

Western Australia

## **Rights in Water and Irrigation Regulations 2000**

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## Rights in Water and Irrigation Regulations 2000

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## **Rights in Water and Irrigation Regulations 2000**

### **Part 1 — Preliminary**

**1. Citation**

These regulations may be cited as the *Rights in Water and Irrigation Regulations 2000*<sup>1</sup>.

**2. Commencement**

These regulations come into operation on the same day as the *Rights in Water and Irrigation Amendment Act 2000* comes into operation<sup>1</sup>.

**3. Terms used in these regulations**

In these regulations, unless the contrary intention appears —

“**Act**” means the *Rights in Water and Irrigation Act 1914*;

“**approved**” means approved in writing by the Commission;

“**Department**” means the department of the Public Service assisting in the administration of the Act;

“**form**” means a form set out in Schedule 3;

“**permit**” means a permit referred to in section 11(2), 17(1) or (3) or 21A(1)(a);

“**section**” means a section of the Act.

*[Regulation 3 amended in Gazette 5 Sep 2006 p. 3623;  
22 Jun 2007 p. 2878.]*

## **Part 2 — Permits**

### **4. Application for permit**

- (1) An application for a permit must be —
  - (a) made to the Commission in a form specified for that purpose by the Commission; and
  - (b) accompanied by, or include, those plans or other information that are stated in the form to be required; and
  - (c) accompanied by the fee set out in Schedule 1 Division 1 item 1.
- (2) An applicant for a permit must provide the Commission with any further information that the Commission may require.

*[Regulation 4 amended in Gazette 22 Jun 2007 p. 2878.]*

### **5. Advertising of applications**

- (1) The Commission may determine that an application, if granted, will be of sufficient impact on a water resource that it is desirable that it be publicly notified.
- (2) Where the Commission makes such a determination, the Commission is, by written notice given to the applicant, to inform the applicant of the determination and that the applicant is to arrange for there to be published in either or both of the following —
  - (a) a newspaper circulating daily in the State;
  - (b) a newspaper circulating in the locality to which the application relates,notice in accordance with subregulation (3).
- (3) A notice is to be in a form approved and is to state —
  - (a) that an application for a permit has been made;
  - (b) the section to which the permit relates;



- (c) such details of the application as are necessary to identify the relevant water resource;
- (d) a brief description of the ambit of the permit applied for; and
- (e) that interested persons may within the time specified in the notice (which is to be not less than 14 days after the publication of the notice) make written submissions to the Commission regarding the application.

**6. Right to make representations**

- (1) This regulation applies where the Commission proposes —
  - (a) to refuse an application for a permit; or
  - (b) to grant, or to undertake to grant, a permit subject to the inclusion of a term, condition or restriction that it considers is inconsistent with the terms of the application.
- (2) The Commission is to notify the applicant —
  - (a) of its proposal; and
  - (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision on the application.
- (3) Written submissions may be made by the applicant, as mentioned in subregulation (2)(b), within 30 days after the applicant is given notice under that subregulation.

**7. Grant or refusal at Commission's discretion**

- (1) The grant or refusal of an application for a permit and the terms, conditions and restrictions to be included in the permit are, subject to regulation 8, at the discretion of the Commission.
- (2) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including whether the proposal for which the permit is sought —
  - (a) is in the public interest;

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- (b) is ecologically sustainable;
  - (c) is environmentally acceptable;
  - (d) may prejudice current and future needs for water;
  - (e) would, in the opinion of the Commission, have a detrimental effect on another person;
  - (f) could be undertaken in another way;
  - (g) is in keeping with —
    - (i) local practices;
    - (ii) a relevant local by-law;
    - (iii) a plan approved under Part III Division 3D Subdivision 2 of the Act; or
    - (iv) relevant previous decisions of the Commission;or
  - (h) is consistent with —
    - (i) land use planning instruments;
    - (ii) the requirements and policies of other government agencies; or
    - (iii) any intergovernmental agreement or arrangement.
- (3) The Commission is not to have regard to the safety of —
- (a) the design; or
  - (b) the method of construction, or operation,
- of the works, or action, that would be authorised by the permit.
- (4) The Commission is to have regard to any submissions under regulations 5(3)(e) and 6(3) before it makes its final decision.
- (5) The Commission may refuse to grant a permit to a person on the ground that the person has been convicted of an offence against a relevant Act.

- (6) The Commission may refuse to grant a permit to a person if it is not satisfied that the person has the resources, including the financial resources, to carry out the activities to which the permit relates.

**8. When Commission must refuse permit, and undertaking to grant permit**

- (1) The Commission must refuse to grant a permit to a person if it considers that the person would not be willing or able to comply with the terms, conditions and restrictions that would be included in the permit.
- (2) If the Commission would grant a permit to an applicant if the applicant satisfies the Commission as to a matter, relevant to the grant of a permit under this Part, specified by the Commission, the Commission may undertake to grant the permit to the person if the person so satisfies the Commission within the term specified in the undertaking.

**9. Commission to give certain information**

- (1) The Commission is to notify the outcome of the application and the terms, conditions and restrictions to be included in the permit to —
  - (a) the applicant; and
  - (b) if the application was publicly notified under regulation 5, to any person who made a submission under that regulation.
- (2) If the Commission —
  - (a) refuses the application; or
  - (b) grants, or undertakes to grant, the application subject to the inclusion of a term, condition or restriction that the Commission considers is inconsistent with the terms of the application,

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the Commission is to notify the applicant of the reasons for the decision.

**10. Duration of permits**

- (1) A permit may be granted for —
  - (a) a fixed period of time; or
  - (b) an indefinite duration,as stated in the permit.
- (2) A permit for an indefinite duration continues in force until it is —
  - (a) suspended or cancelled under regulation 13; or
  - (b) surrendered under regulation 15.

**11. Application by permit holder for amendment of permit**

- (1) The holder of a permit may apply to the Commission at any time for amendment of the permit.
- (2) Regulations 4, 6, 7, 9, 10, 17, and 18 apply, with all necessary modifications, to an application under subregulation (1) as if it were an application for the grant of a permit.
- (3) An application under subregulation (1) is to be accompanied by the permit.

