



Environmental Defenders Office

Water Planning and Licencing in WA

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Overview

This factsheet provides information about water planning and licencing in Western Australia and outlines:

1. how surface and groundwater is regulated in WA;
2. water rights and exemptions to licencing;
3. types of water licences, including when you can comment on licence applications;
4. Water Allocation Plans; and
5. water reforms in WA, including the implications of the National Water Initiative.

A [glossary](#) of key terms is provided at the end of this factsheet.

Key Takeaways

The key takeaways from this factsheet are:

- water extraction from surface or non-artesian groundwater resources is only regulated if it is in a proclaimed area;
- extraction of water resources in proclaimed areas requires a water right, licence or exemption under the *Rights in Water and Irrigation Act 1914* (WA);
- only certain licence applications will be publicly notified and third parties cannot challenge licence decisions or take enforcement action for breaches of conditions;
- WA Water Allocation Plans are not legally binding or enforceable; and
- reform is necessary to better manage and regulate WA's water resources to protect public need and environmental water.

Regulation of Water in WA

The *Rights in Water and Irrigation Act 1914* (WA) (**RIWI Act**) and *Rights in Water and Irrigation Regulations 2000* (WA) (**RIWI Regulations**) regulate water use, management and rights in WA. The RIWI Act and Regulations are administered by the Department of Water and Environmental Regulation (**DWER**).

Water licences are required to extract surface or non-artesian groundwater in proclaimed areas or to extract of artesian groundwater in any areas in WA.

In proclaimed areas, there are some rights under the RIWI Act that provide for certain people to take water without a licence. More information on this is provided [below](#).

Commercial extraction from non-artesian water resources in unproclaimed areas does not require a licence; however, it can still be covered by a [Water Allocation Plan](#) and subject to non-statutory (i.e. unenforceable) allocation limits.

Water Rights

The RIWI Act provides some express rights for extraction or use of water from regulated resources that do not require a licence where it is for a legislated use. These include:

- riparian owner's rights;¹
- water resources accessible by public road;² and
- taking of water from non-artesian wells.³

Riparian Rights

Owners or occupiers of land that has a watercourse running through it or is adjacent to a watercourse or wetland have the right to take water from that water course or wetland in proclaimed areas for:⁴

- domestic use;
- watering cattle or stock other than those raised in intensive conditions;⁵ and
- irrigation of a domestic garden that is less than 2 hectares.⁶

Where the watercourse or wetland is not in a proclaimed area, the owner or occupier can also take water free of charge to the extent that that the flow or amount of water is not 'sensibly diminished', meaning there is not a visible reduction as a consequence of taking the water.⁷

Accessible by Public Road

Anyone can take water from a watercourse or wetland that is accessible by a public road for domestic use or to water cattle/stock (other than those raised in intensive conditions).⁸

¹ *Rights in Water and Irrigation Act 1914* (WA) (**RIWI Act**) ss 9, 20.

² RIWI Act ss 10, 21.

³ RIWI Act s 25A.

⁴ RIWI Act s 9.

⁵ RIWI Act s 21(4) defines 'intensive conditions' as circumstances where the cattle stock are confined to an area smaller than that required for grazing under normal conditions and where cattle/stock are usually fed by hand or mechanical means.

⁶ RIWI Act s 9. Produce cannot be sold from the garden, it must be for domestic (not commercial) purposes only.

⁷ RIWI Act s 20.

⁸ RIWI Act s 10.

Similarly to riparian rights, where the watercourse or wetland is not in a proclaimed area, water can be taken to the extent it is not sensibly diminished.⁹

Taking Water from Non-Artesian Wells

Any person can take water from a non-artesian well for:

- domestic use;
- firefighting;
- watering cattle/stock (other than those raised in intensive conditions); and
- any other use prescribed in a local by-law.

However, construction of a well in a proclaimed area will require a licence or exemption.

Visit: A full list of water licence rights and exemptions is published by DWER [here](#).

Water Licences

For extraction from, or interference with, a regulated water resource that is not permitted by a water right or exemption, a licence is required. There are three broad categories comprising:

- licence to take water under s 5C (**s 5C licence**);
- licence to construct wells under s 26D (**s 26D licence**); or
- permit to interfere with or obstruct a watercourse under ss 11, 17 or 21A.

