



Western Australia

Agriculture and Related Resources Protection Act 1976

# **Agriculture and Related Resources Protection (Fencing) Regulations 1985**

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## **Agriculture and Related Resources Protection (Fencing) Regulations 1985**

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## **Agriculture and Related Resources Protection (Fencing) Regulations 1985**

### **Part I — Preliminary**

#### **1. Citation**

These regulations may be cited as the *Agriculture and Related Resources Protection (Fencing) Regulations 1985*<sup>1</sup>.

#### **2. Interpretation**

- (1) In these regulations, unless the contrary intention appears —  
***approved*** means approved by the Director General or an authorised person;

***motor traffic pass*** has the meaning attributed to it in section 6 of the *Local Government Act 1960*<sup>2</sup>;

***other body*** means any person or body to whom or to which a delegation has been made for the control and maintenance of a barrier fence, under regulation 5.

*[(2) deleted]*

*[Regulation 2 amended in Gazette 17 Dec 2010 p. 6420 and 6421.]*

## **Part II — Barrier fences**

### **3. Powers of the Director General**

(1) The Director General may —

- (a) erect, improve, alter, maintain, repair or renew; or
- (b) dismantle or remove,

a barrier fence, and dispose of such a fence by sale or otherwise at the discretion of the Director General.

(2) For the purposes of subregulation (1) the department by its officers, employees and agents may, in addition to the powers of entry provided in the Act —

- (a) cut timber and conduct earthworks;
- (b) clear the land on each side of any barrier fence,

but nothing herein contained shall empower —

- (c) the destruction of fruit trees, trees used for shade, windbreaks or ornament, or trees used to prevent erosion or degradation of the soil;
- (d) the removal of buildings.

*[Regulation 3 amended in Gazette 17 Dec 2010 p. 6421.]*

### **4. Ownership and control of barrier fences**

A barrier fence erected under these regulations is the property of the Crown and the control of a barrier fence shall be exercised by the Director General who may delegate control and maintenance of any barrier fence to —

- (a) a council;
- (b) a regional council, as defined in section 696(2) of the *Local Government Act 1960*<sup>2</sup>; or
- (c) any other person,

by notice in writing and subject to any conditions contained in that notice.

*[Regulation 4 amended in Gazette 17 Dec 2010 p. 6421.]*

**5. Consent for use of barrier fence**

A person shall not make use of, interfere with or attach anything to a barrier fence, unless he has obtained the consent in writing of the Director General or other body.

Penalty: a fine of \$2 000.

*[Regulation 5 amended in Gazette 17 Dec 2010 p. 6420 and 6421.]*

*[6, 7. Deleted in Gazette 28 Oct 1994 p. 5461.]*

**8. Offence, damage, etc.**

A person shall not —

- (a) destroy or damage any portion of a barrier fence, or gate or motor traffic pass in a barrier fence;
- (b) leave a gate in a barrier fence open after opening or passing through that gate;
- (c) carry, drive or pass any live declared animal through, under or over any barrier fence; or
- (d) attach any animal trap, diversionary wing fence, gate, wire netting or other attachment to any barrier fence, without the prior written consent of the Director General or other body.

Penalty: a fine of \$2 000.

*[Regulation 8 amended in Gazette 17 Dec 2010 p. 6420 and 6421.]*

**9. Offence, driving stock along fence, etc.**

(1) A person shall not —

- (a) drive, or cause to be driven, any stock along or over Crown land adjoining a barrier fence and reserved for the protection and maintenance of the fence;

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- (b) confine, encamp or keep, or cause to be confined, encamped or kept, stock against or in proximity to a barrier fence.

Penalty: a fine of \$2 000.

- (2) It shall be a defence to an offence created by this regulation if it is shown that the barrier fence was being used in accordance with the Act by an owner or occupier to fence his holding and the stock are confined within the land so fenced.

*[Regulation 9 amended in Gazette 17 Dec 2010 p. 6420.]*

**10. Offence, travelling along fence, etc.**

A person shall not enter, remain on or travel along any Crown land adjoining a barrier fence and reserved for the protection and maintenance of the fence, unless he has obtained the prior permission of the Director General or other body.

Penalty: a fine of \$2 000.

