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WATER AND RIVERS  
COMMISSION



Government of  
Western Australia



## Summary of 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 tabled in Parliament.

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# foreword

The reforms outlined in this summary 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.

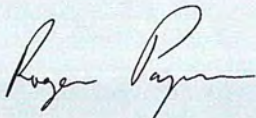
However, the changes to water management will take considerable time to be fully realised. The need to carefully define management objectives that are compatible with the legislative objectives and for local water management committees to develop local strategies and rules to take advantage of the new 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



# introduction

This document is the first 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 a summary of matters to be considered during the preparation of a Bill to amend the *Rights in Water and Irrigation Act 1914* to implement reform of water resource management in Western Australia. This document is a plain english interpretation of what may be contained in the 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 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 more detailed treatment of the issues covered in these guidelines 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.

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



# act objectives and processes

## Definitions

Definitions will be updated to remove uncertainties and comply with modern practices. New definitions are proposed for spring, underground water, watercourse, well and wetland.

## Title of the Act

The Act has two functions, defining and managing rights to use water and establishing and operating public irrigation schemes.

The title of the Act should be clear and simple, written to ensure that the Act can encompass the widening focus of modern natural resource management.

## Objectives and decision-making

The *Rights in Water and Irrigation Act* provides the power to manage water use but it does not give any guide as to what should be achieved and what matters are important.

This has meant that the Commission and advisory committees have to decide what is or is not relevant and some important matters, such as fishing, tourism, swimming and local government policies on land development, may have to be ignored because they are not mentioned in the current Act.

Modern natural resource management systems require an expert, dedicated resource manager who, acting in partnership with the people affected by its decisions, prepares and implements policies and management plans to achieve the objectives set by Parliament. This is the purpose of the Water and Rivers Commission.

It is proposed to set an objective of sustainable use and management of water resources to ensure that the water is available to future generations, the values of the water resource are maintained and the adverse effects of the use of the water are minimised.

The objective of the Act will be to promote:

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

The legislation should specify the types of matters that are to be considered and require the Commission and local water management committees to consider the impacts of their decisions on water users, the community and the environment.

The legislation should allow the Commission and local water management committees to support the policies of other agencies and the integration of natural resource management at local, State, National and international levels.

## Environmental water

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. 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.

The preparation of allocation plans and local rules under the new legislation will provide an opportunity to clearly specify the water needs of the environment.



## Monitoring

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 tailored to management needs.

The legislation should allow the Commission or local water management committees to require water users to monitor 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 the most efficient or effective means to obtain the required information and where the monitoring is within the technical and financial capacity of the water user.

Reporting of the details of the strata 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.

## Penalties

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

## Appeals

The Commission will initiate a review of alternative appeal systems, such as replacing the current system of appeal to the Minister with that to a tribunal or court. In the interim it is proposed to increase the scope of appeals to match the full range of discretionary powers available to the Commission and local water management committees under the new laws.

It is also proposed to more fully describe the appeal process and make some procedural improvements by giving the Minister more discretion in dealing with appeals. 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.

## Compensation

Water users acting within their legal rights should be compensated for an enforced reduction to their level of use resulting from the grant of an increase to others. Generally the compensation will be achieved by the sale of rights from the existing user to the developer. 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 conflict in established rights and no compensation shall be paid for changes to reduce current use to sustainable levels to ensure the stability of the social, water resource and ecologic systems.

The compensation is to be paid by the water users who benefit from the change where the change is made for their benefit, 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 increase the flow of a river for tourism or navigation.

# water rights

## Crown and private rights

The current multiple vesting for 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 (areas where licensing applies) will become vested in the Crown without the need to proclaim the area. This will allow local rules to be introduced, rather than introducing licensing, if management is necessary.

## Riparian rights

Conflicts over riparian rights arise between neighbours during times of low flow. These conflicts cannot be resolved because there is no requirement in the Act for any riparian user to share the water with any other user, whether a riparian user or not.

The current basic riparian rights are to be retained but, in times of shortage, local rules over rationing flows may be introduced.