**12. Commission may amend permit**

- (1) The Commission may, subject to this regulation and regulation 14, by notice in writing given to a permit holder —
  - (a) vary the duration of the permit;
  - (b) vary or remove any term, condition or restriction included in the permit; or
  - (c) include any new term, condition or restriction in the permit.

- (2) The Commission may only exercise a power described in subregulation (1) in relation to a permit if —
- (a) the permit holder consents to the Commission doing so;
  - (b) in the opinion of the Commission, the exercise of the power is necessary or desirable —
    - (i) due to the detrimental effect of actions authorised by the permit on another person;
    - (ii) to protect the water resource to which the permit relates from unacceptable damage; or
    - (iii) to protect the associated environment from unacceptable damage;
  - [(c) deleted]*
  - (d) in the opinion of the Commission, the exercise of the power is necessary or desirable —
    - (i) in the public interest; or
    - (ii) to more effectively manage the use of the water resource;
  - (e) in the opinion of the Commission, the exercise of the power is necessary to prevent a serious inconsistency arising as a result of —
    - (i) the approval of a plan, or the alteration, revocation or substitution of a plan, under Part III Division 3D Subdivision 2 of the Act; or
    - (ii) the making, amendment or repeal of relevant local by-laws;
  - (f) the permit holder is convicted of an offence against a relevant Act;
  - (g) in the opinion of the Commission, the exercise of the power is necessary to comply with another written law of the State or a law of the Commonwealth; or
  - (h) the permit confers authority for the Commission to do so.

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- (3) At the written request of the Commission, the permit holder is to give the permit to the Commission for amendment.

*[Regulation 12 amended in Gazette 17 Dec 2002 p. 5912.]*

**13. Commission may suspend or cancel permit**

- (1) The Commission may, subject to this regulation and regulation 14, by notice in writing given to a permit holder —

(a) suspend a permit —

- (i) for a fixed period specified in the notice; or  
(ii) until such time as the permit holder is notified by the Commission that the suspension no longer applies;

or

(b) cancel a permit.

- (2) The Commission may only exercise a power described in subregulation (1) in relation to a permit if —

(a) in the opinion of the Commission, the exercise of the power is necessary or desirable —

- (i) due to the detrimental effect of actions authorised by the permit on another person;  
(ii) to protect the water resource to which the permit relates from unacceptable damage; or  
(iii) to protect the associated environment from unacceptable damage;

(b) in the opinion of the Commission, the exercise of the power is necessary due to a serious inconsistency, which cannot be resolved by an amendment under regulation 12, arising as a result of —

- (i) the approval of a plan, or the alteration, revocation or substitution of a plan, under Part III Division 3D Subdivision 2 of the Act; or

- (ii) the making, amendment or repeal of relevant local by-laws;
  - (c) the permit holder —
    - (i) is convicted of an offence against a relevant Act; or
    - (ii) has contravened or failed to comply with any term, condition or restriction included in the permit;
  - (d) in the opinion of the Commission, the exercise of the power is necessary to comply with another written law of the State or a law of the Commonwealth;
  - (e) in the opinion of the Commission, the exercise of the power is necessary or desirable in the public interest; or
  - (f) the permit confers authority for the Commission to do so.
- (3) The suspension or cancellation of a permit has effect to suspend or cancel the rights and privileges conferred by the permit but does not affect the duties imposed by the permit.
- (4) A permit holder must, within 7 days of receiving notice under subregulation (1) that the permit is suspended or cancelled give the permit to the Commission —
- (a) to be annotated in accordance with subregulation (3) if any duties are imposed by the permit; or
  - (b) if no duties are imposed by the permit and the permit is —
    - (i) suspended, to be retained by the Commission until the suspension no longer applies; or
    - (ii) cancelled, to be retained by the Commission.

Penalty: \$2 000.

**14. Permit holder's rights before permit amended, suspended or cancelled**

- (1) Except as provided by subregulations (2) and (3), this regulation applies where the Commission proposes to exercise a power conferred by regulation 12 or 13.
- (2) This regulation does not apply to the proposed exercise of a power conferred by regulation 12 or 13 if the Commission is of the opinion that the exercise of the power is necessary to prevent loss of life or property or serious injury to persons or property.
- (3) This regulation does not apply to the proposed exercise of a power conferred by —
  - (a) regulation 12 in the circumstances mentioned in subregulation (2)(a) or (g) of that regulation; or
  - (b) regulation 13 in the circumstances mentioned in subregulation (2)(c)(i) of that regulation.
- (4) Where this regulation applies, the Commission is to notify the permit holder —
  - (a) of its proposal; and
  - (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision to exercise the power.
- (5) Written submissions may be made by the permit holder, as mentioned in subregulation (4)(b), within such period after the applicant is given notice under that subregulation as is specified in the notice.
- (6) The Commission is to have regard to any submissions made by the permit holder under subregulation (5) before it makes its final decision.



**15. Surrender of permits**

A permit may be surrendered at any time to the Commission if the permit holder has complied with any terms, conditions or restrictions included in the permit relating to its surrender.

**16. Commission to be notified of change of ownership**

(1) Where —

- (a) a permit holder is the owner of all the land to which the permit relates; and
- (b) another person becomes the owner of that land in place of that permit holder (the “**new owner**”),

the permit holder and the new owner must give notice in writing of the change of ownership to the Commission within the period of 30 days after the day of the change of ownership.

Penalty: \$250.

(2) Whether or not notice of change of ownership of land is given to the Commission under subregulation (1), the new owner is to be taken to be the permit holder.

**17. Terms, conditions and restrictions**

(1) A permit is subject to the following conditions —

- (a) that the permit holder ensures that all other written laws regarding the work or action authorised by the permit are complied with;
- (b) that where a condition attached to a permit relating to an alteration in work authorised under the permit has not been complied with within the time specified in the condition and after written notice to that effect has been given by the Commission, the Commission may take such action as is necessary to ensure the condition is complied with and may recover the cost of doing so from the permit holder as a debt due in a court of competent jurisdiction.

