieve sustainable use of water in a way that achieves an equitable balance between the competing needs of the people of the State. This objective has not yet been subject to the scrutiny of Parliament.

Proposed law

It is proposed that the new legislation's objectives be to promote:

- the sustainable management of the State's water resources.
- the integrated management of the State's natural resources;
- the orderly, equitable and efficient use of water resources; and
- members of the community taking an active role in managing these resources.

Sustainable management is the management of the use, development and protection of the State's water resources so as to allow Western Australians to provide for their social, physical, economic and cultural well being while -

- (i) ensuring that water resources are able to meet the reasonably foreseeable needs of future generations;
- (ii) safeguarding the life supporting capacity of water resources; and
- (iii) avoiding, remedying or mitigating significant adverse effects of activities on the environment.

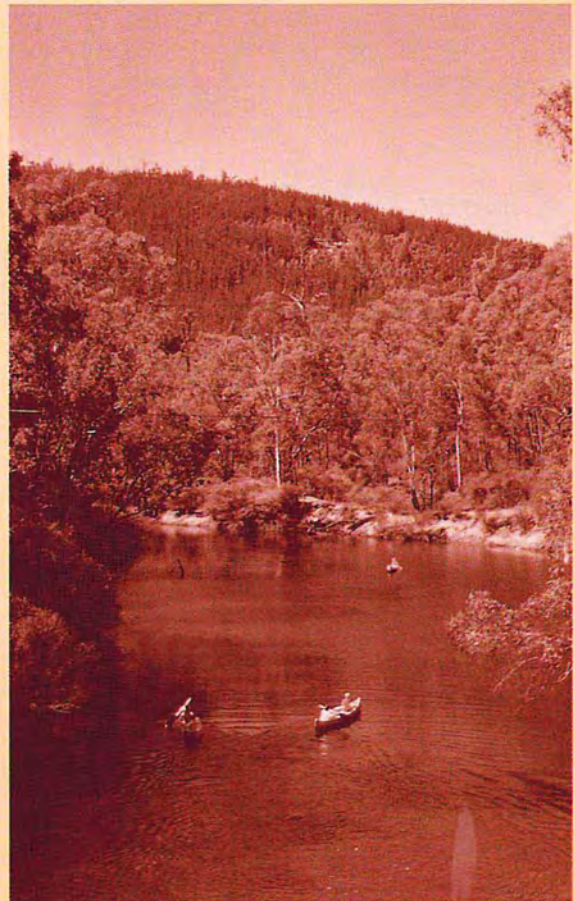
The Commission and all other bodies and persons concerned with the administration of this Part of the Act and in carrying out their responsibilities and powers under this Act must have regard to the objectives.

What we are trying to achieve

Modern natural resource management systems require an expert, dedicated resource manager which, acting in partnership with the people affected by its decisions,

prepares and implements policies and management plans to achieve a set of guiding objectives prepared by Parliament.

It is proposed to develop a statutory objective of sustainable use and management of the water resources of the State. This will ensure that the water is available to present and future generations, the values of the water resource are maintained and the adverse effects of the use of the water are minimised.



3.4 decision-making considerations

Existing law

The *Rights in Water and Irrigation Act*, in common with many old Acts, provides the means to allocate and manage the use of the State's water resources but it does not provide any guidance as what matters should be considered.

How the law is applied

The Commission and advisory committees have had to make their own interpretation of what is relevant. While this has given a great deal of freedom it has meant that they have had a great deal of difficulty in protecting the social and environmental needs of the community. Some Commission decisions, such as requiring water users to maintain river flows for recreation or supporting the policies of local government, may be beyond the Commission's power.

Such uncertainty could prevent the Commission giving protection to important social, economic and environmental needs such as fishing, tourism, swimming and beautification of watercourses. Similarly the Commission may be unable to support local government policies on land development.

Proposed law

The legislation should be amended to **require the Commission and local water management committees to consider the impacts of their decisions on water users, the community and the environment** and give some guidance as to the types of matters that are relevant. Issues that the Commission should consider include:

- the sustainability of the water use – will the water resource or any other natural resource be damaged by the use?;
- the benefit of the use – is the use of the water going to benefit the user and the rest of the community?;
- the need for the water relative to the current and future needs of others – does the use justify preventing the water being used for other uses? Will it prevent the water being used for better uses in the future?;
- other sources of water that are available – should the person use another source of water that will

have less impact on other people or the environment?;

- **impacts on the ecology, the environment, the community, land-owners and other users** – what are the effects of the use?;
- **Government policy and agreements** between the Commission and other natural resource managers – will the use hamper plans of other people, groups, agencies or the Government?;
- **Commission and local water management committee policy** – is the use consistent with the water resource protection and development plans for the area?;
- **local custom and practice, advice from local water management committees and other authorities and submissions from members of the community** – is the use consistent with the local plans and practice?;
- **international and interstate agreements** – are there trade or environmental protection agreements that affect the use?; and
- **local policies, rules, regulations and directions** – has the Commission made earlier decisions that affect this decision?

What we are trying to achieve

The Commission and local water management committees will be making decisions about the level and conditions of use of water resources, the allocation, management and protection of those water resources and the transfer of licences. The managers should be able to consider all matters that impact on the objectives of the Act, including the needs of the water user and the economic, social and environmental needs of other users and the wider community.

The legislation should allow the Commission and local water management committees to identify these needs from the policies of other agencies and in submissions from members of the community and from organisations. The legislation should also recognise that integration of natural resource management policies and actions is desirable by allowing the Commission and local water management committees to support local, State, National and international policies and agreements.



3.5 environmental water

Existing law

The *Rights in Water and Irrigation Act* is subject to the Environmental Protection Act which requires the Commission and water users to avoid pollution and to assess the environmental impact of new projects if they are likely to cause significant environmental harm.

How the law is applied

The Commission submits its plans and policies to the Environmental Protection Authority for assessment if the Commission considers that they could have significant impacts on the environment. The plans and policies may then be subjected to public review before the Minister for the Environment sets conditions that must be complied with. The Minister for the Environment also makes regulations and environmental protection policies that protect water resources and their environment. For example the Commission's strategy for wetland protection and groundwater allocation to landowners at Wanneroo was subject to full environmental assessment.

However, many day to day decisions that the Commission should make to account for environmental needs are currently beyond its power. This lack of control by the Commission can require farmers to have to go through an unnecessarily onerous formal environmental review process or prevent sensible safeguards from being applied.

Proposed law

The requirements of protecting the environment are already well covered by the proposal to include objectives, **create a duty of care**, specify the way in which licence applications are made and, from time to time, review licence entitlements and local rules, (see Sections 3.3, 4.4, 3.6, 5.1 and 7.6).

The Commission will ensure that the environmental requirements are satisfied and will formalise and publish a policy statement on environmental water requirements based on its current approach. The policy will be published as a draft and will be available for public discussion. It will be submitted to the EPA.

Preparation of allocation plans and local rules under the new legislation will specifically address water for the environment.

What we are trying to achieve

All aspects of water resource management should be able to be dealt with by the water resource manager. The Commission and local water management committees should be able to make decisions that balance environmental and economic factors speedily and authoritatively. For example the Commission should be able to refuse applications for market gardens that are too close to streams. The Environmental Protection Authority should continue to assess the major plans and policies of the Commission but it need not be involved in the day to day management.



3.6 monitoring

Existing law

Rights in Water and Irrigation Act section 26E – Information on non-artesian wells

Drillers must provide information on the geology of the ground and the construction of wells to the Commission.

Rights in Water and Irrigation Act – Construction and alteration of wells by-laws -Section 12A – Fitting meters to wells

The Commission can fit meters to wells.

How the law is applied

In Carnarvon the Commission meters all irrigation wells. In other areas large users and industrial users are required to meter their water use. Most mining operations and water service providers, such as the Water Corporation, are required to monitor the impacts of their use of water and to regularly report. The Commission estimates the water use and monitors the impacts in most areas of the State. This information is used to improve the management of the water resources, especially to detect early signs of problems.

Proposed law

The legislation should allow the Commission or the local water management committee to require water users to undertake monitoring of their use of water and the impact of the use on the water resource and the environment.

These requirements would be applied when this is a practical, efficient or effective means to obtain the information required for water resource management.

The Commission recognises that water use can vary dramatically and that monitoring of other indicators of use, such as crop type and area, can be more appropriate.

The monitoring would be restricted to the individual use and impacts; the Commission will remain responsible for monitoring the total resource.

The monitoring and reporting requirements will be specified in regulations, local rules or licence conditions. The monitoring and reporting may be

periodic and may include statements, estimates or measurements of:

- use of the water including crop area and type;
- water volumes taken and used;
- watercourse flows;
- watercourse, wetland and aquifer flows or water levels;
- water quality and contaminants; and
- changes in ecosystems dependent on the water resource.

Reporting of the strata details of the ground encountered during drilling and the construction details of wells, dams and other works may also be required.

The Commission may install meters or require the holder of a licence to provide and install meters on any well or other facility for taking water.

The holder of the licence shall maintain the meter in good order and condition and use every reasonable endeavour to ensure that the meter is operating within the prescribed tolerance.

The Commission may require that the meter be tested.

The regulations may prescribe fees for the installation, maintenance and reading of meters and other monitoring equipment where the Commission or local water management committee does this on behalf of the landowner. The fee may be combined with the fee for a licence.

What we are trying to achieve

The proposed changes are intended to allow the Commission to get access to the data it needs to properly manage water use. The means of collecting the data should be efficient, placing the lowest cost on the taxpayer and water user, and be tailored to management needs.

For example, where there is only one user, such as a mining company, that user will be required to monitor the water resource. Where there are many users, such as at Manjimup, the Commission will monitor the streams.



3.7 penalties

Existing law

Rights in Water and Irrigation Act section 26J – Commission entitled to institute proceedings

The Commission may take court action to enforce penalties.

How the law is applied

The Commission takes very little court action, using this as a final resort if compliance can not be achieved by direct negotiation.

Proposed law

The following increases in the prescribed penalties are proposed.:

Section of Act	Offence	Current penalty	Proposed penalty for individuals*
11	taking water without authority	\$2,000 \$200 a day	\$10,000 \$1,000 a day
22	not complying with a surface water direction	\$500 \$50 a day	\$4,000 \$400 a day
26A	drilling an artesian well without a licence	\$2,000 \$200 a day	\$10,000 \$1,000 a day
26B	drilling an unlicensed well without authority	\$2,000 \$200 a day	\$10,000 \$1,000 a day
26E	not providing information on non-artesian wells	\$500	\$1,000
26F	unauthorised alterations of licensed well or contravention of licence	\$2,000 \$200 a day	\$10,000 \$1,000 a day
26G	not complying with a groundwater direction	\$500 \$50 a day	\$5,000 \$500 a day
70	obstructing a Commission officer	\$1,000	\$10,000
71	refusing to give up possession of Commission works	\$2,000 six months imprisonment	\$10,000 six months imprisonment
72	general penalty against the act	\$2,000	\$10,000

* It is proposed that the financial penalties for corporate bodies be twice that for an individual.

What we are trying to achieve

The penalties are to be increased to maintain their value as a deterrent to individuals and to corporations.



3.8 appeals

Existing law

Rights in Water and Irrigation Act section 14 – Appeals [surface water licences]

A person who is aggrieved by the refusal of an application for a licence or the holder of a licence who is aggrieved by any term, limitation, condition, or provision imposed in relation to a licence may appeal to the Minister.

The Minister shall cause an inquiry to be conducted and the person aggrieved has the right to be heard at that inquiry. The Minister shall give such decision, as is seen fit.

Rights in Water and Irrigation Act Section 23 – Appeals [Directions]

Any person who is aggrieved by a direction contained in a notice even under section 22 (1) may give notice to the Minister that he or she wishes to be heard.

The Minister shall cause an inquiry to be conducted. The person aggrieved has the right to be heard at that inquiry and the Minister shall thereafter give such decision as he or she thinks fit.

The inquiry panel shall consist of a magistrate or other people who, due to their qualifications and experience, are suitable to conduct the inquiry.

Rights in Water and Irrigation Act section 26D – Application for and issue of well licences

An applicant for a licence who is aggrieved by any decision of the Commission shall give notice to the Minister of his or her wish to be heard, before the decision is implemented.

The Minister shall cause an inquiry to be conducted by such persons as he or she shall appoint, including at least one person nominated by the person aggrieved. The person aggrieved has the right to be heard at any such inquiry and the Minister shall thereafter give such decision as he or she thinks fit.

How the law is applied

Under the existing law the following people may appeal to the Minister against a decision of the Water and Rivers Commission:

- a person applying for a licence to take surface or groundwater who is dissatisfied by a refusal or a condition on the licence;
- a person issued with a direction that places conditions or limits on the way water is taken or on the amount of water taken; and
- any other person affected by the direction, such as a downstream property owner who suffers interruption to the water supply because of the direction.

The Minister will normally convene a conference to try to resolve the dispute. If this fails a panel of three people is normally appointed to inquire into the matter and make a recommendation to the Minister. The Commission and the appellant are represented on the panel if the appeal relates to a licence. A magistrate always chairs the panel.

Proposed law

The decisions made by the Commission or a local water management committee in respect to the following matters should be subject to appeal:

Commission decision	Possible appellant
licence refusal	licence applicant
adverse licence condition	licence applicant
direction	person subject to the direction
refusal to transfer entitlement	all applicants for the transfer
change in licence condition	licence holder
cancellation or suspension of licence	licence holder

Conditions or limitations imposed on licences by local rules, regulations or by-laws cannot be changed on appeal.

Appeals should be lodged in 30 days however the Minister should have **discretion to accept an appeal at a later time** if it would be equitable to do so.

An agent may bring an appeal on behalf of a person entitled to bring an appeal.