The two different definitions of riparian rights, one for proclaimed areas and one for other areas, must be unified as proclaimed areas will be removed. Local rules will be able to be used to maintain the right of some people in proclaimed areas to irrigate a 2 hectare household garden.

## Other rights to water

The Commission would like to make the law as simple as possible, giving the same rights to users of surface and groundwater. People should be able to take water from their own land or from public land for domestic and household use, watering stock and firefighting. Local rules should govern the way water is taken only if there is not enough water to go round or other problems, such as preventing damage to the watercourse or aquifer, need to be addressed. In some instances it may be necessary to issue licences or to prohibit the taking of water altogether.

## Duties

It is proposed to establish general guidelines for the duties of water users. The guidelines will help people to use water in a way that respects the rights of others. The guidelines should also help people who are unfairly affected to obtain redress in the courts. The new legislation should provide a means to clearly state, on a place by place basis, the specific duties that people who use or affect water resources owe to each other.

A duty of care should apply to all people involved in the management or use of water resources, including the Commission and other agencies, local water management committees and landowners. The duty of care would require these people to comply with the objectives of the Act and operate in a way that minimises the risk to others.





# local management

## Local rules

The law should give the Commission and local water management committees the flexibility to control only what needs to be controlled and leave other matters in the hands of the land owner or occupier.

For example local rules may be made to:

- control activities that impact on the water resource, such as taking water, building dams and dewatering;
- specify the duties of water users;
- share water during periods of shortage;
- protect watercourses, wetlands and aquifers;
- establish standards for the use and monitoring of water resources;
- determine arrangements under which the water rights may be transferred;
- limit speculation in trading licences;
- specify if licence and transfer applications must be advertised;
- specify if drilling contractors must hold particular qualifications;
- manage the flow of water and protect the use of streams for activities such as tourism, aquaculture and recreation;
- control the purchase and sale of water entitlements by the Commission; and
- manage dams or tanks that affect flow or quality of watercourses or wetlands.

Local water management rules are to be drafted by the local water management committee and the Commission. The rules must comply with regional and State rules and policies and will be subject to a public review before the Commission can recommend them for approval by the Minister. The rules will then be tabled in Parliament and may be disallowed by either House.

## Local committees

It is proposed to establish local water management committees that will take an active role with the Commission and the community in developing local policy and rules and arbitrating over disputes. The Commission has established a community based working group to develop a proposal for the establishment and operation of local water management committees. This proposal will be circulated for public comment when the group has developed it.

## Proclaimed areas

The proclaimed area system with its rigid set of rules is to be progressively replaced by management plans and local rules that specify how water will be used and managed in the 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.

## Allocation Plans

Plans are an essential element of modern water resource management. They are a means to develop acceptable written rules and policies for management. Plans will be prepared when the Minister, Commission or local water management committee considers that there is a need for a plan.

Regional Allocation Plans will set the regional management objectives, environmental protection standards and the acceptable uses of water resources. They will also specify the resource protection requirements and help integrate land and water management. Regional Plans may cover several river and groundwater systems.



Sub-Regional Allocation Plans will list the likely demands for water and specify how the water resources can be developed to satisfy those demands. The plans will identify dam and wellfield sites and provide information that will help water users select the water source most suited to their needs and design their investigations. The plans will enable the cumulative impacts of several water developments to be estimated and managed.

Management Area Plans apply to an individual resource, such as the Swan Valley groundwater system. They will specify the allocation and water use policies, environmental water provisions, flow requirements, total volumes of water that may be taken, local rules, including rules for trading and the functions and membership of the local water management committee. The Commission's advisory committees already use management plans in many areas. This process of carefully developing and documenting policy has proved to be very useful to the Commission and water users alike.

The Act will describe the process for preparing and reviewing plans.

## Directions

Directions are an important means to address specific or very localised water resource problems that develop. It is not possible or wise to try to use the Act or local rules to address all the problems that might arise. This would stifle initiative and require an army of people to write and enforce the rules.