*[Regulation 10 amended in Gazette 17 Dec 2010 p. 6420 and 6421.]*

**11. Water**

Any water on Crown Lands or reserves, set apart for the purposes of the Act or partly for such purposes, is deemed to be the property of the State and is capable of being stolen and a person shall not take, use or interfere with such water without the prior written approval of the Director General or other body.

Penalty: a fine of \$2 000.

*[Regulation 11 amended in Gazette 17 Dec 2010 p. 6420 and 6421-2.]*



## **Part III — Animal proof fences**

### **12. Interpretations**

Unless the contrary intention appears, in this Part —

*certificate* means a certificate issued by the Director General pursuant to regulation 14;

*permit* means a permit issued by the Director General to keep a declared animal of Category A6 pursuant to regulation 13 of the *Agriculture and Related Resources Protection (Declared Animals) Regulations 1985*.

*[Regulation 12 amended in Gazette 17 Dec 2010 p. 6421-2.]*

### **13. Animal-proof fences**

Where a permit is issued subject to the condition that an animal-proof fence is provided in relation to the animal, that fence and its surrounds shall comply with the specifications of the appropriate fence set out in the Schedule.

### **14. Certificate**

- (1) The Director General may issue a certificate certifying a fence to be an animal-proof fence within the meaning of the Act.
- (2) The certificate shall stipulate the class of declared animal the fence is intended to contain.

*[Regulation 14 amended in Gazette 17 Dec 2010 p. 6421-2.]*

### **15. Maintenance of fencing**

- (1) A certificate holder shall maintain an animal-proof fence in good repair, order and condition so as to prevent the escape of the declared animal stipulated in the certificate from the land around which the fence is erected.

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- (2) Where, in the opinion of the Director General or an authorised person, an animal-proof fence is not maintained as required by subregulation (1) the Director General may improve, alter, repair or renew the animal-proof fence and the owners of the land shall pay to the Director General, per metre —
- (a) for improvement, alteration or repair —
    - (i) of a deer fence ..... \$5.00
    - (ii) of a feral goat fence ..... \$2.00
  - (b) for renewal —
    - (i) of a deer fence ..... \$6.00
    - (ii) of a feral goat fence ..... \$2.50

and if default is made in respect of any sum so payable, payment may be sued for and recovered by the Director General in a court of competent jurisdiction.

*[Regulation 15 amended in Gazette 17 Dec 2010 p. 6421-22.]*

**16. Fencing between land in different ownership**

- (1) An animal-proof fence may be erected or created between land in different ownership or occupancy and contributions may be made by agreement between those owners and occupiers in relation to the expenses incurred in that erection or creation but where the adjoining owners are both permit holders the costs shall be shared equally.
- (2) The maintenance and repair of animal-proof fences between land in different ownership or occupancy shall be the responsibility of each owner or occupier and may be provided for by agreements in writing entered into by those owners or occupiers and any such agreement shall run with the land and be binding on succeeding owners and occupiers according to its tenor.
- (3) Disputes arising in relation to barrier fences and other animal-proof fences shall be determined by arbitration under the *Arbitration Act 1895*<sup>3</sup>.

## **Schedule**

[reg 13]

### **1. Deer Proof Fence**

A fence of a galvanised fabricated type approved by the Director General with line wire and vertical dropper wire spacing as approved. The fence shall be strained and attached to posts in accordance with the manufacturer's specifications. The bottom line wire shall be fixed no more than 50 millimetres above the ground.

The overall height of the fence shall be 2 metres from ground level to the top. Ground level is the highest ground within 3 metres inside the fence.

Strainer posts and assemblies shall be —

- (a) of steel, hardwood or treated timber of appropriate diameter; and
- (b) sunk to a depth, and constructed, in accordance with the netting manufacturer's straining specifications.

Line posts shall be sunk into the ground to a suitable depth at intervals up to 20 metres, depending on the terrain.

The bottom line wire shall be held in place by pegs securely anchored in the ground where necessary. Pegs are to be made of steel, hardwood or treated timber.

Where there is danger of the soil being washed or blown away from the fence line, both sides of the fence shall be protected by a continuous line of stones or other appropriate material.

The fence line shall be kept sufficiently clear so that there is no danger of falling timber damaging the fence.