The appeal shall:



- state the name and address of the appellant;
- set out or otherwise identify sufficiently the decision, direction or measures appealed against; and
- set out the grounds of the appeal and state briefly the facts on which the appellant relies.

The Minister will determine whether the decision should be set aside until the appeal is resolved.

If the Minister considers that the appeal is trivial or frivolous, the Minister may dismiss the appeal and need not cause an inquiry to be conducted.

The Minister may appoint a person to hold a conference of the parties to the appeal, including the appellant, representatives of the Commission and the local water management committee in order to resolve the dispute by agreement.

If a resolution cannot be achieved the Minister shall appoint one or more people to inquire into the appeal.

The appellant and the Commission or the local water management committee shall be given an opportunity of being heard and make written submissions.

An inquiry shall be conducted according to equity and the substantial merits of the case without regard to legal technicalities.

A person conducting an inquiry is not bound by any rules of evidence and may conduct the inquiry and obtain information in whatever manner that person considers appropriate.

The person conducting the inquiry shall report to the Minister giving that person's findings and recommendations in respect of the appeal.

The person conducting an inquiry may, of his or her own initiative or after taking into account an application of the appellant or the Commission, refer a question of law arising in the inquiry for determination by the District Court. The conduct of the inquiry shall not be concluded until the determination of the District Court has been made and taken into account.

On receiving the report of the person conducting the inquiry, the Minister shall consider and determine the appeal and may:

- allow the appeal wholly or in part;
- dismiss the appeal; or

- refer the appeal back to the person conducting the inquiry with a request for consideration or further consideration of some fact or issue.

In determining an appeal, the Minister shall have regard to, but is not bound by, the findings and recommendations of the inquiry.

The decision of the Minister is final and the Commission and the local water management committee shall give effect to it.

What we are trying to achieve

It is proposed to review the appeal system itself, to investigate whether replacing the Minister with another appellant authority such as a natural resource tribunal or administrative law court will improve the outcomes of appeals. Such a review should also consider the benefits of third party appeals, that is appeals lodged by people whose interests may be adversely affected by the Commission's decision in respect of the activity of another person. It should also consider reforms in town planning and environmental appeals. This review will take some time and in the interim it is proposed to make some improvements to the existing system.

The scope of appeals should be increased to match the full range of discretionary powers available to the Commission and local water management committees.

It is also proposed to more fully describe the appeal process and make some procedural improvements by giving the Minister more discretion in the way the appeals are dealt with. The Minister should be able to deal quickly with minor or frivolous appeals and adopt alternative dispute resolution processes before a full inquiry is initiated.



3.9 compensation

Existing law

The *Water Agencies (Powers) Act* provides for compensation to be paid if the Commission or the Water Corporation causes damage in carrying out works. Compensation may be paid for damage resulting from negligence and in respect to land compulsorily resumed under the *Land Resumption and Public Works Act, 1902*.

Section 12 of the *Rights in Water and Irrigation Act* provides for compensation to be paid if a special licence (that is surface water licences issued to legitimise existing water use when an area is proclaimed) is cancelled or changed in the public interest.

Sections 35, 36, 37 and 38 of the *Rights in Water and Irrigation Act* provide for compensation to be paid for flooding and loss of riparian rights caused by works constructed by the Commission or the Water Corporation.

How the law is applied

The Commission endeavours to protect the flows of water needed to satisfy riparian and licensed rights when public works are constructed. Accordingly, compensation seldom becomes an issue.

The Commission has regard to the impact of new private projects that use water when it considers licence applications for those projects. The Commission tries to protect the existing user and encourages the developer to compensate the existing user for his or her loss. Mining projects are often ordered to make compensation by the Mining Warden.

Proposed law

The existing compensation provisions should be retained.

Water users acting within their legal rights should be compensated for an enforced reduction to their level of use caused by the grant of a relative increase to others. Generally the compensation will be achieved by the sale of rights from the existing user to the developer but, provision should be made for the Commission to order compensation payments if a sale is not practical or does not adequately redress the loss.

No compensation should be payable simply because of a loss in use of water because of a conflict in established rights. For example one riparian water user cannot claim compensation from another if there is inadequate water to supply both.

No compensation shall be paid for a change in use necessary to reduce overall use to sustainable levels that ensure the stability of the social, water resource and ecologic systems.

The measure of damages shall in all cases be the direct pecuniary injury caused by the loss of something of substantial benefit and shall not include remote, indirect, or speculative damages.

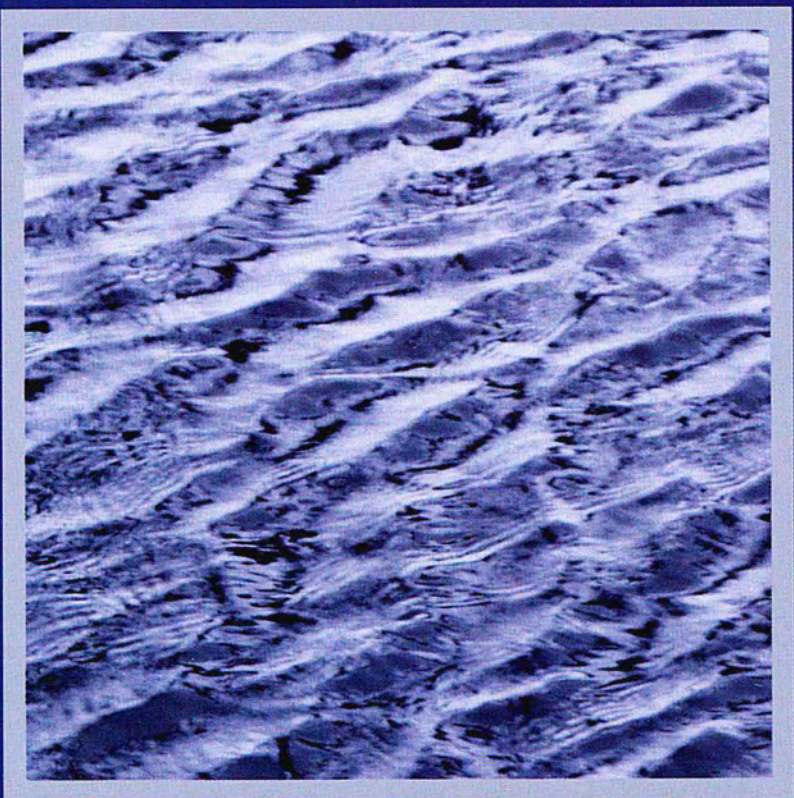
The compensation is to be paid by the water users who benefit from the change where the change is made for the benefit of other users, such as to give priority of one use over another. The compensation is to be paid from the public purse where the change is made in the public interest, such as to restore the flow of a river for tourism or some other public use. The Commission may **require that compensation be paid under a licence condition or by placing a charge on the licence of the beneficiary of the decision.**

What we are trying to achieve

There should be a system of compensation whereby those who benefit from a change in rights to use water compensate those who lose a reasonable entitlement because of that change. The compensation should be limited to actual loss, such as a reduction the level of production or commercial activity, not because of any loss of enjoyment or amenity value, or any change in the aesthetic environment. For example a mining company might be required to provide new stock water supplies if mine dewatering dries up stock bores. Compensation should not be made for changing rights in response to changing water management requirements.



water rights



4.1 crown and private rights

Existing Law

Rights in Water and Irrigation Act Sections 6 and 19 – Application of the Act

The Act does not apply to springs and wetlands that are wholly contained on one property.

Rights in Water and Irrigation Act Section 8 – Natural waters vested in the Crown [proclaimed surface water areas]

This section vests the right to the flow and control of water in watercourses and wetlands in the Crown. It allows people to build works on their land to capture water if this does not “sensibly” diminish the flow of water vested in the Crown.

Rights in Water and Irrigation Act Section 11 – Other diversions to be licensed [in proclaimed surface water areas]

It is an offence to take the water vested in the Crown without the licence or under some other right.

Rights in Water and Irrigation Act Section 26 – Rights to underground waters vest in the Crown

The right to the use and flow and to the control of all groundwater is vested in the Crown.

Rights in Water and Irrigation Act Section 26C – Exemptions

Within proclaimed groundwater areas non-artesian domestic and stock wells can be exempted from the requirement to be licensed.

Underground water – unproclaimed areas

The *Rights in Water and Irrigation Act* places no

restriction on the taking of underground water in unproclaimed areas.

How the law is applied

The law allows the Commission as the Crown’s agent to regulate the way water is used and to protect the water resources on behalf of the community. For example, in areas where resources are scarce the Commission can prevent new users taking the water needed by existing users. With the passage of time more and more areas of the State have been proclaimed and most areas of significant water resources, especially groundwater, are proclaimed and subject to licensing controls.

Proposed law

A possible wording for the Crown vesting and associated private rights is:

The right to the use and flow and to the control of the water at any time in any watercourse, wetland or underground source of supply shall, subject to this Act and until appropriated under this or any other Act, vest in the Crown.

The vesting shall not prevent any person from draining any land, or making any dam or tank upon any land of which he or she is the owner or occupier if the flow of water in any watercourse or the amount of water in any wetland is not thereby sensibly diminished.

A person who, is not authorised by this Act, a licence, a local rule or any other Act, diverts or takes any water from any underground source of supply, watercourse or wetland or causes or permits any of those things to be done commits an offence.

What we are trying to achieve

The current multiple vesting of surface and underground water is intended to be replaced by a single general vesting of both types of water in a way that does not introduce new controls over springs, soaks or wetlands contained wholly on one property. The major change is that **surface waters outside proclaimed areas will become vested in the Crown** without the need to proclaim the area. This will allow the progressive development of local rules to manage water use.



4.2 riparian rights

Existing law

Rights in Water and Irrigation Act Section 9 – Riparian right defined [proclaimed areas]

The owner or occupier of private land that has direct contact with surface water may take water for domestic, ordinary and stock watering. If the land was alienated before the area was proclaimed the owner may take water for a 2 ha household garden.

Limits apply to the volume of water that may be taken if the flow has been increased by public works.

Rights in Water and Irrigation Act Section 20 – Riparian right defined [Unproclaimed areas]

The owner or occupier of private land that has direct contact with surface water may take water for domestic, ordinary and stock watering. If the land was alienated before 1914 the owner may take water for a 2 ha household garden. A riparian landowner may also take water for any purpose from a watercourse or wetland if there is no sensible reduction in the volume or flow of the water.

How the law is applied

People taking water for riparian rights often build dams to collect the water. These dams require the approval of the Commission in proclaimed areas. Generally the approval is readily given but in some areas restrictions are necessary because the dams can cut off the flow entirely. Conflict between neighbours can arise as, during times of low flow, riparian users are not subject to the controls that apply to all other users.

Proposed law

In order to address times of water shortage it is proposed to enable local rules and directions to be made to share the available water when there may be insufficient water in the watercourse or wetland to satisfy all landowner rights.

Local rules may allow dams may be constructed to store water for riparian rights and the local rules may control the positioning of pumps and other works if this is necessary to protect the bed or banks from damage.

It should be noted that currently riparian rights do not apply to occupiers of Crown land. The common right to take water (see section 4.3) will allow pastoralists and other holders of leasehold land to take water for stock and domestic needs.

Proclaimed areas will be progressively removed as local rules are made (see section 5.3). This would have the effect of changing the riparian right from that defined in section 9 of the Act to that of section 20. The proposed rights are set out in the table below.

What we are trying to achieve

As proclaimed areas are to be removed, the two types of riparian rights, one in proclaimed areas and one in other areas, are to be merged. In times of shortage, when there is not enough water for all users to get their full allotment, local water management committees will be able to make local rules to ration the available water.

Local water management committees should also be able to make local rules on how water is taken, such as building dams and controlling stock access to streams to protect the banks if this is necessary.

Rights in Water and Irrigation Act section 9 rights – proclaimed areas	Rights in Water and Irrigation Act section 20 rights – other areas	Proposed rights
Stock, domestic & ordinary uses	Stock, domestic & ordinary uses	Right to be maintained
	Irrigation of a 2 ha household garden on land alienated before 1914	Maintain rights to irrigate 2 ha household garden on land alienated before 1914.
Irrigation of a 2 ha household garden on land alienated before the date of proclamation (this date is always later than 1914)		Irrigation of a 2 ha garden in proclaimed areas for properties alienated after 1914, can be maintained by making a local rule when the areas is de-proclaimed.
	Take water for any use if the flow of a watercourse or volume of a wetland is not sensibly diminished.	Take water for any use if the flow of a watercourse or volume of a wetland is not sensibly diminished unless restricted by a local rule.
Volume of water restricted if the flow has been augmented.		Volume restrictions to be maintained, unless relaxed by local rules.



4.3 other rights to water

Existing law

Rights in Water and Irrigation Act Section 21 – Other rights to water [unproclaimed surface water areas]

Any person may take water from a watercourse or wetland that is on public land for domestic and ordinary use and watering stock. Water can be taken for any other purpose if the flow is not sensibly diminished.

However no person acquires a right because he or she has used the water previously.

How the law is applied

People take water from public land for all purposes, often from a watercourse that is in a reserve adjacent to their property. Many landowners have installed pumps without seeking the approval of the owner of the reserve. If the Commission becomes aware that a person is taking water so that it affects the supply to other people the Commission will advise the various parties of what believes is fair and will issue a direction in particularly difficult circumstances. Some communities make their own rules, which they try to enforce through cooperation, sometimes with the assistance of the Commission or local government.

Proposed law

It is proposed to extend the “riparian” type right to all water sources and to all water users.

Common rights to take water should be made uniform and be defined. They should include taking water from



any water body or aquifer (other than an artesian aquifer), where there is public access, for:

- domestic and ordinary use;
- for watering cattle or other stock, but not for intensive stock; or
- firefighting.