Rather, directions allow new problems to be addressed directly 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.

Directions can also be used to address short-term problems, such as rationing of water during times of shortages. The rationing will include riparian and other general rights as well as licensed rights.

Directions will be used to define and enforce detailed criteria for taking water and for enforcing licence conditions and rules as an alternative to prosecution.



# dams and drainage

## Drainage

Controls on drainage and dewatering works should be introduced if the works are not already controlled by another agency, such as Agriculture WA, and the controls are necessary to prevent damage to the water resources, other users or the environment. The controls will be applied through local rules which may require drainage and dewatering works to be licensed.

## Dams on watercourses

Currently people building gully dams on proclaimed watercourses require the approval of the Commission. It doesn't matter if the water is being used under a riparian right or a licence. Generally the approval is readily given but in some places restrictions are necessary because the dam will cut off or seriously reduce the flow.

A simple system of managing gully dams, according to need, will be developed without introducing unnecessary regulations. Enforcing the present controls through a system of local rules and licences can do this.

As proclaimed areas are to be removed local rules will be able to be applied to dams on any watercourse.

## Dams built off stream

Dams built outside watercourses are presently subject to control only if they affect the flow of a proclaimed watercourse. In the future local rules controlling these dams may be made if the dam is likely to significantly reduce the flow of a watercourse and the local water management committee considers this is necessary.

## Flood control levees

The reforms are intended to provide a means to coordinate flood protection works in areas where landowners construct their own works, such as levee banks.

Controls over the construction and maintenance of levee banks that obstruct or interfere with the flow of watercourses may be introduced by making local rules. The rules will only be introduced if the private works may damage property, the watercourse or the environment.

Local rules will require landowners to comply with relevant flood management plans. They will minimise the cost of effective flood control and ensure the efficient passage of floodwater. Compliance with the flood plain management plan can protect a landowner against claims for damage.



# licences

## Need for a licence

The proposed reforms will increase the scope and flexibility of licensing and ensure that licensing is only introduced where it is necessary. The reforms will allow local rules to be used as an alternative to licensing and allow licensing to be applied to some activities that are already controlled but less efficiently than is possible with licences.

Outside proclaimed areas the Act and local rules will specify whether an 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 taking water for most purposes must be licensed. Proclaimed areas will be phased out so that, eventually, local rules will define all licensing requirements.

Activities that may be controlled by licensing are taking, collecting and diverting water, transferring and using water, obstructing or modifying the flow of a watercourse, building and operating a dam or other works on a watercourse, drilling or altering a well or bore, building or operating drainage and dewatering works and disposing of water in a manner that may affect water resources.

Exemptions from groundwater licensing, which are currently restricted to stock and domestic uses, will be able to be widened through local rules.

## Who can apply for a licence

The introduction of licence trading can create conditions favourable to speculation. Limits will be placed on who can obtain a licence so as to protect landowners and limit speculation.

The person must have access to the land on which the water exists and, unless local rules provide otherwise, have the intention and means to use or supply the water for a worthwhile purpose.

## Considering a licence application

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

The Commission will have discretion with respect to the grant, transfer, renewal, terms, conditions and limitations of licences. The Commission and local water management committees will deal with the application for a licence. They will be guided by the Act's objectives and consider matters that are relevant to the management of water resources in that area. The Commission may advertise the application to seek submissions from the community.

Where the Commission is considering a refusal or the attachment of a condition that is adverse to the applicant, the applicant will have a right to make representations before the Commission makes its decision.

## Duration of licences

An objective of the proposed reforms is to clearly specify the duties of water users so that the licence period can be extended, knowing that water users will act to overcome resource management problems caused by their use. This change will be gradual and can be hastened by the implementation of effective local management.

The legislation will continue to 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 will be renewed unless the by-laws, a local rule or the licence itself provides otherwise. The licence conditions will be changed at the time of renewal if this is necessary to make the licence consistent with the management plan.

A licence will expire if the holder of the licence ceases to be a person eligible to apply for such a licence. Early renewal of licences will be possible at the request of the licensee.