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- (2) The Commission may, at its discretion, include in a permit any other term, condition or restriction but regulation 7(2) and (3) applies to the exercise of that discretion.

**18. Commission may direct compliance with permit condition**

- (1) If a permit holder fails to comply with any term, condition or restriction included in a permit, the Commission may direct that person to comply with that term, condition or restriction.
- (2) A direction under subregulation (1) must —
- (a) be given by written notice served on the permit holder; and
  - (b) specify the time within which the direction is to be complied with.
- (3) If a permit holder to whom a direction has been given does not comply with the direction within the specified time, or any additional time allowed by the Commission —
- (a) the person commits an offence; and
  - (b) the Commission may —
    - (i) do all or part of whatever the direction requires to be done; and
    - (ii) recover the costs and expenses incurred by it as a debt due by the person.

Penalty: \$2 000 and daily penalty of \$200.

### **Part 3 — Licences under section 5C**

#### **19A. Terms used in this Part**

In this Part —

**“licence”** means a licence under section 5C;

**“water entitlement”** has the same meaning as in the Act  
Schedule 1 clause 28.

*[Regulation 19A inserted in Gazette 22 Jun 2007 p. 2878.]*

#### **19. Fees for application for licence and amendment of licence**

- (1) The fee prescribed for the purposes of the Act  
Schedule 1 clause 4(1)(d) to accompany an application for a  
licence is set out in Schedule 1 Division 1 item 2.
- (2) The fee prescribed for the purposes of the Act  
Schedule 1 clause 23(3) to accompany an application for  
amendment of a licence is set out in Schedule 1 Division 1  
item 2.

*[Regulation 19 inserted in Gazette 22 Jun 2007 p. 2878-9.]*

#### **20. Annual fees for licences**

- (1) An annual fee is payable to the Commission for a licence —
  - (a) on the grant of the licence; and
  - (b) on each anniversary of the day on which the licence is  
granted.
- (2) The amount of the annual fee payable on the grant of a licence  
is the amount set out in Schedule 1 Division 1 item 3 for the  
water entitlement under the licence, less the amount already  
paid by way of the relevant application fee.
- (3) The amount of the annual fee payable on the anniversary of the  
grant of a licence is the amount set out in Schedule 1 Division 1  
item 3 for the water entitlement under the licence.

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- (4) For the purposes of subregulation (1)(b), the anniversary for a licence does not change even if —
- (a) the licence is renewed under the Act Schedule 1 clause 22; or
  - (b) the licence is amended on an application under the Act Schedule 1 clause 23; or
  - (c) the licence or the licensee's water entitlement under the licence is transferred under the Act Schedule 1 clause 29; or
  - (d) the licensee enters into an agreement referred to in the Act Schedule 1 clause 30.
- (5) If a licence is amended on an application under the Act Schedule 1 clause 23 so as to increase the water entitlement under the licence —
- (a) the licensee is to pay the amount set out in Schedule 1 Division 1 item 3 for the new water entitlement —
    - (i) less the amount already paid for the water entitlement that applied before the licence was amended; and
    - (ii) less the amount already paid by way of the relevant application fee;
- and
- (b) the amount of the annual fee payable on the anniversary of the grant of the licence is the amount set out in Schedule 1 Division 1 item 3 for the new water entitlement.
- (6) If payment of an annual fee is not made in accordance with subregulation (1)(a) or (b), the late fee set out in Schedule 1 Division 1 item 4 is payable for each month, or part of a month, that the annual fee remains unpaid.
- (7) If a licensee fails to pay the annual fee and the late fee referred to in subregulation (6) not more than 6 months after the annual

fee became payable, the Commission may cancel the licence in accordance with Schedule 1 to the Act.

- (8) The circumstances set out in subregulation (7) are prescribed circumstances for the purpose of clause 25(2)(g) of Schedule 1 to the Act.
- (9) If a licensee has not paid the annual fee and any relevant late fee the Commission may refuse, until the fees have been paid, to deal with an application —
  - (a) to renew or amend the licence; or
  - (b) for the approval of a transfer of the licence or a water entitlement under the licence or of an agreement referred to in the Act Schedule 1 clause 30.
- (10) A quantity of water that a licensee is entitled to take under a licence on condition that that quantity is stored as surface water is not to be included in the water entitlement when assessing the amount mentioned in subregulation (3).

*[Regulation 20 amended in Gazette 22 Jun 2007 p. 2879-80.]*

**21. Renewal of licence**

- (1) An application for the renewal of a licence that is in force for a fixed period must be made before the expiry of the licence.
- (2) An application for a renewal that is made after the expiry of the licence may be taken by the Commission to be an application for a licence under clause 4(1) of Schedule 1 to the Act.

**22. Fee for certified copy of licence**

- (1) The fee payable for a duplicate licence is the fee set out in Schedule 1 Division 1 item 5.
- (2) A duplicate licence is to be a copy of the licence certified as a correct copy by the Commission.

*[Regulation 22 amended in Gazette 22 Jun 2007 p. 2880.]*

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**23. Advertising applications (cl. 5 of Schedule 1 to the Act)**

- (1) In this regulation —  
“**water entitlement**” has the same meaning as in clause 28 of Schedule 1 to the Act.
- (2) The Commission is to notify a person who has made an application referred to in subregulation (3) by written notice given to that person that the person is to arrange for there to be published in —
- (a) a newspaper circulating daily in the State; and
  - (b) a newspaper circulating in the locality to which the application relates,
- notice in accordance with subregulation (4).
- (3) An application referred to in subregulation (2) is an application for a licence or, to amend a licence to increase a water entitlement under that licence, where —
- (a) the application relates to an underground water source and —
    - (i) the water proposed to be taken under the licence is more than 100 000 kilolitres per year, or if the application is to amend the licence, an increase in the water to be taken under the licence by more than that amount; or
    - (ii) the Commission is of the opinion that an application, if granted, will be of sufficient impact on a water resource that it is desirable that it be publicly notified;
  - or
  - (b) the application relates to a water course or wetland unless —
    - (i) any relevant plan approved under Part III Division 3D Subdivision 2 of the Act specifies

that advertising of licences of this description is not required; or

- (ii) the Commission is of the opinion that an application, if granted, will not be of sufficient impact on a water resource that it is desirable that it be publicly notified.