Local rules may:

- regulate how the water is taken;
- specify the volumes that may be taken;
- specify the times and rates at which water may be taken;
- prohibit the taking of water;
- prohibit the taking of water without a licence; or
- approve the taking of water for any other purpose.

It should be noted that water might be taken for any purpose if allowed by licence.

To protect aquifers and water users, the construction of wells should be controlled in areas where aquifers may be damaged by inappropriate well construction such as artesian aquifers or in areas where saline or contaminated waters exist.

Possible new clause:

- (1) Any person may take water for firefighting, domestic and ordinary use, watering stock or for any other purpose allowed under a local rule from any watercourse, wetland or underground source of supply to which there is public access.
- (2) Local rules and directions may be made to regulate or prohibit the taking of water.
- (3) No right to take and divert water shall be acquired by any person and no right to exclusive use of water shall be acquired by any person, by length of use or otherwise, except under this or any other Act.

What we are trying to achieve

The Commission would like to make the law simple and reasonable, giving the same rights to users of surface and groundwater. People should be able to get access to water for their basic needs with a minimum of red tape. Where there is not enough water to meet all needs or problems are developing, local rules should govern the way water is taken.



4.4 duties

Existing law

The existing law does not place any duties on water users other than requiring the holder of a licence to maintain facilities to which the licence refers in good order and repair.

How the law is applied

The Commission has to place detailed conditions on licences and issue specific directions to require people to protect the resource and the rights of others. This creates a lot of red tape leading to lengthy disputes, wasting a lot of time and creating ill-will.



Proposed law

It is proposed to place a duty of care on all people involved in the management or use of water resources – including the Commission, local water management committees, landholders and water users.

Scope of the duty of care

The statutory duty is to be a codification of the common law duty that applies generally to everyone who may harm another person by his or her actions. The statutory statement of the duty of care will apply to activities and wastage that might harm current and future generations and instil in landholders an ethic of stewardship and a pro-active approach to environmental protection. The duty of care would

cover the management of water resources and dependent flora and fauna, biological diversity and ecological integrity.

The duty of care would and not require the correction of harm caused by past actions.

The duty of care will require a person to take all reasonable and practical steps to comply with the objectives of the Act including taking action to identify, assess and manage the risks of harming the environment or others.

The Act could also include a statement of the rights of persons who are at risk to be informed of the hazard and consulted over its management, especially of any incident or accident giving rise to a risk.

Local rules may be made to stipulate the legal requirements for the fulfilment of the duty of care. A breach of the rules should give rise to liability and to a civil claim for compensation by a person who suffers harm caused by the breach.

Additionally, there should be the facility for developing voluntary codes of practice or guidelines that indicate how the duty may be fulfilled but not create legal obligations. Rather, the codes of practice or guidelines would be relevant considerations for the Commission and local water management committees determining the issue of an administrative notice where they believe the duty of care was not being fulfilled and could also indicate the requirements for fulfilling legal obligations under local rules.

Who owes the duty of care?

The duty of care would apply to all those persons who own, manage or use water resources, including the Water and Rivers Commission, landholders, holders of native title and the Crown. The duty of care should also apply to other persons who have any indirect influence on the management of water resources (eg drilling contractors and suppliers of plant, equipment and materials), with their obligations being proportional to their influence.

Specifying the duty of care

In order that the duty of care is applied in a fair and equitable way and does not promote adverse local outcomes such as inefficient water use, it is proposed



that local rules may be made to establish local objectives and specific requirements.

The duty of care should require all water resource owners, managers and users to take reasonable steps to prevent harm to each other and the environment that could flow from their activities. The duty would only apply to harm that could be foreseen.

The Commission and local water management committees should be given the function to prepare land use and management plans incorporating standards, guidelines and codes of practice for the use of water resources in those areas. In doing this the committee will address many of the problems facing individual water users and be able to develop strategies to overcome these problems. These plans may include:

- rules that create legal duties;

- specify the relevant considerations for management decisions; and
- set regional or industry guidelines and standards.

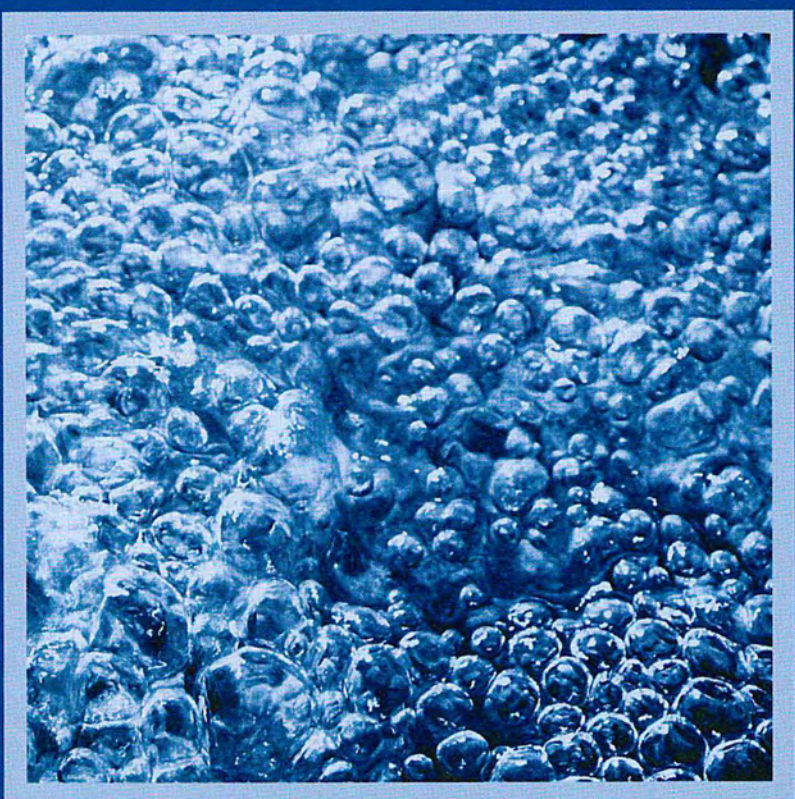
Local water management committees and the Commission should have the power to issue and enforce appealable directions giving effect to the requirements of the general duty of care.

What we are trying to achieve

It is proposed to establish State-wide guidelines for the duties of water users and a process that can be used to more clearly state, on a place by place basis, the duties that people who use water or change water resources owe each other. The statement would allow people to plan to use water in a way that will not get them or their neighbours into trouble and will help people who are adversely affected to obtain redress.



Local rules



5.1 local rules

Existing law

Rights in Water and Irrigation Act Section 27 – regulations

“Local rules” can be made as regulations for any matters that are necessary or convenient to be prescribed, for giving effect to the Act including:

- the establishment and functions of advisory committees;
- the issue of, the conditions and provisions of licences;
- limitations to riparian rights along regulated watercourses;
- the furnishing of information about wells;
- the forms to be used and the fees payable in respect of applications and the grant, variation and renewal of licences;
- the conduct and determination of inquiries and appeals; and
- generally, the implementation of licensing schemes.

How the law is applied

The level of control over water use is changed under current law by “proclaiming” an area. The Act gives the Commission no flexibility over the control options, and once an area is proclaimed licensing must be introduced. This causes problems in some areas such as the Avon River where water users are subject to quite unnecessary licensing obligations merely because the area was proclaimed to facilitate the river clearing.

Regulations have been made to establish administrative arrangements for the licensing process, covering such items as the forms to be used, the advertising of applications, the information to be provided by licence applicants, the fees to be paid and the fitting and reading of meters. These regulations have a general application and do not provide for variations from place to place.

Proposed law

In addition to the provision to make regulations, the Act should **allow local rules to be made**. The rules could prohibit, regulate or allow controlled activities if this is necessary or convenient to enable the:

(a) carrying out the functions of the Act; and

(b) achieving the objectives of the Act and plans made under the Act.

The **process for making the rules must be fair and open**. The local water management committee will work with the Commission to formulate the rules which will normally be included in the management area plan (see section 5.4). The Board will endorse the rules before they are **submitted to the Minister for approval**. The *Interpretation Act 1984* will require local rules to be tabled in Parliament where either House can overturn them.

An example of a local rule might be that people along a stream can take water for the irrigation of crops without a licence during winter and spring. A licence would be required during summer and autumn.

Local rules should be able to be made to:

control certain activities, for example:

- specify that a licence is required for some activities (see Section 7.1);
- prohibit some activities;
- prevent the obstruction or interference of watercourses, including the building of dams;
- control the diversion, interference with the flow of water, including the flood flows of watercourses [but not overland flow that is not part of the watercourse flow, unless the interference is likely to have a significant effect on the flow of the watercourse];
- manage the taking of water under a riparian right from watercourses and wetlands augmented by works (see subsection 9 (4) of the *Rights in Water and Irrigation Act*);
- manage the construction of drains and the flow of drainage water (see section 6 of this guide);
- limit or otherwise regulate the removal of underground or surface water by dewatering works; and
- manage the taking of water.

allow certain activities that are otherwise prohibited, for example:

- allow activities in proclaimed areas that would otherwise require a licence;
- allow the diversion, abstraction, taking, use and disposal of water from watercourses, wetlands and underground sources; and



- allow the irrigation of a household garden of 2 hectare on riparian land alienated after the commencement of the *Rights in Water and Irrigation Act*.

share water when the flow is inadequate, for example:

- control the taking of water under common rights (see Section 3.6);
- specify criteria for declaring times of shortage;
- restrict water use during periods of shortage – applying to all rights, statutory, common law and licences;
- specify how water will be shared;
- specify the times at which water may be taken; and
- adjust or vary licensed entitlements if the demand on the water resources cannot be sustained.

define the requirements to achieve the social, economic and environmental management objectives of the *Rights in Water and Irrigation Act* and the community, for example:

- determine arrangements under which the water may be sold or disposed of;
- impose limits to the water that may be held by a person;
- protect a watercourse, wetland or aquifer from interference and damage;
- determine the purposes for which the water may be used;
- determine the maximum amounts of water which may be taken in particular periods or circumstances;
- subject to other legislation, protect the environment, including mitigating any environmental consequence of the use of the water;
- determine the proper management of the watercourse, wetland or aquifer;
- manage the physical and hydrological circumstances that affect the water resource and water flow;
- promote the efficient use of water and water resources;
- specify duties and requirements for the avoidance and mitigation of adverse impacts of using or interfering with water resources;

- specify the duties of water users and managers (see Section 4.4);
- manage the water resource for the protection and enhancement of all water uses including boating;
- manage the protection of the watercourse, wetland or aquifer and its surrounds;
- manage the maintenance of flow in the watercourse;
- determine the maintenance of the drainage regime;
- determine steps to be undertaken to maintain the availability of water to satisfy other water requirements;
- control construction and operation of dams that affect flow or quality of water resources;
- determine works or measures to be undertaken for the protection of the aquifer or for the maintenance of water pressures; and
- monitor, sample, analyse and report on flora, fauna, water and bore hole strata.

regulate works that affect water resources, for example:

- require the installation and use of measuring devices or pumps;
- determine strategies to be followed in the operation of water supply or water use systems;
- specify the standard of construction, dimensions, and any other feature of works;
- determine the maintenance and operation of the works;
- determine the date of commencement of the works and the notice required to be given of that commencement;
- require the submission of reports on the carrying out of the works; and
- determine the qualifications held by persons undertaking, designing, constructing or operating the whole or any part of the works.

manage the licensing system, for example:

- provide for additional classes of people who can apply for and hold a licence;
- manage the purchase and sale of water entitlements by the Commission;
- provide for the transfer of licences on transfer of the land to which the licence applies;

- determine prohibitions, restrictions or arrangements relating to transfer of a licence;
- determine to whom, including the general public, an application for the issue, renewal or transfer of a licence must be notified; and
- specify licence charges and fees.

The rules may establish standards and terms for activities, levels of flow and rates of use, standards of water quality and regulate the transfer of licences.

What we are trying to achieve

The law should allow the Commission and the local water management committees flexibility to control what needs to be controlled and leave other matters in the hands of the land owner or occupier. A legislative process for making local rules to build on the basic rules contained in the legislation should be introduced. The process should involve the local community but be subject to State rules and Parliamentary review. This is necessary to match the local actions to regional and State objectives and to ensure that the due process of law making is followed.



5.2 local committees

Existing law

Water and Rivers Commission Act 1995 Section 15 – Committees

The Board of the Water and Rivers Commission can appoint committees to assist it. The Board can change the membership of committees, which must include one person from the Commission unless the Minister approves otherwise.

Water and Rivers Commission Act 1995 Section 13 – Delegation

The Commission can delegate its functions to a committee.

Water and Rivers Commission Act 1995 Section 34 – Confidentiality

A member must not record, disclose or make use of any information obtained in the committee except:

- for the purpose of performing functions under this Act;
- as required or allowed by this Act or under another written law;
- with the written consent of the person to whom the information relates; or
- in prescribed circumstances.

How the law is applied

The Commission currently has appointed statewide and local advisory committees. Some of these committees are:

- Stakeholder Council
- Water Resource Allocation Council
- Broome Groundwater Area
- Gingin Groundwater & Surface Water Area
- Swan Groundwater Area
- Wanneroo Groundwater Area
- Cockburn Groundwater Area
- Stakehill Groundwater Area
- Canning, Wungong and Southern Rivers
- Serpentine, Dandalup, Murray Rivers
- Warren Water Management Area
- South West Coastal Groundwater Area

These committees have a majority of local community members, a chairperson from the Commission and various agency members, according to the local requirements. The committees largely determine their

own procedures and meet as required to conduct their business which includes identifying policy requirements, reviewing proposals prepared by the Commission, considering licence applications and advising on resolution of disputes. The committee members also liaise with water users and other community members.

