



## Operational policy 5.10

Managing breaches of the Rights in Water and Irrigation Act 1914 on watercourses  
in Western Australia





Government of **Western Australia**  
Department of **Water**

# Operational policy 5.10 Managing breaches of the *Rights in Water and Irrigation Act 1914* on watercourses in Western Australia

(Previously Statewide policy 12 *Management of complaints and disputes on  
watercourses in Western Australia*)

DWPF 5.10

September 2010

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This document has been revised by the Water Licensing Branch of the Water Resource Use Division of the Department of Water.

Any enquiries relating to the implementation of this policy or any matters relating to management of water resources in the regions, please contact a regional office listed under 'Regional enquiries'.

For more information about this policy, contact: Tim Katsavounidis, Program Manager, Water Licensing Branch on 08 6364 7600.

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## Summary

Properties that border a watercourse (such as a river or stream) are highly sought after for their aesthetic, environmental, recreational and commercial values. Any loss of the amenities provided by the watercourse generates considerable anguish to property owners who may take steps to protect the features of the watercourse and the associated monetary value of their property.

Such instances may occur during a drought or periods of low streamflow. There may be a dispute between property owners over the rights to take water from a stream. It is important for such disputes to be addressed in an efficient and effective manner, reducing the potential for the dispute to escalate and damage social and commercial activities.

This policy describes the role of the Department of Water in situations when it is informed of an activity that is having a detrimental impact on a watercourse and the rights of individual water users to take and use water.

Under this policy, the department will only become actively involved in a 'complaint' or 'dispute' involving an activity on a watercourse where it determines that it has the statutory powers under the *Rights in Water and Irrigation Act 1914* to intervene.

This policy details the procedure a complainant should follow in reporting a potential breach of the *Rights in Water and Irrigation Act 1914*, the information the Department of Water requires to determine if a breach has occurred, and the procedure the department will follow to investigate and if necessary, take action.

# 1 Policy statement

The Department of Water (the department) will only take action if a reported activity involving a right to use water is in breach of the *Rights in Water and Irrigation Act 1914*. Such an activity includes the:

- unlawful taking of water
- unauthorised interference with the bed and banks of a watercourse.

Note that a person who reduces or exhausts the water supply in a watercourse while exercising a right granted by a water licence or riparian right under the *Rights in Water and Irrigation Act 1914*, may not be in breach of the Act.

A person reporting an alleged unlawful activity must provide the department with relevant information to allow it to assess whether the alleged activity is a breach of the *Rights in Water and Irrigation Act 1914*.

If it is determined that the activity does not breach the Act, the department will generally not intervene.

If it is determined that a breach of the Act has occurred, the department may:

- insist that the illegal activity cease
- require restitution work be undertaken
- take enforcement action.

## 2 Background

### 2.1 Issue

Rivers and streams are highly visible, and often major, sources of water supporting our industries and our way of life. The flow of water in rivers and streams is governed by seasonal rainfall patterns, runoff generated in the watercourse's catchment and in some cases, by groundwater discharge or by human activity. During dry seasons, when water is needed more, especially by irrigators, the flow diminishes. In some years, rainfall during the wet months may be insufficient to generate enough flow to satisfy the needs of all water users in the following dry months.

When water flow is low or intermittent, disputes may arise between people drawing on the same watercourse. In some situations, problems arise when water users do not consider how their actions affect the environment and other water users downstream (for example by abstracting at a high rate or by constructing a dam on a watercourse).

It is likely that disputes along watercourses will become more common, as parts of Western Australia are predicted to become drier. The public need to have realistic expectations about depending on watercourses, including understanding their right to a water supply from a watercourse as well as the rights of others.

When people are affected by someone else's activities they often look to a government agency to remedy the situation. The Department of Water, as the state's water resource management agency, receives numerous complaints from landowners sharing the same watercourse. It is important that the complainant understand that the department will not take action where there is no breach of the *Rights in Water and Irrigation Act 1914*. The complainant should provide the department with as much information as possible (preferably in writing) concerning the issue to assist the department in determining if a breach of the Act has occurred.

### 2.2 Intent

The intent of this policy is to provide a consistent and comprehensive foundation for managing reported alleged unlawful activities relating to water legislation on watercourses in Western Australia. The policy details the information that complainants need to provide when reporting a potential breach of water legislation and describes the manner in which the department will respond.

This policy revises and replaces Statewide policy 12, *Management of complaints and disputes on watercourses in Western Australia* (2004).