It is an offence to:

- take water without a licence (or exemption) from:¹⁰
 - watercourses or wetlands in proclaimed areas;
 - non-artesian groundwater resources in proclaimed areas; or
 - artesian groundwater in all areas.
- construct a non-artesian well in a proclaimed area without a licence.¹¹
- obstruct or interfere with a watercourse without a permit.¹²

There are some exemptions where the Minister may make an order that s 5C or s 26B does not apply to the taking of water from a non-artesian groundwater resource that is located in a proclaimed area.¹³

Right to Comment on Licence or Permit Applications

Where an application for a s 5C licence is:

- to take more than 100,000kL per year; or
- in the Minister's opinion, of sufficient impact on a water resource that it should be publicly notified;

⁹ RIWI Act s 21.

¹⁰ RIWI Act s 5C.

¹¹ RIWI Act s 26B.

¹² RIWI Act ss 11, 17, 21A.

¹³ RIWI Act s 26C.

the application must be published in a State and local newspaper and the public given at least **14 days** to make written submissions on the application to the Minister.¹⁴

An application for a permit under the RIWI Act may be publicly notified where the Minister believes that it will sufficiently impact a water resource such that it should be publicly notified.¹⁵ If a Minister requires a permit application to be published, it should be published in a State and local paper with a public comment period of no less than **14 days** from the date the notice was published.¹⁶

There is no requirement to notify the public of an application for a s 26D licence.

Generally, there will only be an opportunity to comment on a licence or permit application if the Minister believes it will significantly impact a water resource such that that it is desirable to notify the public.

Comment periods must be at least **14 days**.

Right to Challenge Licence or Permit Application Decisions

The RIWI Act does not provide for members of the community to seek review of decisions to grant water licences.

The only way third parties can challenge a decision to grant a licence or permit under the RIWI Act is by seeking a judicial review of the decision in the Supreme Court. Judicial review is only available in circumstances where a Minister or government agency has made a decision that is not legally correct or valid.

Applications for judicial review must be made within **6 months** of either the date on which the decision was made or the date the applicant became aware of the decision, whichever is later.¹⁷

Judicial review is limited in that it can only determine whether there has been a legal error and seek the decision be remade according to law. As there are significant costs risks involved in these types of proceedings and it is a time-consuming process, we **strongly** recommend obtaining legal advice before commencing any judicial review proceedings.

Water Register

Under the RIWI Act, licences issued under s 5C, licence exemptions and some statutory directions must be made publicly available on the Water Register.¹⁸ However, the Water Register does not contain information about licence applications.

¹⁴ *Rights in Water and Irrigation Regulations 2000* (WA) (**RIWI Regulations**) r 23(3) and (4).

¹⁵ RIWI Regulations r 5(1).

¹⁶ RIWI Regulations r 5.

¹⁷ *Rules of the Supreme Court 1971* (WA) order 56.

¹⁸ RIWI Act s 26GZI.

The Water Register must include a description of the water resource and details of the licence holder (or party the direction was issued to), including whether they have been convicted of an offence under the RIWI Act.¹⁹

Visit: You can see the Water Register [here](#).

Enforcing Breaches of the RIWI Act

Who can take enforcement action?

There is no right for third parties to commence proceedings to enforce breaches of the RIWI Act.

However, where a person commits an offence under s 5C to take water from a regulated water resources without a licence and does not take all reasonable steps to minimise the degradation of the water resource, a person that is '*directly affected*' by the degradation may commence civil proceedings.²⁰

Otherwise, DWER is the responsible agency for investigating potential breaches and taking enforcement action under the RIWI Act, pursuant to the *Water Agencies (Powers) Act 1984* (WA) (**WAP Act**).²¹

N.B. Report suspected breaches of the RIWI Act using DWER's [Environment Watch](#) online form or by calling **1300 784 784**.

DWER's Enforcement Powers

Under the RIWI Act and the WAP Act, DWER has various enforcement powers available, including to:

- amend,²² suspend or cancel the licence;²³
- issue a statutory direction for certain breaches (e.g. to cease taking water, close a bore or restore a watercourse);²⁴
- issue an infringement notice requiring the offender pay a modified penalty²⁵ (i.e. a fine in the amount set out in sch 2 of the RIWI Regulations); or
- prosecute the offence in the Magistrates court.²⁶

The Minister is empowered to commence proceedings under the RIWI Act, including for civil remedies or to enforce any penalty issued, and is not required to show any damage was sustained by the breach.²⁷

¹⁹ RIWI Act s 26GZJ(1).