Proposed law

Functions of local water management committees

The local water management committees will have the function of stewardship of water resources and may undertake or assist the Commission in some or all of the following:

- advising the Board and the Minister on policy in relation to water resources;
- promoting the efficient use of water resources to avoid waste;
- undertaking, coordinating, managing and providing assistance to activities and projects for conserving, managing or using water resources;
- **developing plans for and providing advice on flood management;**
- **assessing, carrying out, collaborating in or procuring research or investigations relating to water resources;**
- publishing information relating to water resources;
- participating in programs that will protect and enhance the water resources of the region;
- developing, in consultation with the community and Commission, management and allocation plans, policies and local rules to manage and control the use of the local water resources;
- making recommendations on the issue of groundwater and surface water licences;
- assist in resolving disputes related to the use of the local water resources;
- providing a focus for community input on water resource management; and
- liaising with the community and providing information on water resources issues.

Through consultation between the committee and the Commission these functions may be changed or developed.



The committees can advise the Board on the geographic boundaries to their work however, the Board will set the boundaries. This also applies to making local rules. Local water management committees will develop these with final approval needed from the Minister. Local committees will not be able to prosecute offenders.

Types of committee

Generally a local water management committee will be constituted specifically to manage water resource use and protection in a particular area. However it may be more effective to use an established group to undertake the functions of the local water management committee. This latter arrangement would suit areas where there is already a responsible group undertaking land and water management functions and the level of water resource management activity will not overwhelm the existing group.

Examples of groups that could undertake water resource management include:

- Land Conservation District Committee (eg Chapman Brook, Scott River)
- Catchment management committee
- Irrigation cooperative (eg Preston Valley, Carnarvon)

The Water and Rivers Commission will undertake the functions of a local water management committee if no other group has been established.

Member responsibility

A committee member should always:

- *Act with honesty and integrity* – be truthful and consistent, promote ethical behaviour, check actions and decisions against personal principles and corporate values;
- *Prepare for and attend meetings* – read all meeting papers, ask for more information or clarification if required, become familiar with relevant legislation and policies, attend as many meetings as possible;
- *Be active and conscientious* – take an interest in all issues before the committee, ask questions, raise objections and debate opposing views, be objective, understand enough to form an opinion on every issue before the committee;
- *Record any dissent* – make a point of having views recorded in the minutes if committee decisions are concerning or are opposed by members;

- *Avoid any improper use of information or committee position* – do not misuse information obtained in the course of committee duties either to: obtain a direct or indirect gain for themselves or others; or do harm to other people or the committee;
- *Maintain confidentiality* – do not indulge information which is confidential or sensitive; and
- *Disclose any personal interests* – in addition to disclosing personal interests in particular matters, abstain from discussions or voting on any issues where their judgement may be influenced, or be seen to be influenced, by personal interests.

Protection from liability

A committee member will be protected from liability for actions done in good faith in the performance of his or her functions on the committee.

The member's protection does not relieve the Commission or the Crown of any liability that might arise from the committee's actions.

A reference to the doing of anything includes a reference to the omission to do anything.

Confidentiality

A person who is or has been a member a local water management committee must not, directly or indirectly, record, disclose or make use of any information obtained in the course of duty except:

- for the purpose of performing functions;
- as required or allowed;
- with the written consent of the person to whom the information relates; or
- in prescribed circumstances.

Deciding to establish a local water management committee

The Commission may establish a local water management committee **when directed by the Minister, when requested (such as by the local government council)** or on its own volition if it considers that there is an immediate or emerging need to:

- formalise entitlements to use water;
- restrict or manage the use of water resources; or
- develop policies and rules over the use of water.

The process to establish local water management committees must be **open to the community**. The Commission will advertise its intention to establish a local water management committee stating the



reasons for its establishment, the resource area, the proposed members and classes of membership, and the duration, functions and tasks of the committee.

The Commission will, if appropriate, hold a public meeting to explain the reasons for establishing a committee and to receive submissions and recommendations for the Board to consider in determining whether to establish the committee and the committee area, the membership, duration, functions and tasks of the committee.

Appointing local water management committee members

This section only applies to groups that are appointed not to those that already exist. However, existing groups that become local water management committees may be asked to include a Water and Rivers Commission officer in their membership.

The local water management committee should have between seven and 11 members (optimum is eight or nine).

The membership shall, if practicable, be selected from persons who live within in the area of the interest of the local water management committee. The Board will determine the type of members when it decides to establish a committee. Committees may include the following members:

- water users or their representatives (generally this group will form a majority);
- people interested in management of water resources;
- local authority councillor;
- employees of public authorities having responsibility for the affairs of the region; and
- employees or Board members of the Water and Rivers Commission.

The Commission may invite local authorities, interest groups and industry groups to nominate persons for appointment, but the Commission will appoint such persons as the Commission thinks fit.

The Commission may ask nominating organisations to address specific selection criteria such as:

- knowledge of water issues;
- ability to think long term and for the whole community;
- advisory skills; and
- community standing.

Members shall be appointed for a term not exceeding three years; and may be removed from office by the Commission by notice in writing.

Members may be reappointed to a maximum consecutive term of six years but must then stand down for at least 12 months.

The period of appointments will be staggered.

Members are to be paid fees and allowances as the Commission determines.

The Commission shall initially appoint a member to be Chairperson who may be a Commission officer. A chairperson chosen by a committee will be elected annually.

The Water and Rivers Commission will provide an executive officer and policy support to the committee.

The Commission shall publish a notice of the appointment of the Chairperson and of the other members in the Gazette and a local newspaper.

Delegating powers

The Board will delegate powers as required. Decisions to delegate powers will be decided by the Board in consultation with the committee.

The committee shall discharge any powers delegated to it but it will not be able to delegate its powers or responsibilities to others. The Committee must act on any general or specific direction given to it in writing by the Commission with respect to the performance of its functions.

Proceedings of local water management committees

The proceedings of a local water management committee may be conducted in such manner as the members decide subject to the following:

At a meeting of a local water management committee the Chairperson, a member appointed by the Chairperson or a member elected by the members present at the meeting shall preside.

One half of the members shall form a quorum.

The Commission or the Chairperson may at any time convene a meeting and the Chairperson shall convene a meeting within seven days of receiving a written request signed by one-third of the members of the local water management committee specifying the business for which the meeting is to be convened.

At any meeting all questions shall be decided by consensus of the members of the local water management committee present. If the chairperson considers that a consensus cannot be achieved within a practical time the question shall be resolved by a majority vote.

Each member of the local water management committee, including the person presiding, has one deliberative vote.

In the case of an equality of votes, a resolution is not carried.

Resolutions may be carried by a majority of members voting by mail or fax.

A member who has a direct or indirect pecuniary interest in a matter that is before a meeting for consideration must disclose the nature of the interest and shall not take part in any deliberation or decision with respect to that matter.

The disclosure made shall be recorded in the record of proceedings of the committee.

A record of the proceedings of every meeting shall be kept in such manner as the Commission may direct or approve and the records shall be approved at the next meeting.

Members must not miss more than three meetings in a row without a leave of absence.

A local water management committee shall advise and inform the Commission with respect to any matter referred to it and shall make available to the Commission, on request, all documents relating to its functions.

If members have a personal interest in a particular matter they can present their case to other committee members before abstaining from further discussions or voting. It is the decision of the committee whether members who have a personal interest in the matter are present during the discussions. The decision must be noted in the recordings of the meeting.

Dispute resolution

The committee will assist the Commission to resolve disputes between members of the community. The committee may do this by inviting the disputing parties to be heard at a meeting and may inspect the scene of the dispute.

The committee will give people adversely affected by

its decisions or recommendations an opportunity to be heard.

The committee may make its own representation to appeal inquiries convened by the Minister.

Decision making process

Committees will work within the framework of existing Commission policies.

The committee may establish its own objectives, procedures and work program.

The Commission will generally be responsible to implement the advice and decisions of the committee.

In the case of a dispute between the committee and the Commission the committee or a representative may meet with senior staff or a representative of the Board to negotiate. The Board of the Commission, being responsible for the committee's actions, will have the final say.

Budget

The Commission will hold budgets for committee projects.

Existing groups who take the role of local water management committees may have their own budgets.

Local committees can develop projects and may apply in association with the Commission for external funds.

Local water management committees could evolve to become incorporated bodies with their own budgets.

What we are trying to achieve

It is proposed to extend the role and functions of the current "advisory" committees by the formation of local water management committees to take an active role in developing local policies and rules, and dealing with disputes.

This will ensure that community interests are consulted and will result in decisions that are more acceptable to the community.

A community based working group has been formed to develop a proposal for the establishment of local water management committees. This group has not yet completed its task and the following "proposals" are set out to give the reader an appreciation of how the committees may be established and how they might function and for the sake of completeness. The final proposal that is developed by the working group will be subject to separate consultations and may differ from these proposals.



5.3 proclaimed areas

Existing law

Rights in Water and Irrigation Act Section 6 – Application of Division [Proclaimed surface water areas]

Proclamations may be made to apply the provisions of Divisions 1 of Part III of the Act to surface water resources. This has the effect of allowing the use of water for commercial activity under licence. Local governments must be given the opportunity to object to the proclamation.

Rights in Water and Irrigation Act Section 16B – Non-artesian wells in certain areas to be licensed [Proclaimed groundwater areas]

Proclamations may be made to require all wells, except those subject to an exemption subject to licensing.

How the law is applied

Areas are proclaimed when there is a need for systematic management of the use of water. This occurs when competition for water is likely to become extensive or when there is a need to protect the resource from overuse. These factors normally develop together. Examples include Carnarvon where the aquifer was becoming saline and Manjimup where there were disputes over use of the streams and rivers. Some river

systems have been proclaimed to facilitate river maintenance work such as on the Avon and Moore Rivers.

A proclaimed area is referred to as a surface water area or groundwater area. One area can be both a surface water and a groundwater area. Nearly the whole State is covered by groundwater areas, the only exceptions being the majority of the wheatbelt and the Eucla basin.

Nearly all water sources developed for public water supplies are proclaimed.

Proposed law

The provisions relating to proclaimed areas will remain in the legislation arrangement until proclaimed areas are not longer required. Provisions for making local rules, that will remove the need for proclamation, will be added to the Act.

What we are trying to achieve

The “proclaimed area system”, which provides a rigid set of rules, is to be replaced by the progressive writing of management plans and local rules to specify how water may be used and managed in an area. It will take several years to develop the local rules and each proclaimed area will be retained until it can be phased out and “de-proclaimed.”



5.4 allocation plans

Existing law

There is no provision for water allocation planning under the *Rights in Water and Irrigation Act*.

How the law is applied

A successful system of non-statutory water allocation planning has evolved since the early 1970's. These plans vary in scale from regional plans that cover several river and groundwater basins, to local management area plans that cover a single management area of a groundwater aquifer or river catchment. Examples of typical plans of the different scales are:

Regional Plans

- Perth-Bunbury Draft Regional Allocation Plan – Safeguarding Our Water Resources

Sub-regional Plans

- Harvey Basin Proposed Surface Water Allocation Plan

Management Area Plans

- Busselton-Capel Groundwater Management Plan

Most plans have been prepared at the management area scale with assistance from advisory committees. The plans guide the Commission's licensing decisions made at the local level. The larger scale plans identify potential water resource developments and the likely quantities of water that could be taken from them. In the case of the Perth to Bunbury Draft Regional Plan, the potential values of the key water resources were assessed. In some cases, for example the Murray River and the lower Collie Rivers, the social and environmental water values were considered more important than the development values. Development options were foregone or limited to protect these environmental and social values.

Water allocation plans are complemented by regional development plans that collate information on the water resources of the region, identify projected water demands and match the known resources to the projected demands. Examples include the:

- Esperance region water resources review and development plan, WRAP 5, 1997;
- Pilbara region water resources review and development plan, WRAP 4, 1996; and the

- Gascoyne region water resources review and development plan, WRAP 3, 1996.

In most of the groundwater management plans, and in the more recent surface water allocation plans, explicit provision has been made for the water needs of the environment. The Commission has no legal requirement to consider environmental needs in its planning.

However, water development projects assessed under the *Environmental Protection Act, 1986* are required to make provision for the needs of the environment.

Proposed law

The current range of water allocation plans is to be maintained. **The plans are to have defined purposes, make explicit provision for water for the environment and have a defined process for their preparation.**

Regional Allocation Plans

The purposes of regional allocation plans are to guide the overall management of water resource in the region by:

- setting policies and management objectives for the use and protection of water resources;
- establishing environmental values and beneficial uses for key water resources;
- ensure the protection of defined water resource values; and
- promote the integration of land and water planning and management.

The policies and management objectives of regional plans will set the framework for sub-regional and management area plans. Estimates of water allocated for use or reserved for the environment will be more clearly defined at the sub-regional or management area scale.

Sub Regional Allocation Plans

The purposes of Sub-regional allocation plans are to:

- facilitate the investigation and development of water sources;
- establish resource allocation policy, including the provision of water for the environment and rules for regional trading in water entitlements;
- describe potential source development sites and estimate sustainable use limits from them; and



- define the cumulative impacts of future source developments for environmental assessment

Local Management Area Plans

The purposes of management area plans are to describe the:

- allocation and water use management policies for the local water resource;
- environmental water provisions, flow maintenance requirements and the quantities and timing of water that may be taken;
- market rules for trading in water entitlements from the resource; and
- functions and membership of the local water management committee.

Management area plans will generally apply to one resource but may apply to multiple resources that are managed conjunctively. The area of application will be specified in the plan.