## 2.2 Policy links

This policy has links to other complaint resolution procedures produced by the Government of Western Australia including:

- *Complaints management guidelines* (Department of Water 2009) which prescribe the use of the department's incident management system.
- *Whole of government complaints management strategy* (Government of Western Australia 2003).
- *Guidance to good practice in the Western Australian public sector: a companion reference to Australian standard on complaints handling* (Government of Western Australia 2004).

## 2.3 Legislation

The *Rights in Water and Irrigation Act 1914* establishes the legislative framework for managing and allocating water resources in Western Australia. Under this Act, the right to the use, flow and control of the water in watercourses, wetlands and underground water sources is vested in the Crown. The department is responsible for discharging the water resource management powers and functions set out in the Act.

The *Rights in Water and Irrigation Act 1914* gives landowners whose properties are contiguous with a watercourse, a riparian right to take water. In areas that are prescribed or proclaimed as surface water areas or irrigation districts, the Act requires that the taking of water in excess of riparian right be licensed by the department. In these areas, a permit is also required for interfering with the bed and banks of watercourses, such as when constructing a dam.

In areas that are not proclaimed, a person may take water from a watercourse without approval from the department as long as the taking of water does not 'sensibly diminish' (refer to glossary) the flow in the watercourse and the interference is not located where a watercourse is adjacent to a public access road or reserve (in which case a permit is required).

Under the provisions of the *Rights in Water and Irrigation Act 1914* the following rights are equal (no one of these rights has precedent over the other):

- riparian right
- other rights to water
- a licence to take water.

The department may also draft by-laws or issue directions under the *Rights in Water and Irrigation Act 1914* placing limitations on the rights to take and use water.

## 3 Implementation

### 3.1 Application of this policy

This policy applies state wide to both proclaimed watercourses under the *Rights in Water and Irrigation Act 1914*, and unproclaimed streams. It applies to all persons whose conduct comes within the scope of the legislation defined in the provisions of the *Rights in Water and Irrigation Act 1914*.

### 3.2 How to register a complaint related to a watercourse

A person can register a complaint regarding an alleged unlawful activity relating to a watercourse by contacting one of the department's regional offices (refer to the list at the end of this document). This can be done verbally, either in person or by telephone, or in writing by sending a facsimile, a letter or an email. Written complaints are preferred as they are easier to record and to follow up, and as they ensure that the complainant and the department have the same information.

When registering a complaint, the following information should be provided to the department to allow a prompt assessment of the reported incident:

- contact details of the complainant
- location and description of the properties involved
- date the complainant became aware of the potential breach
- name of watercourse (if any)
- details of the alleged activity, for example how water is diverted, the construction of infrastructure
- steps taken by the complainant (if any) to resolve the matter
- details of whether this complaint has been registered with any other agency or local shire.

The complainant should supply as much relevant information as possible when registering a complaint. The complaint will be logged in the department's incident management system. Appendix A provides an outline of the process that is followed when investigating a complaint.

Appendix B provides a template for the complainant to follow when submitting a written complaint.

### 3.3 Further information required

The information provided will initially be assessed to see if it is sufficient to determine whether the complaint describes an activity that breaches the *Rights in Water and Irrigation Act 1914*.

If the complaint does not give sufficient information to undertake a full assessment, the department will write to the complainant asking for additional information. If the complainant does not provide the additional information requested in writing within 21 days, the department may conclude that no further action can be taken.

If the issue has been reported to another agency or local shire, the department may liaise with them for information to assist with the department's assessment of the reported breach.

### 3.4 Activities that may breach the *Rights in Water and Irrigation Act 1914*

The department will act on a reported activity that is assessed to be a breach of the *Rights in Water and Irrigation Act 1914*. Some examples are:

- the taking of water in excess of a riparian right (*defined in sections 9 and 20 of the Act*) without a water licence, which is an offence
- in non-proclaimed areas, the taking water for purposes that limit the needs of riparian water users downstream (i.e. the flow is 'sensibly diminished'), which may be an offence (*defined in section 21*)
- when an existing water licence holder does not conform with, or breaches one or more conditions of, their water licence (*issued under section 5C*)
- when an existing permit holder does not conform with, or breaches one or more conditions of, their permit (*refer to sections 11(2), 17(1) and (3), 21A(1)(a) and Regulations 2000 Part 2*)
- when a person does not conform with a local by-law (*drafted under section 26L*)
- when a person does not conform with a 'direction' issued by the department (*under section 22*). For example the department may issue a direction not to take water from a watercourse during the summer months to avoid any downstream environmental impacts.
- when a person carries out unauthorised works (such as building a dam without a permit) or interferes with the bed or banks of a watercourse, resulting in unacceptable effects on the environment or on the rights of existing users (*refer to section 17*)

- when a person interferes with or obstructs the bed or banks of a watercourse without a permit in an unproclaimed area where the interference or obstruction is accessed via an adjoining public road or reserve, then it is an offence under *section 25 (1)* of the Act.