- (4) A notice is to be in a form approved and is to state —
  - (a) that an application for a licence under section 5C has been made;
  - (b) such details of the application as are necessary to identify the relevant water resource;
  - (c) a brief description of the ambit of the licence applied for;
  - (d) that interested persons may within the time specified in the notice (which is to be not less than 14 days after the publication of the notice) make written submissions to the Commission regarding the application; and
  - (e) that if a submission made under paragraph (d) contains an objection, that the person making the submission is to specify what action, if any, the person considers would overcome the objection.
- (5) The Commission is to have regard to any submission made by a person under subregulation (4)(d) within the time specified in the notice before it makes its final decision.

*[Regulation 23 amended in Gazette 17 Dec 2002 p. 5912.]*

**24. Security holders may make submissions on application**

- (1) A person who has been given written details of an application under section 26GZO(b) may within the time specified by written notice given by the Commission (which is to be not less than 14 days after the notice is given) make written submissions to the Commission regarding the application.

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- (2) The Commission is to have regard to any submission made under subregulation (1) within the time specified in the notice before it makes its final decision with respect to an application under section 26GZO.

**25. Licensee no longer eligible to hold licence to inform Commission**

- (1) A licensee who ceases, or who has reason to suspect that he or she may have ceased, to be eligible in terms of clause 3 of Schedule 1 to the Act to hold a licence is to inform the Commission in writing of that fact within 30 days of the licensee ceasing to be eligible.

Penalty: \$1 000.

- (2) On receiving notice under subregulation (1) the Commission is to inform the licensee in writing of the time when the licence will be terminated.
- (3) At the request of a licensee referred to in subregulation (1), the Commission may agree in writing that the licence is to be terminated at the end of a period, not exceeding 6 months from the time the Commission received notice under subregulation (1).

**26. Removal of endorsement of a licence under clause 19 of Schedule 1 to the Act**

- (1) If the Commission is satisfied that a licensee is no longer obliged by an agreement with another person referred to in clause 19 of Schedule 1 to the Act, or that it is no longer appropriate for the Commission to recognise such an obligation it may remove an endorsement from a licence under that clause.
- (2) Before removing an endorsement from a licence, the Commission is to give written notice to the third party (within the meaning of clause 19 of Schedule 1 to the Act) and to the licensee.



- (3) A person who has been given written notice under subregulation (2) may within the time specified in that notice (which is to be not less than 14 days after the notice is given) make written submissions to the Commission regarding the removal of the endorsement.
- (4) The Commission is to have regard to any submission made under subregulation (3) within the time specified in the notice before it makes its final decision with respect to the removal of the endorsement.

**27. Additional circumstances where Commission may suspend or cancel a licence under clause 25 of Schedule 1 to the Act**

- (1) For the purpose of clause 25(2)(g) of Schedule 1 to the Act, the circumstances to which subregulation (2) applies are circumstances where the Commission may suspend or cancel a licence under clause 25(1) of that Schedule.
- (2) This subregulation applies to the circumstances that, in the opinion of the Commission, in making a decision to grant a licence to the licensee, the Commission has relied on information that the licensee supplied to the Commission —
  - (a) that the licensee knew to be false or misleading in a material particular;
  - (b) that was false in a material particular and was supplied with reckless disregard as to whether the information was false or misleading in a material particular; or
  - (c) that omitted some information without which the information supplied was, to the licensee's knowledge, misleading in a material particular.

**28. Application for approval to transfer licence, water entitlement or agreement**

- (1a) The fee prescribed for the purposes of the Act Schedule 1 clause 32(1)(c) to accompany an application for the approval of a transfer of a licence or a water entitlement under a

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licence or of an agreement referred to in the Act Schedule 1 clause 30 is set out in Schedule 1 Division 1 item 6.

- (1) A submission under clause 35(3) of Schedule 1 to the Act must be made within 30 days after the person making the submission received notice of the application under that clause.
- (2) For the purpose of clause 35(5) of Schedule 1 to the Act, a response under clause 35(4) of that Schedule must be made within 14 days after the relevant material is given to the applicant.

*[Regulation 28 amended in Gazette 22 Jun 2007 p. 2880.]*

**29. Licensee to return licence on suspension and cancellation**

A licensee must, within 7 days of receiving notice from the Commission that a licence held by the licensee is suspended or cancelled under clause 25 of Schedule 1 to the Act, give the licence to the Commission —

- (a) to be annotated in accordance with clause 25(3) of that Schedule if any duties are imposed by the licence; or
- (b) if no duties are imposed by the licence and the licence is —
  - (i) suspended, to be retained by the Commission until the suspension no longer applies; and
  - (ii) cancelled, to be retained by the Commission.

Penalty: \$2 000.

**30. Licensee to provide licence to Commission on amendment and transfer**

- (1) An application for approval of a transfer a licence, water entitlement or agreement referred to in clause 30 of Schedule 1 to the Act under clause 32 of that Schedule, is to be accompanied by each licence relevant to the transfer.
- (2) An application for the amendment of a licence under clause 23 of Schedule 1 to the Act is to be accompanied by the licence.

- (3) A licensee must, within 7 days of receiving notice from the Commission that a licence held by the licensee is to be amended under clause 24 of Schedule 1 to the Act give that licence to the Commission for the endorsement of the amendment.

**31. Evidence**

In proceedings for an offence under the Act, an averment that —

- (a) a licence under this Act was given, or was given to a specified person or at a specified time;
- (b) that a specified person is the licence holder of a particular licence or permit; or
- (c) an instrument, within the meaning of section 26GZH, is registered under Part III Division 3E of the Act or was registered at a specified time,

is to be taken to have been proved unless the contrary is shown.