Content of Plans

Plans will vary in detail and content but will generally describe most of the following features:

- the water resource management objectives and policies for the area;
- the water resource characteristics and the various needs for the water, including ecological water requirements;
- **the delegation of water management functions to local groups;**
- **the statutory and common law rights;**
- **the duties and obligations related to water use and water management;**
- the basis on which water is allocated;
- strategies and rules necessary to respond to changed water use limits, changed licence conditions or to meet the objectives of the plan;
- reservations of waters for particular uses;
- **rules for trading in water entitlements;**
- strategies to promote efficient water use;
- requirements to be met before new licences are issued;
- **activities to be licensed and conditions to be placed on licences;**
- **the course of action to review the plan;**

- **methods for restricting water use during drought periods;**
- **when drought conditions are operative;**
- **the local rules that relate to water use and protection;**
- **the actions and restrictions needed to protect the water resource, the environment and water uses, including environmental water provisions and disposal of water;**
- the volumes of water allocated to the consumptive uses, and
- **licence application and transfer fees.**

Preparing Allocation Plans

Allocation plans can be prepared when the Minister, the Commission or a local water management committee considers it is necessary or convenient to document water allocation policies and strategies or change the current rules over water use because of:

- actual or foreseeable conflict over water allocations;
- a need to protect or restore the resource or the dependent environment;
- a need to promote strategies and practices of efficient water use;
- the level of use of the resource relative to the size of the resource; or
- the implementation or coordination of agency policies.

The steps involved in preparing or revising allocation plans are:

1. **The Commission shall advertise the proposal to prepare or revise a plan.** The advertisement shall state the area to be covered by the plan, the reason for preparing or revising the plan, the objectives the Commission seeks to achieve, the public consultation process it proposes to follow, the local water management committees that will be involved in the preparation and how the plan will be assessed under the *Environmental Protection Act 1986*;
2. Following a review of submissions on the proposal, **the Commission will recommend, and the Minister will accept or amend the final plan preparation or review process.** The approved process will be advertised;

3. The Commission, with the advice of the relevant local water management committees, will prepare a draft plan;
4. If required by the approved preparation process the draft plan will be made available for public review, as may the written submissions made on the draft plan;
5. The Commission must consider the submissions and may amend the draft plan in consultation with the relevant local water management committees;
6. If the amendments are significant the Commission will advise affected people or release the amended draft for further public review;
7. The Commission will submit the amended draft plan together with a report on the submissions to the Minister, indicating any inconsistency with other currently valid plans and make a recommendation on how the inconsistency should best be resolved;
8. The Minister may establish an inquiry to review the draft plan and recommend a course of action to the Minister. The inquiry may seek further submissions if it desires;
9. The Minister may approve or reject the plan or direct the Commission to amend the draft plan before approving it, and determine how any inconsistency with other valid plans is to be resolved; and
10. If the plan includes regulations, fees or rules, those items must be tabled in both Houses of Parliament and be subject to disallowance.

The plan will be binding on the Minister, the Commission, local water management committees and water users.

Other Plans

The Commission will, from time to time, prepare other plans to guide it in the management of the State's water resources. These may relate to future resource development or water quality protection and would not be allocation plans developed under the above procedures.

Such plans may trigger a review of allocation plans if they affect water resource allocation.

What we are trying to achieve

It is proposed to establish a comprehensive system of water allocation planning with statutory backing that:

- encompasses environmental, economic and social uses of water;
- can be applied to all types of water resources across the State;
- will respond to change (including change in demand, water uses, climate and social and environmental expectations);
- can incorporate new management techniques (including definitions of water entitlements that recognise uncertainty and trading in water licences);
- can define rules for the trading of water licences after first ensuring that provision is made for the water needs of the environment; and
- links with other planning activities of Government.

Plans are an essential element of modern water resource management. They are a means to develop acceptable rules and policies for management and to inform water users and other natural resource managers of the way in which water is allocated and protected so that public and private action can be coordinated. The plans will provide a means to implement the policies developed by the Commission and local water management committees.



5.5 directions

Existing law

Rights in Water and Irrigation Act Section 17 – Interference prohibited

The Commission may direct any person who has been convicted of interfering with a watercourse, drain, dam or reservoir to carry out restoration works. If the person fails to carry out the works the Commission may do them and recover the costs.

Rights in Water and Irrigation Act Section 22 – Directions

The Commission may give directions defining the purposes and conditions under which water may be taken or used if a person has taken water in a way that is not authorised and this has damaged another person or is not in the public interest.

Rights in Water and Irrigation Act Section 23 – Appeals

Any person aggrieved by a direction may appeal to the Minister who shall conduct an inquiry.

Rights in Water and Irrigation Act Section 24 – Saving of civil remedy

A person is protected from being sued by another person if he or she is complying with a direction.

Rights in Water and Irrigation Act Section 25 – Offences

The Commission may direct any person who has been convicted of an offence to restore the bed or banks of a watercourse or wetland and minimise any interference. If the person fails to carry out the works the Commission may do them and recover the costs.

Rights in Water and Irrigation Act Section 26G – Powers of Commission in case of improper use of water

The Commission may direct the closing of a well or direct such other steps to prevent the water from a well being improperly used, being wasted, having a harmful effect or not being used to the best advantage. It may also give directions over the amount of water and the rate of draw from a well to regulate the quantity of water to be drawn from an aquifer.

If the person is convicted of an offence for not complying with the direction the Commission may cancel the licence.

How the law is applied

The Commission issues directions when other attempts to resolve individual disputes have failed. They are mainly used for dealing with isolated problems when introducing licensing controls.



Proposed law

The Commission may issue directions, where the Commission is of the opinion that:

- the water volume in any source of supply is inadequate to meet the demands placed upon it;
- a person is taking water or otherwise interfering with a water resource in a way that is contrary to the objectives of the Act or contrary to a duty of care;
- a person is taking water or otherwise interfering with a water resource or water body beyond that person's right to do so and the activity has interfered with any other person's right or damaged the land of another person or should not, in the public interest, be permitted to continue;
- the holder of a licence fails to comply with the requirements of the licence;
- a person fails to act in accordance with the Act, a regulation or local rule;
- a person is using water in an improper or wasteful manner or causing water to be wasted; or
- an offence has been committed.

The direction will be given by notice in writing. The direction may be varied or cancelled by the Commission by subsequent notice in writing.

The direction may specify the licence condition, rule, regulation or other provision that a person may be contravening with and require the person to comply. This step may be taken as an alternative to prosecution.

A direction may specify the purposes for which, or the extent to which, water may be taken or used and the manner in which, and the conditions upon which, that person may take or use water.

A direction could only be issued in this way if these factors are not clearly specified in the Act or local rules and the Commission believes that the direction is necessary or convenient to enforce the objectives of the Act or if there is a water shortage.

A direction given by the Commission because of a temporary shortage will be effective only while the shortage persists, such as for a season.

The direction shall not permit the taking or use of water unless the Commission is satisfied that such taking or use will not result in or contribute to any interference, damage, or injury.

Where an offence has been committed or where the Commission believes that a person has contravened the Act, directions may be issued to specify the work that must be done to rectify any damage. The direction may

require restoration work to be undertaken to a watercourse, wetland, aquifer, drain or levee.

There should be a right of appeal to the Minister against the direction.

A person who fails to comply with a direction within the time specified in the notice commits an offence. Where a person does not, within the time specified in the direction or any additional time allowed by the Commission, comply with a direction, the Commission may do whatever the direction requires and may recover the costs incurred.

What we are trying to achieve

Directions are an important means to address specific or very localised water resource problems that develop. It is not possible and not wise to try to address all the problems that might arise in the Act or in rules. This would stifle initiative and development and would require an army of water resource officers to develop and enforce the rules. Rather, directions allow new problems to be addressed and actions to be taken to enforce the requirements of the legislation without inconvenience to the majority of people who operate in a reasonable and responsible way, addressing their duties in the ordinary management of their business.

An important element of this is to allow rationing of water use during water shortages. The rationing will include riparian and other general rights as well as licensed rights.



damns and drainage



6.1 drainage

Existing law

Rights in Water and Irrigation Act Section 8 – Natural waters vest in the Crown

A person may drain his or her land if it does not sensibly diminish the amount of water in a watercourse or wetland in proclaimed surface water areas.

How the law is applied

The Commission does not normally enforce this requirement. Drainage works are managed differently in different areas. The Soil and Land Conservation Act provides some controls in rural areas that are administered by Agriculture WA. Public drainage schemes are constructed and operated by the Water Corporation and local government. Groundwater well licensing is sometimes applied to drainage and dewatering works that affect groundwater but this is often beyond the scope of the Act.

Proposed law

It is proposed to provide for local rules to manage the construction of drains and flow of drainage water if the drain:

- changes the flow of water in any watercourse or the amount of water in any aquifer, or wetland in a

deleterious way;

- is likely to cause damage to the water resource or its associated environmental systems or values; or
- impairs the quality of the water in any water resource.

Local rules may be made to limit or otherwise regulate the removal of underground or surface water by drainage or dewatering works if the activity or class of activity is having, or is likely to have, an impact on the water resources, other users, or the environment. Local rules may require these drainage and dewatering works to be licensed as if they were wells or water diversion works if they impact on underground water or surface water respectively.

Local rules must be prepared in consultation with the Commissioner of Soil and Land Conservation who has developed strategies to manage drainage water in agricultural areas.

What we are trying to achieve

Controls on drainage and dewatering works should be possible under the Rights in Water and Irrigation Act if the works have an impact on water resources and the works are not already managed by another agency. This can readily be achieved by making local rules that can be administered by the Commission or by others.



6.2 dams

Existing law

Rights in Water and Irrigation Act Section 8 – Natural waters vest in the Crown

A person may build a dam or tank on his or her land only if it does not sensibly diminish the amount of water in a watercourse or wetland in a proclaimed surface water area.

Rights in Water and Irrigation Act Section 17 – Interference prohibited

In a proclaimed surface water area a person shall not, without authorisation obstruct, destroy, or interfere with any watercourse or wetland or any Government drain, dam or reservoir. Any obstruction or interference must be removed on notice given by the Commission.

Rights in Water and Irrigation Act Section 18 – Obstruction of flow

It is an offence to discharge any sludge, mud, earth, gravel, or other matter likely to obstruct the flow of the current, into any watercourse.

How the law is applied

The Commission does not generally enforce the prohibition on building dams outside a watercourse. However several groups, including some advisory committees, are becoming increasingly concerned over the impact of these works on stream flow and consider that some form of control will be required in the near future.

Approval conditions for dams on watercourses are normally included in the licence to take water if one is issued. A convenient system of approval has not yet been developed for dams that are not licensed.

Proposed law

Dams on watercourses (gully dams) in proclaimed areas will continue to be subject to the approval of the Commission although the means of approval **should allow the Commission to licence the dam**. This will mean that the dam can be approved on a licence to store and take water, or by a written notice from the Commission if a licence is not appropriate. The choice between the two methods would be made according to the circumstances.

What we are trying to achieve

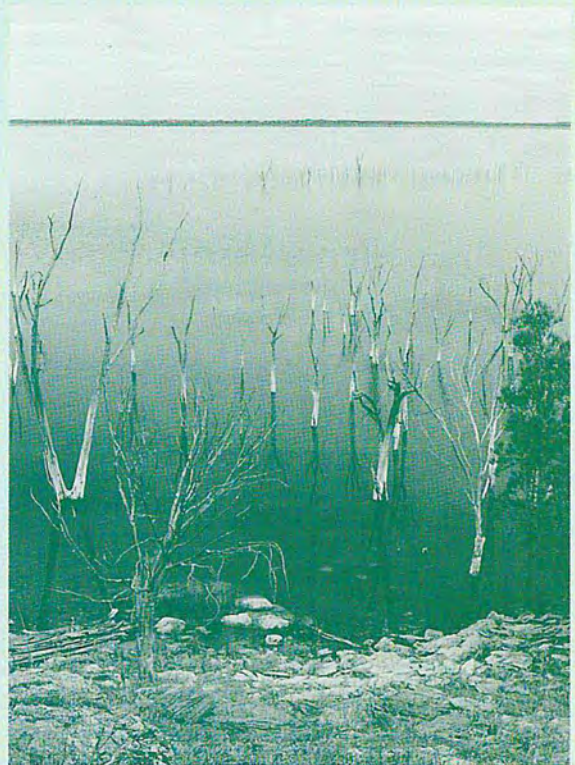
A simple system of managing dams according to need should be developed without reducing the rights of

landowners to construct a dam. Enforcing the present controls through a system of local rules and licences can do this.

Provision should be made in the new legislation to **implement controls on gully dams in non-proclaimed areas by making local rules that govern their construction and operation**. The local rules will be included in a plan for the management of the watercourse itself (see section 5.4). **The local rule may require the dam to be licensed**.

No new controls are proposed for off-stream dams. As discussed (section 6 – Drainage), the current restriction on diminishing flow in watercourses and wetlands by interfering with the flow outside these water bodies is to be implemented through local rules. **The rules, which will normally be formulated by the local water management committees**, will manage the construction and operation of dams built outside a watercourse if such control is necessary because the dam significantly diminishes the flow or impairs the quality of water in a watercourse or wetland.

Rules could only be made if the change to the watercourse or wetland adversely affects other water users or the environment.



6.3 flood control levees

Existing law

There are no controls under the *Rights in Water and Irrigation Act* that apply to levees built outside watercourses.

How the law is applied

An example of the need for better controls occurs along the Moore River where, without a coordinated plan, landowners have played “tit for tat” in building levees to push the floodwaters away from their properties. The current law has proved to be inadequate to implement sensible floodwater management.

Generally the flood plain management plans prepared by the Commission have been used by local government to set building standards.

Proposed law

It is proposed to introduce, through the making of local rules, controls over the construction and maintenance of levee banks if the levee obstructs or interferes with the ordinary or flood flow of a watercourse.

The controls may only be introduced if the levee bank may cause damage to other properties, such a flooding or erosion, or environmental damage to the watercourse.