### 3.5 Activities that do not breach the *Rights in Water and Irrigation Act 1914*

The department does not have the statutory power under the *Rights in Water and Irrigation Act 1914* to act in the following situations:

- the taking, storing or using of water from a spring or wetland to which the *Rights in Water and Irrigation Act 1914* does not apply. For example, the taking of water that flows from a spring and rises to the surface on private land is excluded from licensing while that water is within the boundaries of the private property, regardless of whether that spring is within or outside a proclaimed area. Similarly the taking of water from a wetland that is wholly within private land is excluded from controls under the Act. Exceptions to this are:
  - when the activity is regulated under a relevant local by-law made under the Act
  - when the spring rises to the surface within the bed or banks of a proclaimed watercourse.
- when the owner of a property adjacent to a watercourse, within a proclaimed or a non-proclaimed area, exercises their riparian right to take water free of charge (and without a water licence) for stock and domestic purposes (defined in *sections 9 and 20*)
- when a person takes, stores or uses water in accordance with either a:
  - licence issued by the department (for example a licence issued under *section 5C*, authorising that person to take water from a specified watercourse)
  - direction given by the department (under *section 22*)
  - local by-law authorising the taking of water from that watercourse (made under *section 26L*)
- when a person installs works or interferes with the bed or banks of a watercourse:
  - in accordance with a permit granted by the department to undertake works, for example to construct a dam or a bridge (refer to *section 11(2), 17(1) or (3) or 21A(1)(a)* and *Regulations 2000 Part 2*)
  - on freehold land or on land leased from the Crown in areas that are not proclaimed (under *section 25(1)*). A property owner can interfere

with the bed and banks of a watercourse flowing through their property (e.g. build a dam) and abstract water without requiring a permit or a water licence from the department. However a 'direction' may be issued if all reasonable steps to minimise degradation of the watercourse are not taken (for example a fish ladder may be required).

The *Rights in Water and Irrigation Act 1914* does not give powers to the department to be involved in matters related either to:

- methods of construction and dam safety (*Regulation 7(3)* of the Rights in Water and Irrigation Regulations 2000). The department has no jurisdiction over matters concerning the safety of the design, or the method of the construction or operation of, works authorised by a permit.
- reduced or increased streamflow as a result of land use<sup>1</sup> such as tree plantations or the clearing of land.

### 3.6 Process for investigating a potential breach of the Act

If further investigation is required to determine if a reported activity is in breach of the *Rights in Water and Irrigation Act 1914*, the department will inform the complainant in writing that it will be investigating this matter further. The letter may also state that the complainant may be contacted to provide further details on the issue and will be informed of the outcome.

The department may contact the party to whom the complaint applies (respondent) before it decides on what action to take.

The investigation may include an inspection of the reported activity to establish the validity of the complaint. Evidence, including photographs and witness statements, may be collected.

### 3.7 Process when the activity is not a breach of the Act

If the department determines that the complaint does not describe a breach of the *Rights in Water and Irrigation Act 1914*, it will inform the complainant in writing of its decision and the reasons for that decision. The department will not take any further action on the reported complaint.

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<sup>1</sup> The impact of reduced or increased flow in a watercourse due to existing or changing land use should be considered during the planning or environmental protection process.

In these cases, the complainant should attempt to resolve the dispute through other means, including finding common ground with the other party.

Should additional information be forthcoming, the department may review its decision.

### 3.8 Actions where a breach has occurred

If the investigation confirms that a breach of the *Rights in Water and Irrigation Act 1914* has occurred, the department will take appropriate action. Depending on the magnitude of the problem, the offending party will be advised in writing of the nature of the breach and may be given a specified reasonable opportunity to rectify the situation.