## **Part 4 — Licences under section 26D regarding wells**

### **32. Terms used in this Part**

In this Part, unless the context otherwise requires —

**“licence”** means a licence under section 26D;

**“well”** means —

- (a) an artesian well; and
- (b) a non-artesian well for which a licence is required under section 26B(3)(c).

### **33. Applications for licences**

- (1) An application for a licence is to be in the form of Form 1.
- (2) An application is to be accompanied by —
  - (a) a plan or tracing of a plan, drawn to scale, and having bearings, distances, measurements or Australian mapping grid co-ordinates marked on it so that the geographical location of the well, or proposed well, can be accurately ascertained; and
  - (b) the specifications of the construction of the well; and
  - (c) a statement setting out the purposes for which it is proposed to construct the well, with particulars of the types of use to which any water taken from the well is proposed to be put; and
  - (d) the fee set out in Schedule 1 Division 2 item 7.
- (3) The plan, specification and statement accompanying an application are to be signed by the applicant and are to be dated.

*[Regulation 33 amended in Gazette 22 Jun 2007 p. 2881.]*

### **34. Right to make representations**

- (1) This regulation applies where the Commission proposes —
  - (a) to refuse an application for a licence;

- (b) to grant, or undertake to grant, a licence subject to the inclusion of a term, limitation or condition that it considers is inconsistent with the terms of the application; or
  - (c) to grant, or undertake to grant, a licence subject to an alteration to, or in connection with, the proposed work or the plans or specifications.
- (2) The Commission is to notify the applicant —
- (a) of its proposal; and
  - (b) that the applicant has a right to be heard by, or to make written submissions to, the Commission before the Commission makes a decision on the application.
- (3) Written submissions may be made by the applicant, as mentioned in subregulation (2)(b), within 30 days after the applicant is given notice under that subregulation.

**35. Grant or refusal at Commission's discretion**

- (1) The grant or refusal of an application for a licence and the terms, limitations and conditions to be included in the licence are, subject to regulation 36, at the discretion of the Commission.
- (2) In exercising that discretion the Commission is to have regard to all matters that it considers relevant, including whether the construction or action proposed in the application —
- (a) is in the public interest;
  - (b) is ecologically sustainable;
  - (c) is environmentally acceptable;
  - (d) may prejudice other current and future needs for water;
  - (e) would, in the opinion of the Commission, have a detrimental effect on another person;
  - (f) is in keeping with —
    - (i) local practices;

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- (ii) a relevant local by-law;
  - (iii) a plan approved under Part III Division 3D Subdivision 2 of the Act; or
  - (iv) relevant previous decisions of the Commission;or
- (g) is consistent with —
  - (i) land use planning instruments;
  - (ii) the requirements and policies of other government agencies; or
  - (iii) any intergovernmental agreement or arrangement.
- (3) The Commission is not to have regard to the safety of —
  - (a) the design; or
  - (b) the method of construction, or operation,of the well or works to the well that would be authorised by the licence.
- (4) The Commission is to have regard to any submissions made by the applicant under regulation 34(3) before it makes its final decision.
- (5) The Commission may refuse to grant a licence to a person on the ground that the person has been convicted of an offence against a relevant Act.
- (6) The Commission may refuse to grant a licence to a person if it is not satisfied that the person has the resources, including the financial resources, to carry out the activities to which the licence relates.

**36. When Commission must refuse licence, and undertaking to grant licence**

- (1) The Commission must refuse to grant a licence to a person if it considers that the person would not be willing or able to comply

with the terms, limitations and conditions that would be included in the licence.

- (2) If the Commission would grant a licence to an applicant if the applicant satisfies the Commission as to a matter, relevant to the grant of a licence under this Part, specified by the Commission, the Commission may undertake to grant the licence to the person if the person so satisfies the Commission within the term specified in the undertaking.

**37. Commission to give certain information**

- (1) The Commission is to notify the outcome of the application and the terms, limitations and conditions to be included in the licence to the applicant.
- (2) If the Commission —
- (a) refuses the application;
  - (b) grants, or undertakes to grant, the application subject to the inclusion of a term, limitation or condition that the Commission considers is inconsistent with the terms of the application; or
  - (c) grants, or undertakes to grant, a licence subject to an alteration to, or in connection with, the proposed work or the plans or specifications,

the Commission is to notify the applicant of the reasons for the decision.

**38. Information to be provided — artesian wells**

A person who holds a licence in respect of an artesian well must give to the Commission information regarding the work to which the licence relates in the form approved —

- (a) within 5 days after the end of each month during which that work is being undertaken; and
- (b) within one month after the completion of that work.

**39. Information to be provided — non-artesian wells (section 26E)**

Form 2 is prescribed for the purposes of section 26E and the information to be prescribed under that section is the information required to be provided in accordance with that form.

**40. Application for an amended licence under section 26F(3)**

An application for an amended licence under section 26F(3) is to be accompanied by —

- (a) the licence; and
- (b) a statement setting out the amendments required to the licence; and
- (c) a statement setting out why the amendment is required; and
- (d) the fee set out in Schedule 1 Division 2 item 7.

*[Regulation 40 amended in Gazette 22 Jun 2007 p. 2881.]*

**41. Licence cancelled**

A licensee must, within 7 days of receiving notice from the Commission that a licence held by the licensee is cancelled under the Act, give the licence to the Commission.

Penalty: \$2 000.



## Part 4A — Meters

*[Heading inserted in Gazette 17 Dec 2002 p. 5912.]*

### 42A. Term used in this Part

In this Part —

“**licence holder**” means the holder of a licence under section 5C or 26D.

*[Regulation 42A inserted in Gazette 22 Jun 2007 p. 2881.]*

### 42. Damage to meters

- (1) Any repairs required to a meter provided by the Commission are to be carried out, or to be caused to be carried out, by the Commission and the cost of those repairs is to be paid by the licence holder.
- (2) The Commission may recover the costs due under subregulation (1) as a debt due from the licence holder in a court of competent jurisdiction.

### 43. Interference with a meter

A person must not —

- (a) damage a meter; or
- (b) install, or alter, a meter or any associated fittings so that the meter does not accurately measure the quantity of water being taken from a well.