²⁰ RIWI Act s 5E.

²¹ *Water Agencies (Powers) Act 1984* (WA) (**WAP Act**) s 5(1)(c).

²² RIWI Act sch 1 cl 24(2)(b)-(g).

²³ RIWI Act sch 1 cl 25(c).

²⁴ See e.g. RIWI Act ss 17(6), 25(4) and sch 1 cl 18.

²⁵ WAP Act s 102(2).

²⁶ RIWI Act s 74.

²⁷ RIWI Act s 26J.

Read: Information about compliance and enforcement is available [here](#).

Water Allocation Plans

Proclaimed Areas

Proclaimed areas are regions of WA that the Minister has declared are the responsibility of the WA government to regulate and manage. Once proclaimed, provisions of the RIWI Act requiring licences or permits to take water, construct wells or obstruct or interfere with a watercourse apply to the water resources in the proclaimed area.

Visit: Proclaimed area maps are available [here](#).

Water Allocation Plans

Water Allocation Plans (**WAPs**) provide guidance on how water in the area under the relevant WAP is to be allocated. WAPs are not statutory and are simply used to guide licencing decisions under the RIWI Act.

Statutory WAPs cannot be approved in WA because the Water Resource Council, which is required for the creation of statutory water plans under the RIWI Act, has not been formed.

The WAP Guide sets out the process for water allocation planning; however, it makes no reference to a precautionary approach and does not require that the starting point for assessment be the identification of environmental and other public benefit outcomes in the relevant plan area.

Visit: You can read the Water Allocation Planning in WA Guide [here](#).

Water Reform

WA Water Reforms

The WA Government was contemplating water reforms to consolidate separate water legislation; however, it was decided in late 2023 that the existing framework would continue.²⁸

National Water Reforms

The 2004 National Water Initiative is undergoing review as part of the National Water Reform 2024. Reform is necessary due to climate change and changes in water demands.

A consultation process was held in relation to the review and proposed renewal of the 2004 National Water Initiative.

Read: Our submission on the National Water Reform 2024 is available [here](#).

²⁸ Information about the decision not to proceed with the reforms is available [here](#).

Our recommendations included:

- all jurisdictions to have legally binding water allocation plans;
- provision of First-Nations led water reform;
- improved community participation and First Nations consultation;
- requirement to consider climate impacts in decision-making;
- enshrined right to safe drinking water; and
- improved transparency and participation in processes, such as by including third party merits review for decision making and timely publication of information.

The final inquiry report was published on 27 June 2024.

Visit: Information about the National Water Reform 2024, including the final inquiry report is available [here](#).

Glossary and Further Resources

Artesian groundwater is confined (under pressure) and often at considerable depth from the surface. It is not quickly recharged with water (e.g. rainfall) to replenish the water extracted.

Degradation means the sensible diminishing of quality or quantity of water.

Regulated water resource means a water resources (surface water or groundwater resources) that is located within a proclaimed area or any artesian groundwater resource.

Sensibly diminished means visible reduction in the quantity of water or flow of water downstream.

Take (as in to 'take' water) means to remove water from, or reduce the flow of water in, a water resource by pumping or siphoning water; stopping, impeding or diverting the flow of water; releasing water from a wetland; permitting water to flow under natural pressure from a well; or permitting stock to drink from a watercourse or wetland, and includes storing water during or resulting from any of those activities.

Underground water means water that percolates from the ground into a well or other works.

Water Resource means watercourses and wetlands (including their beds and banks); other surface waters; and aquifers and underground water.

Watercourse means any river, creek, stream or brook in which water flows (including their beds and banks); any collection of water (including a reservoir) into through or out of which a river, creek, stream, brook flows; or any place where water flows that is prescribed by local by-laws to be a watercourse.

Wetland means a natural collection of water, permanent or temporary, on the surface of any land, including any lake, lagoon, swamp or mars or a natural collection of water that has been artificially altered, but does not include a watercourse.

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