If the situation is not rectified within the time allowed, the department may, unless there are extenuating circumstances, take action that could include one or more of the following:

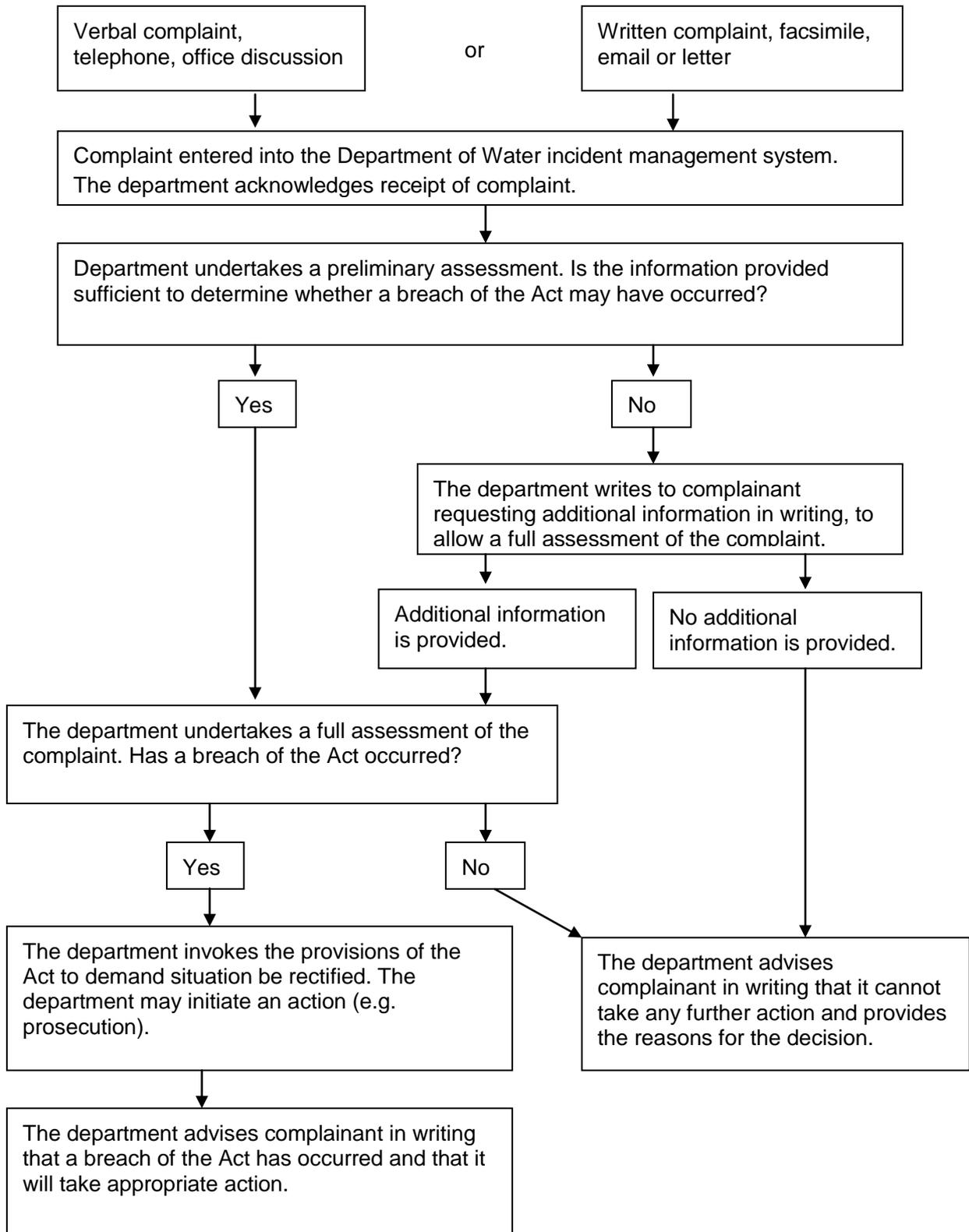
- issuing a written notice to immediately cease illegal activity
- issuing an infringement notice
- physically intervene to stop illegal activity
- issuing an amendment to water licence or permit conditions
- issuing statutory notices or directions
- prosecution.

## 4 Review

This policy will be reviewed within five years. If the department believes it is necessary, modifications will be made. If these are likely to be significant, the department will consult with the community and other stakeholders.

# Appendices

## Appendix A – Process for dealing with a possible breach of the Act



## Appendix B – Reporting a possible breach of the Act on a watercourse

Department of Water Reporting a possible breach of the <i>Rights in Water and Irrigation Act 1914</i> on a watercourse	
Complainant details	
Name	
Postal address	
Phone	
Property location	
Name of watercourse (if any)	
Does the watercourse run through or abut your property?	Yes/No
Do you have a licence to take water?	Yes/No
Licence number	
If you do not have a licence, for what purpose(s) do you take water? <i>(for example domestic, stock watering, orchard or crop irrigation)</i>	

**Nature of the complaint**

Please describe the problem.