Penalty: \$2 000.

### 44. Objections to meter readings

- (1) The Commission may at any time cause a test of a meter to be made.
- (2) The Commission is to cause a test of a meter to be made within 7 days of receiving a written request from a licence holder that

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that meter be tested because the licence holder is dissatisfied with a reading from the meter.

- (3) Where on testing a meter it is found that —
  - (a) the meter registers more than 5% in excess of the quantity that actually passes through it when tested, the Commission is to pay the cost of the test; or
  - (b) the meter registers less than 5% in excess of the quantity that actually passes through it when tested, the licence holder is to pay the cost of the test.
- (4) The cost paid by the licence holder under subregulation (3)(b) is not to exceed the fee set out in Schedule 1 Division 1 item 8.

*[Regulation 44 amended in Gazette 22 Jun 2007 p. 2881.]*

**45. Estimation where meter malfunctioned or amount not metered**

- (1) Where —
  - (a) on testing, a meter has been found not to be in proper order;
  - (b) a meter has been removed for repair; or
  - (c) a meter was, or any associated fittings were, installed or altered so that the meter did not accurately measure the quantity of water being taken,

the Commission may estimate the quantity of water concerned —

- (d) by reference to an average of the quantity of water supplied during another period;
  - (e) by adjusting the quantity registered by the meter to take account of the error found upon testing the meter; or
  - (f) on such other basis as the Commission may determine.
- (2) Notice stating the estimated quantity of water taken from a well during any particular period is to be given by the Commission to the licence holder.

**46. Evidence of water taken from well**

A notice —

- (a) under regulation 45(2); or
- (b) given to a licence holder by the Commission stating the quantity of water taken from a well during any particular period,

is, in the absence of proof to the contrary, to be presumed to be the amount taken from the well.

## **Part 5 — Registration of instruments**

### **47. Terms used in this Part**

In this Part —

“**clause**” means a clause of Schedule 1 to the Act;

“**register**” means the register to be kept under section 26GZI.

### **48. Additional information to be included in register**

The following details are prescribed under section 26GZJ(1)(g) as additional details to be set out in the register in respect of an instrument that is a licence under section 5C —

- (a) where relevant, the volume of water that may be taken under the licence;
- (b) if an agreement referred to in clause 30 relating to the taking of water under the licence has been approved by the Commission under that clause, details relating to that agreement, including —
  - (i) the name and business address of the person who entered into the agreement with the licence holder; and
  - (ii) period for which it is of effect;
- (c) details of any notation endorsed on the licence by the Commission under clause 19(b) showing that the licence is subject to clause 20;
- (d) a notation that an application under clause 32 for approval of the transfer of a licence or a water entitlement or of an agreement referred to in clause 30 that has been made but not yet determined by the Commission; and
- (e) a notation that an undertaking has been given by the Commission to approve an agreement under clause 30 or a transfer under clause 31.

**49. Fees — register**

A fee set out in Schedule 1 Division 2 is the fee to be paid in respect of the matter described opposite the fee.

*[Regulation 49 amended in Gazette 22 Jun 2007 p. 2881.]*

*[Part 5A (r. 49A-49O) repealed in Gazette 30 Dec 2004 p. 7000.]*

## Part 6 — Miscellaneous

### 50. Prescribed offences

An offence against the *Rights in Water and Irrigation Act 1914* or these regulations set out in column 1 of Schedule 2 is prescribed to be an offence that may be dealt with under section 103 of the *Water Agencies (Powers) Act 1984*.

*[Regulation 50 amended in Gazette 14 Jun 2002 p. 2835.]*

### 51. Modified penalties

The modified penalty set out in column 2 of Schedule 2 opposite an offence referred to in column 1 is the prescribed modified penalty which applies in respect of that offence for the purposes of section 103(3)(a) of the *Water Agencies (Powers) Act 1984*.

### 52. Prescribed persons

For the purposes of section 103 of the *Water Agencies (Powers) Act 1984* the persons holding, or for the time being acting in, the offices in the Department or the Commission —

- (a) of chief executive officer; or
- (b) of Director, Business Operations,

are prescribed persons.

*[Regulation 52 amended in Gazette 14 Jun 2002 p. 2835; 5 Sep 2006 p. 3623.]*

### 52A. Designated person

For the purpose of section 103 of the *Water Agencies (Powers) Act 1984* a person holding, or for the time being acting in, the position of chief finance officer (within the meaning of section 56 of the *Financial Administration and Audit Act 1985*<sup>3</sup>) for the Department or the Commission is designated

as a person to whom payment may be made of modified penalties for the offences specified in Schedule 2.

*[Regulation 52A inserted in Gazette 14 Jun 2002 p. 2836; amended in Gazette 5 Sep 2006 p. 3624.]*

**52B. Authorised person**

For the purpose of section 103 of the *Water Agencies (Powers) Act 1984* the persons holding, or for the time being acting in, the offices in the Department or the Commission —

- (a) described as Regional Manager (whether in respect of a region or not); or
- (b) of Director, Business Operations,

are authorised to give infringement notices in respect of the offences specified in Schedule 2.

*[Regulation 52B inserted in Gazette 14 Jun 2002 p. 2836; amended in Gazette 5 Sep 2006 p. 3624.]*

**53. Form of infringement notice**

An infringement notice under section 103(2) of the *Water Agencies (Powers) Act 1984* is to be in the form of Form 3.

**54. Form of notice of withdrawal of infringement notice**

A notice to be sent under section 103(6) of the *Water Agencies (Powers) Act 1984* is to be in the form of Form 4.

**55. Offence of unauthorised alteration of infringement notices**

A person who, not being an authorised person, makes any alteration to an infringement notice commits an offence.

Penalty: \$200.

**r. 56**

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**56. Certain fees non refundable**

The fees set out in Schedule 1 Division 1 items 1, 2, 6 and 7 are not refundable in whole or in part if the application is unsuccessful or the licence or permit is cancelled or suspended.