It is specifically proposed that local rules should require landowners to comply with any management plans that have been prepared to manage the flood flows of the watercourse. Accordingly, private works to manage flood flows would be coordinated, minimising costs and any adverse impacts and providing for the efficient passage of floods.

Compliance with flood plain management plans can be a defence against claims for damage from other landowners who may be adversely affected by the construction of the levees.

What we are trying to achieve

The reforms are intended to provide a means to coordinate the flood protection works in areas where landowners must construct their own works to implement the flood plain management plan.



Licences



7.1 need for a licence

Existing law

Rights in Water and Irrigation Act Section 11 – Other diversions to be licensed

A licence is generally required to take water for commercial purposes from a watercourse or wetland in a proclaimed surface water area.

Rights in Water and Irrigation Act Section 26A – Artesian wells to be licensed

A licence is required to construct, enlarge, deepen, alter, or draw water from all artesian wells.

Rights in Water and Irrigation Act Section 26B – Non-artesian wells in certain areas to be licensed

A licence is required to construct, enlarge, deepen, alter, or draw water from all wells in a proclaimed surface water area except stock and domestic wells which may be exempted.

Rights in Water and Irrigation Act Section 26F – Penalty for alterations in licensed well or contravention of licence

It is an offence to contravene the conditions of a licence. The Commission may cancel the licence following an offence.

How the law is applied

Licences are issued on receipt of an application if water is available and the application does not contravene policies established for the area. A recommendation of the advisory committee is sought for every application that does not fully comply with the policies already developed. In some proclaimed areas the law requires licensing although it is not needed.

Most domestic and stock wells in urban and rural areas are exempted from licensing.

Proposed law

The controlled activities that may require licensing are:

- taking water from a watercourse, wetland or from underground;
- **collecting or storing water in a watercourse;**
- diverting water in a watercourse or wetland;
- using or disposing of water that was taken pursuant to a licence;
- **obstructing a watercourse or modifying the flow of a watercourse;**

- discharging water directly or indirectly into a watercourse or wetland or underground;
- interfering with the bed or banks of a watercourse or wetland;
- **building and operating a dam or other works on a watercourse;**
- building or altering a well or bore or other works to take or obtain access to groundwater;
- **modifying or damaging an aquifer;**
- **building or operating drainage and dewatering works; and**
- **disposing of water in a manner that may affect water resources or the environment.**

In a proclaimed area these activities must be licensed unless they are exempted from licensing under a local rule.

Outside proclaimed areas the **local rules will specify how that activity is controlled**, whether a licence is required, whether general conditions apply or whether the activity can be undertaken without any control. Within proclaimed areas the controlled activities must be licensed unless local rules have been made to waive the need for the licence. Proclaimed areas will be phased out (see section 5.3) and local rules will eventually define all licence requirements.

The range of controlled activities that may be subject to licensing will be extended to **include building dams** (see section 6.2) and **interfering with water bodies**. Within proclaimed areas these activities currently require the approval of the Commission and it is proposed that a licence may give the approval. Exemptions from groundwater well licensing are currently restricted to stock and domestic uses. The effect of the changes and the new common rights to water is to widen the scope for exemptions through the use of local rules.

What we are trying to achieve

The proposed reforms will increase the scope and flexibility of licensing by allowing licensing to be applied to many activities that are already controlled but less efficiently than is possible with licences. Local rules may be used as an alternative means of management to ensure that licensing is only introduced where it is necessary.



7.2 who can apply for a licence?

Existing law

Rights in Water and Irrigation Act section 12 – Certain riparian owners may apply for special licences to divert and use water

An owner or occupier who has permanently diverted the water of the watercourse or wetland may apply for a special 10-year licence when an area is proclaimed.

Rights in Water and Irrigation Act Section 13 – Licences, other than special licences

The Commission may grant to any owner or occupier of land a licence to take, divert, use, or dispose of water from any watercourse or wetland.

Rights in Water and Irrigation Act Section 26A – Artesian wells to be licensed; and Section 26B – Non-artesian wells in certain areas to be licensed

Any person may hold a groundwater well licence.

How the law is applied

Licences are only issued to a person who has a right to go onto the land on which the water is found and who has a use for the water. A licence does not give anybody a right to go onto the land.

Proposed law

An application to obtain a licence, either by issue, renewal or transfer may be made by a person who:

- is the owner or occupier of the land on or under which the water exists;
- has the written approval of the owner and the occupier of the land;
- irrigates crops on various properties owned by others within in a specified area;
- has an agreement to be supplied with water by a person who has authority to take water from a water resource (eg South West Irrigation);
- has an interest in the assessment of the water resources of the area concerned;
- has a right to water relevant to the licence under some other written law; or
- augments the water resource, such as by aquifer recharge, and wishes to lease or sell the licence to use the water made available by the augmentation.

The person must, unless local rules provide otherwise, have the intention and means to use or supply the water for a worthwhile purpose or to augment to available supply of water. If required by the Commission the person must be able to demonstrate, to the satisfaction of the Commission, that licensed activity can be sustained for the period of the licence and will be environmentally acceptable.

An agent of a person entitled to apply for a licence may apply for the licence on behalf of that person.

What we are trying to achieve

The introduction of licence trading makes it imperative that people who are able to hold a licence and participate in the market are clearly identified. Trading can also create conditions favourable to speculation. In order to ensure that water resources remain readily available to people with a genuine use for the water it is useful to prohibit the transfer or issue of licences to others, that is people who may wish only to trade in or hold rights as a speculative interest. It is proposed to specify the basic requirements for applying for and holding a licence and allow local water management committees to relax the restrictions if this is beneficial.



7.3 considering licence applications

Existing law

Rights in Water and Irrigation Act Section 12 – certain riparian owners may apply for special licences to divert and use water and Section 13 – Licences, other than special licences

Applications for surface water licences must be advertised and people within 4.8 km can object. The Commission may refuse the application or may grant a licence to such water and under such conditions as the Commission thinks fit.

Rights in Water and Irrigation Act Section 26D – Application for and issue of well licences

The Commission may issue a well licence to the applicant subject to such terms, limitations and conditions as the Commission thinks fit or refuse a licence. Before granting a licence, the Commission can require alterations to be made to the work or the plans and specifications.

How the law is applied

Although applications for surface water licences are advertised, applications for well licences are not. The Commission will require people applying for substantial amounts of water, especially miners and water service providers, to undertake resource investigations to support the application. Whenever the Commission proposes to make an adverse decision on an application it will usually give the applicant a chance to support the initial application with more information supporting the request and by addressing the advisory committee.

Proposed law

Much of the existing practice will be retained, that is:

- an application for a licence or transfer of a licence shall be made in the form specified for the purpose by the Commission and shall include or be accompanied by any plans or other information that are stated in the form;
- an applicant for a licence or transfer of a licence shall provide the Commission with any further information that the Commission requires;
- the Commission may decline to deal with an application for a licence until any prescribed fee is paid or other condition is met; and

- the Commission will retain its discretion with respect to the grant, transfer, renewal, terms, conditions and limitations of licences.

The Commission will now be bound by the objectives of the Act and give consideration to those matters listed in section 3.4 when it deals with licence applications.

The Commission may advertise the application to enable interested parties to make written submissions regarding the application. Local rules may require the application to be advertised.

Where the Commission or the local water management committee is considering the refusal of an application or the attachment to the licence of a term, limitation or condition that is adverse to the applicant or is inconsistent with the terms of the application, **the Commission shall inform the applicant. The applicant will have a right to make oral or written representations to the Commission or the local water management committee before it makes its decision in respect of the application.**

If the application is refused or is granted subject to the attachment of a term, condition or limitation that is adverse to the applicant or is inconsistent with the terms of the application, **the Commission shall inform the applicant of the reasons for the decision.** The applicant will have the right to appeal against the decision (see section 3.8).

If the application has been advertised the Commission must, if practical, **advise those people who made a submission of the decision and the reason for the decision.**

One licence may be issued in respect of more than one dam, well or other work on a holding.

If the original licence has been lost, the Commission may issue a duplicate licence.

What we are trying to achieve

The licensing process should be clearly described in the legislation so that all participants understand the requirements and justice is seen to be done. The process should be open and the reasons for decisions should be communicated to those affected.



7.4 duration of licences

Existing law

Rights in Water and Irrigation Act Section 13 – [Surface water] Licences, other than special licences

A surface water licence shall have effect for such period as may be specified therein. Special licences are issued for ten years.

Rights in Water and Irrigation Act Section 26D – Application for and issue of [groundwater] licences

The Commission may issue a well licence subject to such terms, limitations and conditions as the Commission thinks fit.

How the law is applied

Licences are issued for fixed periods according to the risks to the resource caused by the water use. Generally licences are issued for periods up to ten years but in particularly difficult circumstances licences may only be issued for one or two years so that the impacts can be reviewed and corrective action incorporated into the conditions of subsequent licences.

Proposed law

The legislation should provide for:

- the duration of a licence, which may be a fixed or indefinite period, to be stated in the licence;
- a licence that is issued for a fixed duration to be renewed unless the by-laws, a local rule, the management plan or a term of the licence provides otherwise;
- changes to be made to the licence at the time of renewal under the same arrangements as a licence may be amended during its term (see section 7.6, Amending licences); and
- a licence to expire within a prescribed period after the holder of the licence ceases to be a person eligible to apply for such a licence or obtain a licence by transfer.

The current practice of issuing licences for specified periods is to continue, however licences may be issued without a specified term once agreement is reached over powers to modify licence conditions during the tenure.

The holder of a licence may apply at any time for an extension to the term of the licence. The application

will be considered as if it was an application for a renewal of the licence.

What we are trying to achieve

A major objective of the proposed reforms is to clearly specify the duties of water users so that the licence period can be safely extended, knowing that water users will act to overcome resource management problems caused by their use. This change will be progressive and will be hastened by the development of stable local management structures.



7.5 conditions of licences

Existing law

Rights in Water and Irrigation Act Section 12 – Certain riparian owners may apply for special licences to divert and use water

A special licence under this section shall be subject to such special conditions and provisions as the Commission determines.

Rights in Water and Irrigation Act Section 13 – Licences, other than special licences

The Commission may grant to any owner or occupier of land a licence, subject to such terms, limitations and conditions as may be specified or referred to therein or as may be prescribed for the purposes of this section.

Rights in Water and Irrigation Act Section 26D – Application for and issue of [well] licences

The Commission may issue a licence to the applicant subject to such terms, limitations and conditions as the Commission thinks fit.

How the law is applied

The current legislation gives the Commission wide powers to place conditions on licences. The Commission has a long list of “standard” conditions that have been developed over many years to deal with the problems that have developed.

Proposed law

It is proposed to make the Act more specific about the type of conditions that may be applied and to require the conditions to be consistent with the objectives of the Act. Within these constraints, the Commission should be able to impose any conditions it deems necessary or convenient for meeting the objectives of the Act, including conditions relating to:

the use of water including:

- the purposes for which the water may be used;
- the maximum amounts of water which may be taken in particular periods or circumstances;
- the efficient use of water and water resources;
- the installation and use of measuring devices and pumps;
- arrangements under which the water may be sold or disposed of;

- strategies to be followed in the operation of water supply or water use systems; and
- payment of fees and charges.

the amendment, renewal, transfer or surrender of the licence including:

- prohibitions, restrictions or arrangements relating to transfer of the licence; and
- removal or making secure works no longer required.

the protection of other water users including:

- restrictions applied during drought and water shortages;
- avoidance, mitigation and compensation for adverse impacts of the activity;
- steps to be undertaken to maintain the availability of water to other requirements;
- the protection and enhancement of uses of the water resource, including boating and fishing; and
- the maintenance or modification of the drainage regime.

the management and protection of the watercourse, wetland or aquifer and its surrounds including:

- the maintenance of flow, water pressure and water level;
- protection and enhancement of the environment, including mitigating any environmental consequence of the use of the water;
- the physical and hydrological circumstances that affect the water resources and water flow;
- the efficient use of water resources; and
- works or measures to be undertaken for the protection of the aquifer or for the maintenance of water pressures.

the construction and operation of works:

- the standard of construction, dimensions and any other feature of any works;
- protection and containment works;
- the date of commencement of the works and the notice required to be given of that commencement;
- the submission of reports on the carrying out of the works;
- the qualifications held by persons undertaking, designing, constructing or operating the whole or any part of the works; and



- the maintenance and operation of the works.
- relationships with other licences including:
- rosters for sharing water between licence holders;
 - supply of water to other licence holders;
 - obtaining supplies from other licence holders and
 - conjunctive use of water from different sources.

monitoring and reporting including:

- flora, fauna, water resources and water;
- compliance with licence conditions, **local rules and other duties and obligations**; and
- construction of works including strata encountered underground.

The Commission may attach terms, conditions and limitations to licences additional to those listed above, but not in a manner inconsistent with the Act, regulations or the local rules.

A licence may require that a term, condition or limitation attached to the licence shall be complied with or continue to be complied with after the action permitted to be carried out by the licence holder under the licence has been completed or the licence terminates.

What we are trying to achieve

The changes brought about by licences becoming transferable makes it more important that the types of conditions that can be applied to licences be documented for the protection of the user, the Commission and the local water management committee. This will build stability and justice into the licensing process.



7.6 amending licences

Existing law

Rights in Water and Irrigation Act Section 12 – Certain riparian owners may apply for special licences to divert and use water

The Commission may cancel or modify a special licence if the licensee has failed to comply with the licence or it is in the public interest. The licensee must be given an opportunity to be heard and the Commission may pay compensation if the change is made in the public interest.

Rights in Water and Irrigation Act Section 13 – Licences, other than special licences

Subject to appeal the Commission may vary the period of a licence or change the terms, limitations, or conditions of a licence.