*(include name and location of property owner where the breach is believed to occur)*

*(if insufficient space attach separate sheet)*

How long has the problem been occurring?

Are you aware of any increases in water use from the watercourse?

What are the general seasonal flow patterns in the watercourse?

*(for example no flow January to March)*

Briefly describe what measures you have taken to resolve the problem, if any.

Signed

Date

Note: The Department of Water will determine from the information provided if your complaint falls within the jurisdiction of the *Rights in Water and Irrigation Act 1914*. If the details provided are insufficient for the department to make a determination, you will be contacted to provide additional information.

# Glossary

<b>Allocation</b>	The specific volume of water allocated to water entitlements in a given year.
<b>Augmented flow</b>	<p>A volume of water introduced into a watercourse or wetland from works constructed for that purpose. The water is usually added to the watercourse from dam storage or from a groundwater bore:</p> <ul style="list-style-type: none"><li>• to maintain flow and water levels for the protection of environmental features – this may be a condition of a licence or a direction issued by the Department of Water</li><li>• by landowners using the watercourse as a conduit to transfer water from storage, for use or storage on a property downstream that would also need to be contiguous to the watercourse.</li></ul> <p>Water users exercising a riparian right or other right to water cannot use the augmented flow except in accordance with the provisions of <i>Subdivision 1 of Division 3A</i> of the <i>Rights in Water and Irrigation Act 1914</i>. The holder of a licence, who has access to the watercourse, can take augmented flow unless the taking is excluded by a condition of their licence or by-law.</p>
<b>Domestic allocation</b>	The volume of water required for household purposes and the irrigation of a small domestic garden.
<b>Incident</b>	An activity that has been reported (but not yet proven) to be in contravention of an Act of parliament.
<b>Other rights to water</b>	A person may take water from a watercourse to which there is access by a public road or by a reserve, for domestic and ordinary use and stock watering. In areas that are not proclaimed, water may be taken for any purpose provided that the flow is not 'sensibly diminished'. A permit is required for a structure.
<b>Riparian rights</b>	The rights of property owners who live adjacent to watercourses to take water free of charge for domestic and ordinary use plus watering of stock. In proclaimed areas, two hectares of land may be irrigated for non-commercial purposes. In non-proclaimed areas, water may be taken for other purposes provided that the flow is not 'sensibly diminished'.

**Sensibly diminished**

A reduction in flow that is visual to the eye as a consequence of the take of water upstream.

**Watercourse**

A permanent or seasonal river, stream or channel (man-made structure) that discharges surface flow of water.

## References and further reading

Department of Water 2009, *Complaints management guidelines*, Department of Water, June 2009.

Department of Water 2009, Operational policy no. 5.11 *Timely submission for required further information*, Department of Water, Perth, November 2009.

Department of Water 2009, Strategic policy no. 2.03 *Managing unlicensed groundwater use*, Department of Water, August 2009.

Government of Western Australia, *Rights in Water and Irrigation Act 1914*, State law publisher, Perth.

Government of Western Australia 2000, *Rights in Water and Irrigation Regulations 2000*, State law publisher, Perth.

Government of Western Australia 2003, *Whole of government complaints management strategy*, Department of Premier and Cabinet, August 2003.

Government of Western Australia 2004, *Guidance to good practice in the Western Australian public sector*, Department of Premier and Cabinet.

## Regional enquiries

Please direct any enquiries relating to this policy or to management of water resources to the appropriate regional office.

### Kimberley Region

Lot 225 Bandicoot Drive

Kununurra 6743

Telephone 08 9166 4100

Facsimile 08 9168 3174

### Swan Avon Region

7 Ellam Street

Victoria Park 6100

Telephone 08 6250 8000

Facsimile 08 6250 8050

### Pilbara Region

Lot 4608 Cherratta Road

Karratha 6714

Telephone 08 9144 2000

Facsimile 08 9144 2610

### Kwinana Region

2 Stidworthy Court

Kwinana 6167

Telephone 08 9411 1788

Facsimile 08 9419 5897

### South Coast Region

5 Bevan Street

Albany 6330

Telephone 08 9842 5760

Facsimile 08 9842 1204

### Mid West Gascoyne Region

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Geraldton 6530

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### South West Region

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