*[Regulation 56 amended in Gazette 22 Jun 2007 p. 2881.]*

**56A. Fees for combined applications**

(1) An application for —

- (a) amendment of a licence under section 5C; and
- (b) the approval of a transfer of the licence or a water entitlement under the licence or of an agreement referred to in the Act Schedule 1 clause 30,

is, for the purposes of assessing the applicable application fee, to be taken to be an application for amendment of the licence.

(2) An application for —

- (a) a licence under section 5C or amendment of a licence under section 5C; and
- (b) a licence under section 26D or an amended licence under section 26D,

is, for the purposes of assessing the applicable application fee, to be taken to be an application for a licence under section 5C or amendment of that licence, as is applicable to the case.

(3) An application for the renewal of a licence under section 5C and —

- (a) amendment of the licence; or
- (b) the approval of a transfer of the licence or a water entitlement under the licence or of an agreement referred to in the Act Schedule 1 clause 30,

is, for the purposes of assessing the applicable application fee, to be taken to be an application for amendment of the licence.

*[Regulation 56A inserted in Gazette 22 Jun 2007 p. 2882.]*



**57. False or misleading information in respect of applications**

A person who makes a statement under these regulations to the Commission that —

- (a) the person knows to be false or misleading in a material particular;
- (b) was false in a material particular and was supplied with reckless disregard as to whether the information was false or misleading in a material particular; or
- (c) omits anything without which the statement is, to the person's knowledge, misleading in a material particular,

commits an offence.

Penalty: \$2 000.

[58. *Omitted under the Reprints Act 1984 s. 7(4)(f).*]

**Schedule 1 — Fees**

**Division 1 — Fees for licences and permits**

*[Heading inserted in Gazette 22 Jun 2007 p. 2882.]*

- (\$)
1. Application for a permit (r. 4(1)(c)) or for amendment of a permit (r. 11) ..... 200
  2. Application for a licence under s. 5C (r. 19(1)) or for amendment of a licence under s. 5C (r. 19(2)) ... 200
  3. Annual fee for a licence under s. 5C (r. 20(2), (3), (5)) —

<b>Class</b>	<b>Water entitlement kL each year</b>	<b>Fee (\$)</b>
1.	1 501 — 5 000	200
2.	5 001 — 50 000	325
3.	50 001 — 100 000	600
4.	100 001 — 500 000	1 200
5.	500 001 — 1 000 000	1 800
6.	1 000 001 — 5 000 000	2 400
7.	more than 5 000 000	3 000

4. Late fee for annual licence fee (r. 20(6)) ..... 200
5. Fee for duplicate licence (r. 22(1)) ..... 50
6. Application for approval of transfer of a licence, water entitlement or agreement referred to in the Act Sch. 1 cl. 30 (r. 28(1a)) ..... 200
7. Application for a licence under s. 26D (r. 33(2)(d)) or for an amended licence under s. 26D (r. 40(d)) .... 200
8. Maximum amount for meter test (r. 44(4)) ..... 500

*[Division 1 inserted in Gazette 22 Jun 2007 p. 2882-3.]*

**Division 2 — Registration of instruments in the register and access to the register**

*[Heading amended in Gazette 22 Jun 2007 p. 2883.]*

	<b>Registration</b>	<b>Fee</b>
1.	Application for notation of security interest	\$70
2.	Removal of notation of security interest.....	\$70
3.	Variation of notation of security interest.....	\$70

	<b>Access to register</b>	
1.	Copy of an entry in, or an extract from, the register (s. 26GZI(4))	\$25 for the first page, \$1 for each additional page

*[Part 3 repealed in Gazette 30 Dec 2004 p. 7000.]*

**Schedule 2 — Prescribed offences and modified penalties**

[r. 50 and 51]

*[Heading inserted in Gazette 5 Sep 2006 p. 3624.]*

<b>Offence</b>	<b>Modified penalty</b>
1. An offence against section 5C of the Act other than an offence described in item 2.....	\$500
2. An offence against section 5C of the Act constituted by taking water from an underground water source in an area, and from a well, specified in an order under section 26C(2) and not using that water in accordance with that order.....	\$100
3. An offence against section 26E(1) of the Act.....	\$150
4. An offence against section 26G(3) of the Act.....	\$500
5. An offence against section 26GC(2) of the Act.....	\$500
6. An offence against regulation 43.....	\$400

*[Schedule 2 inserted in Gazette 5 Sep 2006 p. 3624.]*

## Schedule 3 — Forms

### Form 1

[r. 33(1)]

Water and Rivers Commission

**Application for a licence under section 26D of the *Rights in Water and Irrigation Act 1914***

*Water Agencies (Powers) Act 1984*

<b>Name of applicant</b>	..... .....
<b>Postal address for applicant</b>	..... ..... .....
<b>Description of the land the application is made in respect of</b>	..... ..... .....
<b>Does the applicant own the land?</b>	..... .....
<b>If the applicant does not own the land, describe the interest that would entitle the applicant to hold a licence in respect of the land</b>	..... ..... ..... .....
<b>If there is another licence under section 26D in respect of the land, provide the licence number</b>	..... ..... .....
<b>Purpose of application</b>	new well/bore/excavation/soak..... enlargement or deepening of existing well/bore/excavation/soak..... other (describe).....

<p><b>Proposed water use, please specify —</b></p> <ul style="list-style-type: none"><li>• if the use is commercial or non commercial</li><li>• the volume of water to be used</li><li>• the water use</li><li>• the duration of the use (and licence)</li></ul>	
<p><b>Declaration by applicant</b></p>	<p>I,.....apply for a licence under section 26D of the <i>Rights in Water and Irrigation Act 1914</i>.</p> <p>..... (signature or seal of applicant)</p>

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**Form 2**

[r. 39]

Water and Rivers Commission

**Information to be provided to the Commission on the Completion of  
Construction of non-artesian well**

Section 26E of the *Rights in Water and Irrigation Act 1914*

*Water Agencies (Powers) Act 1984*

Name and address of licensee .....

Location of well, stating local government district and lot or location No.  
.....

Diameter and length of casings inserted, and whether whole or perforated  
.....