## Conditions of licences

The changes brought about by licences becoming transferable makes it important that the types of conditions that can be applied to licences are prescribed. This will build increased stability and justice into the licensing process and make it clear to people wanting to buy licences the range of issues they may be required to address.



Within this constraint the Commission and local water management committees should be able to impose any conditions they consider are necessary to meet the objectives of the Act. The conditions may relate to the taking and use of water, the amendment, renewal, transfer or surrender of the licence, the protection of other water users, the management and protection of water resources and their environment and the construction and operation of works.

### **Amending licences**

The Commission is planning to introduce longer-term licences but before it does this the current powers to amend licences should be reviewed. The amendment process must be fair to the user and enable the manager to protect the water resources and other people affected by the use. Licence conditions must be kept consistent with the water allocation plan and the writing of a new plan or the review of a plan may require licences to be amended. In circumstances where the use of water is clearly unsustainable or causing unacceptable damage a licence may be amended without a review of the plan.

The conditions and the process for amending licences will be defined in the legislation. Importantly, the Commission or the local water management committee must give the licence holder the opportunity to be heard before his or her licence is amended. The Commission should be able to purchase a licence if the licence holder wants to sell and this can be a better and fairer way to make any necessary changes.

The licence holder, or former licence holder in the case of a cancellation, may appeal to the Minister against any variation, suspension or cancellation of the licence by the Commission.

The holder of a licence may apply to the Commission for the amendment or renewal of a licence to change the licensed activity or extend the time of the licence.

### **Licence charges**

It is not proposed to make any significant changes to the scope of charges for existing activities under the Act. However it is proposed to extend the current power to charge fees to cover the new functions of the Commission relating to transfer of licences, registering interests in licences, supply of meters by the Commission, paying compensation and supervising the transfer of private water in watercourses.

### **Access licences**

Access licences are intended to encourage investigation and planning of large-scale developments by providing security to the person doing the investigation. The holder of an access licence must undertake investigations and follow an agreed development program. The production licence conditions and level of use will not be finalised until the investigations have been completed

### **Licence register**

It is proposed to establish a public register of licences, directions and exemptions made under the Act. This will give easy public access to non-confidential information on water use and management and, with the move to trading of water entitlements, will protect lenders, lessees and share farmers by registering their interests.

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 a legitimate interest in knowing how it is used.

# trading

## Transfer of licences

Licences are, and will remain, the primary means of specifying commercial entitlements to use water. The licence will become a negotiable asset that the holder can trade if this causes no environmental harm or other problems. Trading will give water users the opportunity to manage their supply of water, matching it to their needs.

Licences may be transferred to the new occupier on the sale of a property, to another person entitled to apply for a licence or to the Commission.

The approval of the Commission or the local water management committee will be required for the transfer and local rules may be made to govern the transfer of licences. Before making a decision the Commission or local water management committee may direct that an expert is engaged to make an assessment of the transfer. The approval of the licence transfer may involve a change in the total water volume, the licence conditions (to ensure consistency with any local rules and allocation plans) and the term of the licence.

A licence or part of a licence that has been transferred by lease reverts automatically to the transferor when the lease period expires.

## Commission trading

It was previously proposed that, as it is not a water user, the Commission would not be involved in trading.

However, during the development of trading rules for the Wanneroo Groundwater Area and the writing of this guide it became evident that some management problems could be more easily solved if the Commission could buy or sell entitlements. This would allow the Commission to address matters of equity where the local water management committee or the Commission considers it would not be fair to increase or decrease entitlements merely by an administrative change to licence entitlements. It is important that the conditions under which the Commission can trade are clearly specified and that the Commission publishes the volume and costs of trades in its annual report.

The Commission may buy an entitlement if:

- there is a need to reduce the use of water in an area and the reduction is large or unequally applied;
- 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 becomes available and trading of entitlements is allowed in the area;
- the Commission has purchased the entitlement; or
- the licence has expired or been surrendered or cancelled.

Special provisions will apply to access licences.







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