Rights in Water and Irrigation Act Section 26F – Penalties for alterations in licensed well or contravention of licence

The holder of a well licence may apply for an amended licence allowing alterations in the well and the application shall be dealt with as if it was a new application.

Rights in Water and Irrigation Act Section 26G – Powers of Commission in case of improper use of water

Where a person is convicted of an offence against this section, the Commission may cancel the well licence.

How the law is applied

The Commission tries to avoid changing licences once they are issued, as this can be very disruptive of investment and income. Rather the Commission prefers to leave any updating of licence conditions to the time of renewal. One notable exception is that licences are amended if the water entitlement is not used. This enables the water to be available for use by others.

Proposed law

Licences may be changed in two ways, firstly on the initiative of the licence holder and secondly on the initiative of a local water management committee or the Commission.

The holder of a licence may apply at any time for the amendment of the licence. The application will be considered, in so far as it varies the existing licence, as if it were an application for a new licence. The applicant may choose to withdraw the application and retain the original licence if he or she is not satisfied with the new licence.

The terms under which the Commission may vary a licence are listed below and should be defined in the legislation. The Commission should also have the ability to purchase a licence if it considers that this is the more appropriate way to make a change to the manner or level of water use and the licence holder is prepared to sell the licence.

For example it may prove that an aquifer is overused by 5%. The local water management committee would, in consultation with water users, prepare a new allocation plan to reduce use if this is necessary. The committee would determine if licences are to be reduced uniformly or according to a priority (such as leaving stock water with a full allocation). Alternatively the Commission may buy 5% of the overall allocation if funds were available and there are willing sellers.

It is proposed that the Commission, after giving the licence holder a reasonable opportunity to be heard, may vary a licence:

- at any time with the consent of the licensee;
- where, in the opinion of the Commission or the local water management committee, the variation is necessary or desirable to more effectively regulate the use of water from the resource;
- **at any time if there has been an alteration to the water allocation plan**, regulations, by-laws or local rules and the variation is necessary, in the opinion of the Commission, to prevent the licence from being inconsistent (as to the quantity of water allocated or the basis on which it is allocated) or seriously at variance (as to the licence conditions) with the plan;
- if the licence holder is convicted of an offence against the Act; or
- **where, subject to payment of just compensation to the licence holder, the variation is in the public interest.**

It is proposed that a water licence may be suspended or



cancelled by the Court if the licence holder is convicted of an offence against the Act or by the Commission, if in the opinion of the Commission or the local water management committee that:

- the action is necessary to protect the resource or associated environment from undue damage; or
- the licence cannot be varied to be made consistent with the management plan; or
- subject to payment of just compensation to the licence holder, it is in the public interest to cancel or suspend the licence.

The licence holder, or former licence holder in the case of a cancellation may appeal to the Minister against the

amendment, suspension or cancellation of the licence by the Commission.

What we are trying to achieve

In the interests of good resource management, the Commission is endeavouring to introduce a system of long term licences that can be changed as necessary. This will maximise the value of the licences. The change process should be fair to the users and enable the manager to protect the water resources and people affected by the use. The development of water management plans and the introduction of local water management committees will enable the changes to be developed in consultation with the users and the community.



7.7 licence charges

Existing law

Water Agencies (Powers) Act Section 36 – Regulations and by-laws generally

Regulations or by-laws may establish fees to be charged in relation to specified matters and make provision for the recovery of any such fees.

Rights in Water and Irrigation Act Section 27 – Regulations

Regulations may be made to set the fees payable for applications and the grant, variation and renewal of licences and the charges payable by the holder of an operating licence (water supply services) or an operating licence (irrigation services) under the Water Services Coordination Act 1995.

Water and Rivers Commission Act Section 25 – Funds of Commission

The funds available for the purpose of enabling the Commission to perform its functions consist of:

- (a) moneys from time to time appropriated by Parliament;
- (b) moneys received by the Commission in the performance of its functions;
- (c) moneys borrowed by the Commission under section 27 or 28; and
- (d) other moneys lawfully received by, made available to, or payable to the Commission.

What we are trying to achieve

The current power to raise licence fees should be extended to cover new functions (such as licence transfer applications) and to allow the Commission to recover compensation payments made to water users who suffer because of the issue or alteration of a licence for the benefit of others (see section 3.9.)

Proposed law

It is not proposed to make any changes to the scope of charges for existing activities under the Act. However it is proposed to:

- make the current by-law powers to charge licence fees, in respect of applications and the grant, variation and renewal of licences, more explicit;
- add a power to allow the Commission to charge for the costs of providing, fitting, maintaining

and reading meters on the works of licence holders where necessary;

- add a power to make charges for registering or amending interests in a licence (see section 7.9);
- add a power to charge fees in respect of applications for the transfer of licences;
- establish charges for specific services provided by the Commission related to supervising the transfer of private water along watercourses; and
- establish licence charges to fund compensation payments to water users adversely affected by the change.

For example, a grazier may lose the use of summer pasture because of increasing groundwater use. The Commission would be able to compensate the grazier for the loss and recover the costs by raising a licence charge on the groundwater users.

How the law is applied

The Commission gets most of its money from the Consolidated Fund of Government. This fund is used to pay the bulk of Government costs. The moneys within the Consolidated Fund come from National and State taxes and fees. The Water Corporation pays a dividend and tax-equivalent payments into the Consolidated Fund which, under the arrangements put in place to establish the Commission, contribute substantially to the costs of the Commission.

Licence fees are currently charged for licences along the Canning and Serpentine Rivers and Wungong Brook.



7.8 access licences

Existing law

The existing legislation does not provide for the issue of licences for the investigation of water resources.

How the law is applied

At present exploration licences are issued for drilling wells for groundwater investigations but there is no power to recognise surface water investigations by licence. The issue of a licence does not guarantee access to the supply if the investigations are successful.

Proposed law

Specific provision should be made for licences to be issued to allow a person to develop a water source, subject to the person undertaking investigations and developing plans for the development of the water source in a manner satisfactory to the Commission.

For example an access licence might be issued to a company investigating the groundwater resources needed to establish a new irrigation system in the West Kimberley. The licence would be issued if the Commission considered this was a fair and reasonable use for the water. The developer would be required to study the impact of the use on other users and the environment. A production licence would be issued if the impacts were acceptable.

The licences may be issued in advance of the need for the water under the following conditions:

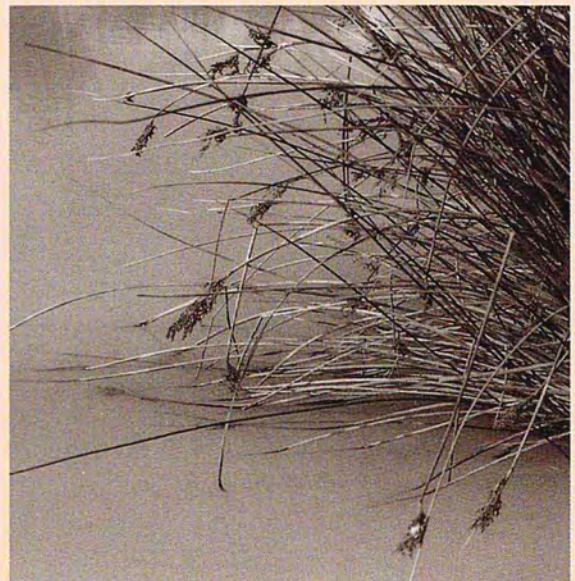
- the application for the licence is publicly advertised, allowing written submissions to be made to the Commission on the application;
- the applicant can demonstrate that he or she has an assured future need for the water and that it is in the State's interest to plan to meet this need at this time;
- the licensee undertakes an approved investigation program to define the capability of the water resource to meet the proposed use and the likely impacts of the use;
- the water resource is developed in accordance with an approved development program;
- the approved programs may be amended by agreement between the licensee and the Commission;

- the conditions and level of use are reviewed after the investigation and again before development of the source;
- before the development of the source the licence may not be transferred to any person other than the Commission, which may sell the licence; and
- if the licence is sold by the Commission only those funds required to reimburse the costs incurred by the licensee will be paid to the former licensee.

Failure to comply with the conditions listed above could result in cancellation or amendment of the licence.

What we are trying to achieve

The changes are intended to encourage investigation and planning of large-scale developments and provide increased security to the person doing the investigation. The Commission will only issue the licence if it intends to issue a production licence on satisfactory completion of the investigations.



7.9 licence register

Existing law

There are no provisions in the legislation stating whether the licences and related information is confidential. There is however some guidance as to what information should be disclosed.

Water and Rivers Commission Act Section 34 – Confidentiality

Commission staff and committee members must treat the information they obtain as confidential unless it should be disclosed to properly perform the functions of the Commission.

How the law is applied

Most information that the Commission holds will assist the community to understand, protect and use water resources. This information is actively disseminated unless it can damage the person to whom the information relates or it is of a personal nature. Licensing information is generally available.

Proposed law

It is proposed to establish a register of licences, directions and exemptions made under the Act. The register would include specific details including the:

- nature of the licence, direction or exemption;
- name of the person and a description of the land to which the licence, direction or exemption applies;
- description of the area or water resource to which the direction or exemption applies;
- licence expiry date;
- details relating to interests in a licence (see below); and
- such other details, such as allocations and conditions, as are prescribed.

Where a licence is transferred, or the water entitlement or part of the water entitlement of a licence is transferred, the Commission must record such particulars relating to the transaction in the register as it thinks fit.

The register must be made available for public inspection.

The Commission must, on application by the licence holder and payment of the fee, register the name of a

person who has an interest in the licence, the nature of the interest and whether that person's approval is required before any part of the licence may be transferred. People who may wish to register include lenders, the Coordinator of Water Services and share farmers. The Commission must, on application by a person who has an interest noted on the register, remove that notation from the register.

The Commission must notify a person with an interest in a licence if:

- the holder of the licence is convicted of a prescribed offence against this Act;
- application is made to the Commission to vary or transfer the licence or any part of a licence entitlement;
- the Commission proposes to cancel or suspend, or not to renew, the licence; or
- the Commission has been asked by the holder of the licence to remove the notification.

The Commission may amend the register in such manner as is necessary to make the register an accurate record of the details it contains.

No compensation is payable in respect of anything done or not done by the Commission in good faith in the performance of its duty.

The regulations may:

- prescribe fees and charges payable for registering a security interest; and
- provide for any other matter relating to the register.

What we are trying to achieve

Information on licences should be available so that the community may understand and judge the outcomes of the management activity of the Commission and the behaviour of water users. Water is a community resource and the community has an interest in knowing how it is used.

With the move to water trading it is essential the register provide information on the licences and the price of water if the market is to meet the necessary trading requirements. The register will also provide an opportunity for people's interests in the licence to be registered.



trading



8.1 transfer and surrender of licences

Existing law

Rights in Water and Irrigation Act Section 26D – Application for and issue of [groundwater] licences

The lawful owner and the occupier of the land where the well is found holds the well licence.

How the law is applied

Licences are only issued to occupiers of the land. Transfers from one property to another will sometimes be permitted where the licensee remains the same. Some people have entered into elaborate arrangements to buy and sell land to which a licence applies so that the licence can be transferred.

Proposed law

Transfer on sale of property

In areas where trading of water licences is not permitted and a property is sold, the new owner or occupier shall hold the licence and must apply for the transfer of the licence into his or her name or give up the licence within 90 days.

In areas where trading is permitted a person selling the land may transfer the licence with the land or retain the licence if he or she remains eligible to apply for a licence or may hold the licence under a local rule (see section 7.2 Who can apply for a licence?).

Licence surrender

A licence may be surrendered at any time, provided that the holder of the licence first complies with any terms, conditions or limitations of the licence relating to its surrender.

Trading

Trading of licences will be allowed in areas where there is inadequate water available to satisfy the requirements of those people wishing to use water and the Commission is satisfied that adequate means, such as local rules, are in place to manage the trade.

A licensee may transfer a licence or part of a licensed water entitlement to another person, another licensee or the Commission. A licence cannot be transferred to a person who cannot hold a licence (see section 7.2 Who can apply for a licence?).

The transfer of a licence requires the approval of the Commission and may be absolute or for a limited period.

The Commission may refuse to grant approval for the transfer of a water licence to a person on the same grounds as it would refuse to grant an application for a licence by that person. (see section 7.3)

Local rules will govern the transfer of licences and provide for the attachment of conditions on the transfer of a licence.

The transfer of the whole or part of the water entitlement of a licence between licensees is achieved by variation of the transferring and receiving of licences by the Commission.

Local rules may prohibit the permanent transfer of a licence. A licence or a water entitlement or part of a water entitlement that has been transferred for a limited period reverts automatically to the transferor when the period expires.

The Commission may refuse an application to transfer a licence if the transfer is to a person who has committed an offence against this Act or to a person who cannot hold a licence.

Application for transfer of licence or entitlement

An application to the Commission for the transfer of a licence or water entitlement must be in a form approved by the Commission and be accompanied by the fee and the licences affected by the application.

The Commission may direct that an expert makes, at the expense of the applicant, an assessment of the effect of granting the application.

The Commission when granting an application may:

- reduce or increase the total entitlement;
- vary any condition of the licence transferred or the receiving licence to ensure consistency with the local rules and allocation plans; and
- change the term of the licences.

For example a licence to take groundwater may be transferred to a property further away from an important wetland. The volume of the allocation may be able to be increased without affecting the wetland. In other cases reductions may be required to prevent an increase in environmental impact.



The Commission must give notice of an application to those persons specified in the local rules or regulations.

Where notice of an application has been given, any person who desires to do so may, in accordance with the regulations, make representations in writing to the Commission in relation to the granting or refusal of the application.