If perforated, the sizes and lengths, with the position of each perforated length  
in the well .....

The depth reached in the well .....

The depth from the surface, with the thickness and character of each of the  
different beds of strata pierced .....

Particulars of water struck (if any), whether salt, brackish, or fresh, and the  
depths from the surface at which each water-bearing bed was struck  
.....  
.....

Also the height below ground level to which the water will rise in the casing  
.....

I, ..... of .....  
in the State of Western Australia, being the holder of a licence for the  
construction, enlargement, deepening, or alteration of a non-artesian well  
situated at ..... in the local  
government district of ..... the .....  
hereby forward the statement under section 26E of the *Rights in Water and  
Irrigation Act 1914* in respect of this work.

.....  
Signature of Licensee

**Form 3**

[r. 53]

Water and Rivers Commission

**Infringement Notice**

*Water Agencies (Powers) Act 1984*, section 103(2)

No. ....

Surname (Block letters) .....

Other names (in full) .....

Address .....

Town or suburb and postcode .....

It is alleged that you committed an **offence**:

<b>Where and when</b>	At ..... on the ..... day of ..... 2000
<b>Details of offence</b>	Section/Regulation..... Description of offence .....
<b>Modified penalty</b>	\$
<b>Information about this notice</b>	Date: ..... Issued at: ..... By: ..... Signature of authorised person: .....



WHAT YOU MUST DO:

- 1. You may dispose of this matter by paying the modified penalty within a period of 21 days after this notice is given.**

PAY THE MODIFIED PENALTY TO:

**The Chief Finance Officer  
Water and Rivers Commission  
PO Box K822  
PERTH WA 6842**

If you wish to do so but are unable to make payment within 21 days you may apply to the Water and Rivers Commission for an extension of time within which the modified penalty may be paid.

**OR IF YOU DO NOT PAY THE MODIFIED PENALTY**

- 2. A complaint may be issued against you for the alleged offence, in which case the matter will be dealt with by a COURT.**

**OR**

**The modified penalty may be recovered by the Fines Enforcement Registry, in which case —**

- (a) additional administrative charges may be incurred;**
- (b) action may be taken to suspend your Motor Driver's Licence or Vehicle Licence until you have paid in full the modified penalty and any additional charge; and**
- (c) you will be given an opportunity to elect to have a complaint for the alleged offence dealt with by a COURT.**

**PAYMENTS AFTER THE DUE DATE CAN ONLY BE MADE WITH A FINAL DEMAND LETTER WHICH INCURS AN ADDITIONAL ENFORCEMENT FEE.**

*[Form 3 amended in Gazette 14 Jun 2002 p. 2837; 5 Sep 2006 p. 3625.]*

**Form 4**

[r. 54]

Water and Rivers Commission

**Withdrawal of Infringement Notice**

*Water Agencies (Powers) Act 1984*, section 103(6)

No. ....

Surname (Block letters) .....

Other names (in full) .....

Address .....

Town or suburb and postcode .....

Infringement Notice No. .... Date ..... / ..... / .....

**AN INFRINGEMENT NOTICE GIVEN TO YOU HAS BEEN  
WITHDRAWN AND NO FURTHER ACTION WILL BE  
TAKEN\*/A SUMMONS WILL BE ISSUED\***

\* Delete where not applicable.

<b>Information about the withdrawn notice</b>	Date of issue: ..... Alleged offence: ..... Notice number: .....
<b>Information about this notice</b>	Date: ..... Issued at: ..... By: ..... Signature of prescribed person: ..... Title of the office in the Water and Rivers Commission held by the prescribed person: .....

*[Form 4 amended in Gazette 14 Jun 2002 p. 2837.]*

**Form 5**

Water and Rivers Commission

**Certificate of authorised person**

*Water Agencies (Powers) Act 1984*, section 103(11)

Water and Rivers Commission

No. ....

Photograph of authorised person

.....  
(Name)

.....  
(Signature)

.....  
(Title of the office in the Water and Rivers  
Commission held by the authorised person)

.....  
(Date of issue)

.....  
(Date of expiry)

**CERTIFICATE OF AUTHORISED PERSON**

This is to certify that the person identified on this certificate is authorised, in accordance with section 103 of the *Water Agencies (Powers) Act 1984*, to give infringement notices under these regulations.

*[Form 5 amended in Gazette 14 Jun 2002 p. 2837.]*

**Notes**

- <sup>1</sup> This is a compilation of the *Rights in Water and Irrigation Regulations 2000* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Rights in Water and Irrigation Regulations 2000</i>	10 Jan 2001 p. 165-210	10 Jan 2001 (see r. 2 and <i>Gazette</i> 10 Jan 2001 p. 163)
<i>Rights in Water and Irrigation Amendment Regulations 2002</i>	14 Jun 2002 p. 2835-7	14 Jun 2002
<i>Rights in Water and Irrigation Amendment Regulations (No. 2) 2002</i>	17 Dec 2002 p. 5911-18	17 Dec 2002
<i>Rights in Water and Irrigation Amendment Regulations 2004</i>	30 Dec 2004 p. 7000	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Rights in Water and Irrigation Amendment Regulations 2006</i>	5 Sep 2006 p. 3623-5	5 Sep 2006
<b>Reprint 1: The Rights in Water and Irrigation Regulations 2000 as at 9 Feb 2007</b> (includes amendments listed above)		
<i>Rights in Water and Irrigation Amendment Regulations 2007</i>	22 Jun 2007 p. 2877-83	r. 1 and 2: 22 Jun 2007 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2007 (see r. 2(b))

- <sup>2</sup> These regulations have effect for the purposes of the *Rights in Water and Irrigation Act 1914* but the formal power to make them is given by the *Water Agencies (Powers) Act 1984* s. 37.
- <sup>3</sup> Under the *Financial Legislation Amendment and Repeal Act 2006* s. 19 a reference in a written law or other document or instrument to the *Financial Administration and Audit Act 1985* may, where the context so requires, be read as if it had been amended to be a reference to the *Financial Management Act 2006* or to the *Auditor General Act 2006*, or to both those Acts, as the case requires.