

Water Resource Conservation and Protection

This fact sheet explains some of the basic features of SA legislation dealing with the protection and conservation of water resources. It outlines certain responsibilities and prohibitions within each Act and the penalties for breaches of these prohibitions. It also provides contacts if you suspect someone is breaking the law.

What are water resources?

The term 'water resource' refers to watercourses (rivers, creeks and other natural watercourses), lakes (natural lakes, ponds, lagoons, wetlands and springs), surface water flowing over land, (including dams and reservoirs), underground water and domestic and industrial wastewater (effluent). This can include the bed, banks and shores of watercourses or lakes as well as the water that is in them.

Why manage, protect & conserve water resources?

Plants and animals have intrinsic value (value in and of themselves) and have an independent right to inhabit this earth just as we do.

Protection of water resources under South Australian Legislation

The *Water Resources Act (1997)* ("The Act") provides for the management, conservation and protection of South Australia's water resources in two ways. Firstly, by providing for the declaration of certain water resources as prescribed water resources (s.8) and by providing a variety of protections, such as restrictions on the removal of water and on other water affecting activities (s.9). People may engage in certain water affecting activities provided they have a permit or water licence granted by the relevant Minister (s.10). Secondly, by controlling the type of activities people can undertake in and around water courses. For example, a person who discharges water directly into a watercourse or lake or destroys vegetation growing in a watercourse, in contravention of any relevant water plans, could face a fine of up to \$5,000. (\$10,000 for companies) (s.9). One way "the Act" controls activities in and around watercourses is by providing for the making of water plans.

Water Plans

All areas of South Australia are covered by the State Water Plan, titled: South Australia - Our Water, Our Future (s.90, s.91). In addition a given area may be covered by one or more other water plans. There are three other types of water plans which may be made under the Act:

- Catchment Water Management (CWM) Plans (s.92 - s.100)
- Water Allocation (WA) Plans (s.101 - s.107)
- Local Water Management (LWM) Plans (s.108 - s.115)

Catchment Water Management (CWM) Plans

CWM plans are prepared by CWM boards. They cover only specific areas, called Catchment Areas, not the State as a whole. They assess the current state and needs of a specific area's water resources and ecosystems

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and develop guidelines for its management taking into account economic, social and environmental considerations. Before preparing a proposal statement for a CWM plan a board must advertise in a local newspaper, inviting written submissions from the general public. A draft plan is then prepared. Before approving a CWM plan the Minister must take into account any public submissions received (s.95). From this information guidelines for the granting of permits for the use of the area's water resources are drawn up (s.92). There are currently six identified catchment areas in South Australia:

- The River Torrens • The Patawalonga • The River Murray • The Onkaparinga
- Northern Adelaide and Barossa • South East Catchments

Copies of the CWM plans are available free from the relevant CWM boards.

Water Allocation (WA) Plans

WA Plans cover prescribed water resources (prescribed under the Act). The aim of WA plans is to ensure that water from these prescribed water resources is allocated to users in a way that is socially, economically and environmentally viable. Like CWM Plans, WA Plans can be drawn up by CWM boards or, alternatively, they are drawn up by Water Resource Planning (WRP) Committees. Procedures similar to those for CWM plans, including public consultation, must be followed for the development of proposal statements for draft plans (ss.101,102,104).

Local Water Management (LWM) Plans

Each LWM plan covers an area within the boundaries of a local Council. Every local Council has the right, but not an obligation to draw up a LWM plan for their area. Some Councils are considering implementing a LWM plan. However, to date, none have done so. LWM Plans must be consistent with the State Water Plan as well as any CWM plans or WA plans which operate within the Council area (s.108). Again, procedures similar to those for CWM plans, including public consultation, must be followed for the development of proposal statements for draft plans.

Environment Protection Act

The *Environment Protection Act 1993* ("EP Act") also plays a role in the protection of South Australia's water resources.

The "EP Act" has provisions for the declaration of 'Water Protection Areas'. 'Water Protection Areas' are areas where surface and ground water is of a high quality and requires protection from pollution. There are 24 Water Protection Areas in SA. Contact the EPA for a list of them. Under the "EP Act", the Minister has the power to order people who are or have been polluting a water protection area to stop polluting and clean up any remaining pollution (s.64A). The minister also has the power to direct people to take steps to minimise the likelihood of pollution occurring (s.64B). If a person fails to comply with a notice from the Minister then they may be fined up to \$75,000 (or \$120,000 for companies).

The Development Act

The undertaking of any alterations to land itself or its use might be considered to be "development" as defined in the *Development Act (1993)*. For further information, please consult EDO Environmental Law Fact Sheet 3: "Development Control in South Australia".

The use of water resources - who, what, when, where, why?

The *Water Resources Act 1997* abolishes a person's common law right to take naturally occurring water (s.7(9)). However, a person who has lawful access to a creek, river, other natural watercourse, natural lake, pond, lagoon, wetland spring or well is entitled to take water from these sources for any purpose that is not prohibited under the Act (s.7). All owners and occupiers of land whose land adjoins a water resource are under an enforceable duty to take reasonable steps to prevent damage to those water resources (s.17).