The Commission must forward to the applicant a copy of the representations (if any) made and allow the applicant an opportunity to respond, in writing, to those representations. The response must be made within 21 days or the number of days prescribed by regulation.

The Commission or local water management committee may invite a person to appear personally to support the representation.

The Commission must forward, to each person who makes a representation, notice of the decision on the application, the date of the decision and the names and addresses of persons who made representations within five business days from the date of the decision.

The applicants may, within 21 days after the date on which the notice was given appeal to the Minister against the decision.

The Commission's decision to grant or refuse approval for the transfer of a licence or water entitlement must be:

- consistent with the objectives of the Act;
- made on the basis of the relevant considerations listed in section 3.4;
- made in the public interest; and
- consistent with the local rules and any regulations.

The licence holder shall advise all persons with a financial or other beneficial interest in the licence of the application to transfer and shall provide a statutory declaration that this has been done. Where a person is noted on the register of water licences as having an interest in a licence, the Commission must notify that person in writing and, if the register so provides, must not approve the transfer without obtaining his or her written consent.

The Commission will endorse on a water licence the name and address of the person to whom the licence has been transferred and, in the case of the transfer of part of the water entitlement, endorse on all licences affected such particulars as relate to the transfer.

What we are trying to achieve

Trading of licences or water rights is an essential element of the National agreement to reform water resources law. Trading is to be introduced in a way that gives water users and the community the opportunity to control the market to protect their environmental and social fabric.

Local rules will provide new ways to define water rights but licences will remain the primary means for specifying a person's entitlement to use water for commercial purposes. Under these reforms the licence will become a negotiable asset that the people can buy, sell or lease.

This will give water users an opportunity to manage their supplies of water, matching them to their needs.



8.2 commission trading

Existing law

There are no provisions regarding trading in the legislation.

How the law is applied

At present the Commission allocates water free of charges but offers ex-gratia payments if the Commission considers that a change in licence conditions warrants compensation.

Proposed law

The Commission may buy an entitlement if:

- there is a need to reduce the overall use of water in an area;
- an entitlement is not being used in whole or part;
- the current use is deemed to be inappropriate; or
- the Minister directs the Commission to buy the licence.

The Commission may sell or lease an entitlement if:

- further water is available and trading of entitlements is allowed in the area;
- the Commission has purchased the entitlement other than for the purpose of reducing overall use; or
- the licence has been surrendered or cancelled or has expired and not been renewed.

What we are trying to achieve

The Commission would not normally be involved in trading as it is not a water user wishing to hold entitlements. Accordingly it was previously proposed that the Commission be deliberately excluded from being able to trade because of a possible conflict of interest. As the water resource manager the Commission has the power to affect the market price by the decisions it makes and thereby profit from trade in water entitlements.

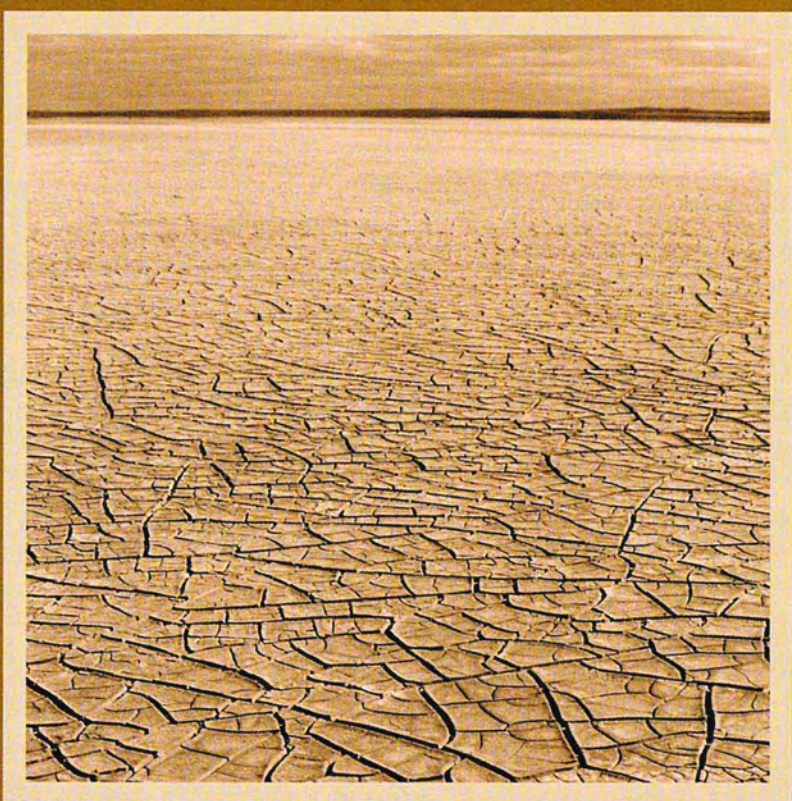
However during the development of trading rules for the Wanneroo Groundwater Area and the writing of these legislative guidelines it became evident that many matters could be more equitably resolved if the Commission bought and sold entitlements. This would allow Government to address matters of equity where it would not be fair to increase or decrease entitlements by decree, especially where some

compensation for a reduction or change in right may be warranted.

For example, from time to time, licence entitlements may be adjusted up or down to match the allocation to the availability of water. Normally this would be achieved by making a uniform increase or decrease in entitlements but under some circumstances it may be appropriate for the Commission to buy or sell licences. This could be done where it would be unduly difficult or costly for licensees to adjust to a smaller entitlement or if the distribution of additional entitlement, free of cost, would be an excessive windfall gain.



glossary



9. glossary

Access licence is a licence issued to allow the investigation of a water source for later development by the licence holder. The development will require the issue of a licence to take water.

Advisory committee is a committee appointed by the Board of the Water and Rivers Commission to advise the Board on matters relating to the allocation of water resources for use by individuals within a defined area. An example is the Wanneroo Groundwater Advisory Committee.

Allocation plan is a document prepared by the Commission and the advisory committee or a local water management committee setting down the policies and rules for allocation of water.

Appeal is a submission to the Minister for Water Resources asking him to change a Commission decision.

Aquifer is a geologic formation that is a useful source of underground water, for example the Leederville aquifer that underlies Perth.

Artesian well is a well where the water rises, or has risen, to the surface.

Board is the Board of management of the Water and Rivers Commission.

COAG is the Council of Australian Governments.

Commission is the Water and Rivers Commission.

Common right is a right to use water that is available to everybody, for example the right to take drinking water from a stream that is on public land.

Common-law right is a right to use water that is established by decisions of the courts.

Compensation is a payment or other benefit given to a person to offset a loss suffered by that person, for example deepening a well because the groundwater level has been lowered.

Consumptive use includes any use of water that reduces the volume of water in a water body such as irrigation, public water supply, stock drinking, diversion of the flow, etc.

Controlled activity is an activity that can damage water resources or people who use water resources and is subject to some form of control under the *Rights in Water and Irrigation Act*.

Coordinator of Water Services is the person administering the *Water Services Coordination Act 1995* and the Chief Executive of the Office of Water Regulation.

Dam is an embankment built to store water by forming a reservoir. An off-stream dam is built outside the watercourse and is filled by taking water from a water body or by collecting overland flow. An on-stream dam stores water by blocking the flow of the watercourse.

Dewater means to remove underground water to facilitate construction or other activity.

Discretionary power is a power that is exercised according to the judgement of a resource manager.

Domestic use does not include watering or irrigating more than 0.1 of a hectare of land or water used in carrying on a business, except for the personal use of persons employed in the business.

Drain is a conduit to collect and remove surplus underground or surface water. A drain may also be a well or a watercourse.

Environmental Protection Authority is the body constituted under the *Environmental Protection Act*, that, *inter alia*, assesses developments, advises the Minister for the Environment on measures required to protect the environment and environmental protection policies.

Environmental water provision is that part of water resource allocated to maintain the ecology.

Exempt usually means to make a declaration that an activity can be undertaken without a licence.

Farm dam is an off-stream dam that holds stock water.

Flood control levee is a bank constructed to prevent flood flows inundating land.

Flood management plan is a strategy to construct works and control the development of land to minimise flood damage.

Flood plain of a watercourse is the land adjoining the watercourse that is periodically subject to flooding from the watercourse.

General conditions are limitations or rules that apply to all people within a particular area.

Gully dam a dam built on a watercourse.



Household garden is an ornamental and kitchen garden associated with a home. It does not include produce that is to be sold or given away.

Instream use includes any use of the water that does not significantly reduce the volume of water in a water resource such as cooling water, boating, fishing, recreation and swimming. An instream use may change the quality of the water.

Irrigation is the application of water to encourage the growth of plants.

Irrigation works are all works used to gather, transport and apply irrigation water.

Levee bank see flood control levee.

Licence is a formal permission to undertake an activity that would otherwise be illegal. In this document a licence generally gives a water user permission to store, take, interfere with and use water from watercourses, wetlands and aquifers.

Licence entitlement is the same as water entitlement.

Licence register is a data base of information on licences issued under the *Rights in Water and Irrigation Act*.

Licensee means a person who holds a water licence.

Local rule is a rule, by-law or regulation made under the *Rights in Water and Irrigation Act* that has application within a specific area.

Local water management committee is a committee assisting and advising the Commission undertake the function of water resource management in an area.

Management plan is a document describing the objectives policies and rules for the allocation of water in a particular area.

Occupier of land means a person who has, or is entitled to, possession or control of the land.

Ordinary use means a common, minor use of water that is associated with occupancy of land. It does not normally include use of water for profit.

Plan generally means a document describing a water resource, the uses of the water the objectives, policies rules and intentions for water resource management.

Policy is a description of the intended course of action to be followed in particular circumstances. Policies are not legally binding.

Prescribe means to specify in an Act, regulation, by-law, rule or plan.

Process is the steps undertaken to achieve an objective or outcome.

Proclaimed area is an area of land or a watercourse that has been proclaimed under the *Rights in Water and Irrigation Act* so that licensing applies for the taking of water from watercourses, wetlands or aquifers. Separate proclamations apply for surface water and groundwater and an area may be proclaimed so that licensing applies to both types of water (see section 5.3). Under current practice areas are proclaimed when non-managed use of the resource would lead to damage to the resource making the supply of water uncertain, for example the Broome Groundwater Area and the Canning River.

Public irrigation scheme is a publicly owned system of water collection and distribution works that provides an irrigation water supply to landowners, for example the Carnarvon irrigation scheme.

Recharge works discharge water into the earth to add to the underground water, for example a drainage sump built in sandy soils.

Resource manager the person or people charged with the responsibility of managing the use and conservation of a natural resource, for example the Water and Rivers Commission and local water management committees are water resource managers.

Rights in Water and Irrigation Act the principal Act governing the management of water resources and the operation of public irrigation schemes.

Riparian means riverbank.

Riparian right is the right that owners and occupiers of land abutting a watercourse or wetland have to take water for specific purposes.

Sensibly diminish is a term used in the Act to differentiate between those activities that have an impact on a water resource or other users and those that do not; that is those activities that should be subject to limits or controls and those that are harmless. The term sensibly diminish was developed in common law and there is no precise definition of it.

Sewer is a pipe to collect and transport wastewater.

Soak is a surface area of wet soil caused by the natural discharge of underground water.



Spring is flow of water over the surface of the land, that is not a watercourse, caused by the natural discharge of underground water

Stock water is drinking water used by free range or paddocked stock, but not feedlot or battery stock.

Sub-regional allocation plan is a plan dealing with the water resources of a specified area which describes how those resources should be allocated among various uses and what water is required to protect the economy, ecology and social structures of the sub-region.

Surface water is water found on the land surface, for example rainfall runoff and the water of rivers, streams, springs and wetlands.

Surplus water means stormwater, surface water or underground water which accumulates or may accumulate to the detriment or disadvantage of any person.

Sustainable use is the use of water in a way that does not cause unacceptable depletion or damage, whether progressive or not, to the water resource.

Trading rules are the rules governing whether and under what conditions a licence may be transferred by sale or lease.

Transfer in this paper usually means to change the person holding a licence or change the place where the licence entitlement may be used.

Underground water means water that is found or taken from below ground level, often called groundwater.

Use includes consumptive and instream uses.

Values in relation to water resources includes the ecological, social and economic values of the water resource and its associated systems and uses to the community, now and in the future.

Vest means place under the care and control of, as if the vestee were the owner, for example vest publicly owned land in a local government body.

Water allocation is a volume of water set aside by a water resource manager for a particular use or a particular user.

Water and Rivers Commission is constituted under the Water and Rivers Commission Act and administers parts of the Rights in Water and Irrigation Act.

Water body is a collection of water and the soil and rock that hold the water, for example a lake, watercourse or wetland, including the bed and banks or an aquifer, including the underground water and the geologic formation.

Water entitlement is a right granted to a person or people by a licence to take a specified amount of water under specified conditions and for a specified purpose.

Water resource means a watercourse or wetland, surface water, underground water and effluent.

Water right is a right to take or use water, the right may be granted by common-law, an Act, a local rule or a licence. The right may be transferable to others and it will be subject to conditions and limitations.

Water service provider is an organisation that is licensed by the Office of Water Regulation to sell water or water services to landowners. In Western Australia water service providers include the Water Corporation, the Bunbury and Busselton Water Boards, Local authorities that provide sewerage services or drainage services and irrigation cooperatives.

Watercourse see definition in section 3.1. A watercourse must have a bed and bank, the occasional flow of water over the land surface does not necessarily constitute a watercourse.

Well means an opening in the ground excavated for the purpose of obtaining access to underground water, an opening in the ground excavated for some other purpose but that gives access to underground water and a natural opening in the ground that gives access to underground water.

Wetland means a lake, swamp or marsh and includes any land that is seasonally inundated with water.

Works include structures and earthworks made or undertaken to facilitate the protection, assessment, development and use of water.





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