*[Clause 1 amended in Gazette 17 Dec 2010 p. 6421.]*

### **2. Goat Proof Fence**

A fence of fabricated ringlock, hinged joint or comparable material (minimum 8 line) with vertical wires spaced no more than 300 millimetres apart. The bottom line shall be no more than 100 millimetres above ground level. A single barbed wire shall be

placed midway between the bottom of the fabricated fencing and the ground.

Two barbed wires and sufficient other wires shall be placed equidistant above the fabricated fencing with spacings no greater than 200 millimetres to bring the overall height to 1.5 metres.

Strainer posts shall be of adequate size with suitable stays and placed at intervals to permit straining to the manufacturer's specifications. Line posts of suitable material shall be placed at not more than 6 metre intervals.

The fence line shall be kept sufficiently clear so that there is no danger of falling timber damaging the fence.

*[Schedule amended in Gazette 22 May 1987 p. 2201; 18 Oct 1991 p. 5326-7.]*

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### Notes

- <sup>1</sup> This is a compilation of the *Agriculture and Related Resources Protection (Fencing) Regulations 1985* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Citation	Gazettal	Commencement
<i>Agriculture and Related Resources Protection (Fencing) Regulations 1985</i>	8 Nov 1985 p. 4297-300	8 Nov 1985
<i>Agriculture and Related Resources Protection (Fencing) Amendment Regulations 1987</i>	22 May 1987 p. 2201	22 May 1987
<i>Agriculture and Related Resources Protection (Fencing) Amendment Regulations 1991</i>	18 Oct 1991 p. 5326-7	18 Oct 1991
<i>Agriculture and Related Resources Protection (Fencing) Amendment Regulations 1994</i> <sup>4</sup>	28 Oct 1994 p. 5461	28 Oct 1994
<b>Reprint 1: The Agriculture and Related Resources Protection (Fencing) Regulations 1985 as at 6 Jun 2003</b> (includes amendments listed above)		
<i>Agriculture and Related Resources Protection (Repeals and Amendments) Regulations 2010 Pt. 7</i>	17 Dec 2010 p. 6403-32	18 Dec 2010 (see r. 2(b) and <i>Gazette</i> 17 Dec 2010 p. 6349)

- <sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

### Provisions that have not come into operation

Citation	Gazettal	Commencement
<i>Biosecurity and Agriculture Management Regulations 2013</i> r. 137(d), 138 and 141 <sup>5</sup>	5 Feb 2013 p. 465-591	1 May 2013 (see r. 2(b) and <i>Gazette</i> 5 Feb 2013 p. 823)

- <sup>2</sup> Repealed by the *Local Government Act 1995*.
- <sup>3</sup> Repealed by the *Commercial Arbitration Act 1985*.

<sup>4</sup> The *Agriculture and Related Resources Protection (Fencing) Amendment Regulations 1994* r. 4 reads as follows:

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**4. Savings**

Despite regulation 3, regulation 7 of the principal regulations continues to apply in relation to an annual sum payable to the Protection Board or other body that was not paid before the commencement of these regulations.

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<sup>5</sup> On the date as at which this compilation was prepared, the *Biosecurity and Agriculture Management Regulations 2013* r. 137(d), 138 and 141 had not come into operation. They read as follows:

**137. Regulations repealed**

These regulations are repealed:

- (d) *Agriculture and Related Resources Protection (Fencing) Regulations 1985*;

**138. Fees and expenses**

On and from the commencement day —

- (a) any fees payable under a regulation repealed under regulation 137 and outstanding on the commencement day are to be regarded as payable under these regulations at the time, and in the manner, in which the fees would have been payable under the repealed regulation and may be recovered accordingly; and
- (b) any expenses recoverable under a regulation repealed under regulation 137 and outstanding on the commencement day may be recovered under regulation 128.

Penalty: a fine of \$10 000.

**141. *Agriculture and Related Resources Protection (Fencing) Regulations 1985***

- (1) In this regulation —  
***repealed regulations*** means the *Agriculture and Related Resources Protection (Fencing) Regulations 1985* repealed under regulation 137(d).
- (2) Any consent given for the purposes of regulation 5 or 8(d) of the repealed regulations and of effect immediately before the commencement day has effect as if it were the consent of the Director General under regulation 48 of these regulations.
- (3) Any permission given for the purposes of regulation 10 of the repealed regulations and of effect immediately before the commencement day has effect as if it were the consent of the Director General under regulation 51 of these regulations.