Occupiers of land (s.7 - s.12)

In general, an occupier of land is prohibited from taking water from any;

- "prescribed water course" or from a "surface water prescribed area" without a "water licence" or "section 11 authorisation"; unless;

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- they are taking it for drinking or cooking (at less than the prescribed rate), or
- they are using it for domestic purposes, or
- they are using it for the watering of stock (not being intensively farmed).
- *other (non-prescribed) watercourse, lake or well if the taking of the water would;*
 - detrimentally affect the ability of another person to exercise their right to take water from the same source, or
 - detrimentally affect the enjoyment of that water by another occupier of land, with whom the occupier in question shares that water source unless;
 - they are using it for domestic purposes, or
 - they are using it for the watering of stock (not being intensively farmed).

However, a declaration that a watercourse, lake or well is “prescribed” or that a certain area is a “prescribed surface water area” may totally prohibit the occupier of land from taking water for any purpose unless the occupier has a “water licence” or a “section 11 authorisation”. In addition, provisions of water plans can prohibit occupiers from taking any water from a particular source for any purpose without a “water licence” or “section 11 authorisation”.

Persons with lawful access (s.7 - s.12)

In general, a person with lawful access to a watercourse, lake or well (who is not an occupier) is prohibited from taking water from any

- *“prescribed water course” or from a “surface water prescribed area” without a “water licence” or “section 11 authorisation”, unless;*
 - they are taking it for drinking (at less than the prescribed rate),
- *other (non-prescribed) water course, lake or well, if it would;*
 - detrimentally affect the ability of another person to exercise a right to take water from the same source, or
 - detrimentally affect the enjoyment of the amenity of water by an occupier of land where the watercourse or lake;
 - is on their land, or
 - runs through their land, or
 - adjoins their land.

However, a declaration that a watercourse, lake or well is “prescribed” or that a certain area is a “prescribed surface water area” may totally prohibit a person from taking water for any purpose unless the person has a “water licence” or a “section 11 authorisation”. In addition, provisions of water plans can prohibit a person from taking any water from a particular source for any purpose without a “water licence” or “section 11 authorisation”.

Dams

A person in either of the above situations must examine the Act and any applicable water plans to make sure that the purpose for which they want to take the water is not prohibited. For example, the building of a dam requires a permit if water is to be collected from any prescribed water course and certain non-prescribed watercourses (s. 7(1), (2), 9(3)). Depending on the applicable Water Plans, enlarging an existing dam may also require a permit.

Wells

Generally, a permit is required to build a well which is more than 2.5 metres deep (s.9(3), s.25(1), schedule 1 clause 1, 2 (b)). In addition, if you occupy land which has a well you must maintain it.

Section 11 authorisations, permits, licences and Section 16 emergency restrictions

Authorisations are made by the Minister to authorise the taking of water from a prescribed watercourse, lake, well or surface water prescribed area for a particular purpose by publishing a notice in the *Gazette*.

Permits are required to undertake certain activities, ie. building a dam or a well. If the land you are seeking a permit for is in a Catchment Area then you must apply to the relevant Catchment Water Management Board. If the land is not within a Catchment Area but is within a local Council area, then you must apply to the relevant local council. If the land is not within either a Catchment Area or a local council area then you must apply to the

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Minister for the Environment, Heritage and Aboriginal Affairs (s.17(4), s.10).

Licences are necessary if you want to take water from a prescribed watercourse, lake or well, or to take surface water from a surface water prescribed area. Applications for a water licence must be made to the Minister for the Environment, Heritage and Aboriginal Affairs.

Notices of Restriction, issued by the Minister, can prohibit/restrict the taking of water from any area of the State if current or proposed water use rates are considered to threaten the viability of the water supply.

Do you suspect someone is using a water resource illegally?

If you suspect someone of using a water resource illegally you can contact one of the organisations listed below. If you wish to know whether someone has a water licence or permit for a specific activity, any one has the right to inspect the Minister's register of licences and permits. In addition, any person may apply to the Environment, Development and Resources (ERD) Court to prevent others from contravening this Act or to claim compensation due to damage caused by contravention to this Act (s141).

Where can I get more information?

To purchase Acts: the State Information Centre, 77 Grenfell Street, Adelaide. (08) 8204 1900

To read and/or photocopy Acts: The Conservation Centre, 120 Wakefield Street, Adelaide. (08) 8223 5155 or The State Library of South Australia, North Terrace, Adelaide (situated on the corner of North Terrace and Kintore Avenue). (08) 8207 7220.

To download Acts from the internet: <http://www.austlii.edu/index.html>

To gain access to information which might be impacting on a water resource: see the EDO's environmental law fact sheets 6 & 7 - Access to Government Records / Freedom of Information in South Australia.

For general enquires: Department for Environment, Heritage and Aboriginal Affairs (DEHAA). (08) 8204 9000, or you may want to contact your local council (listed individually in the white pages) or your local Water Resource Management office (listed in the White pages under Environment, Heritage and Aboriginal Affairs, Dept for / Water Resource Management.)



The Environmental Defenders Office (SA) inc. (EDO) is a non-profit community legal centre offering free advice to individuals and groups on environmental and planning law. The EDO operates an advisory service from its offices on 1st floor, 118 Halifax Street, Adelaide, on Thursday evenings between 6pm and 8pm

Appointments are necessary and must be made by ringing 8232 7599

Postal address: EDO, GPO Box 170 Adelaide SA 5001

E-mail: edos@edo.org.au

Internet address: <http://www.edo.org.au>

Country Free Call: 1800 337 566

This fact sheet is not a substitute for proper legal advice. Important legal details have been omitted to provide a brief overview of this area of law. Contact the EDO or your solicitor for more detailed legal advice about your specific inquiry.

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