

# Chapter 8

## Protecting our water

**Introduction**

**Water Resources Act 2007**

**Environmental flow guidelines**

**Water management areas**

**Water access entitlements**

**Water licences**

**Water Resources Regulation 2007**

**Enforcement of the Water Resources Act**

**Other legislation and instruments**





# Protecting our water

---

## ***Millions have lived without love. None has lived without water.***

Old Turkish proverb

### ***Introduction***

Our future prosperity depends on the wise management of our most precious natural resource—water. Rarely do we think about where this water comes from, how much we use or what happens after the plug is pulled or the toilet flushed. Our concerns are generally whether it is clean and safe and whether we will have a continuing right to access water.

Water is one of the most far-reaching policy issues Australia has ever grappled with; an issue raising intense emotions, a maze of intellectual brain-twisters, cutting-edge environmental forecasting, hazy legal rights, and local, interstate and Commonwealth-state jealousies.

The ACT's water is controlled, protected and managed under five main pieces of legislation:

- the *Water Resources Act 2007* (ACT), which covers management of territory water resources
- the *Environment Protection Act 1997* (ACT), which sets standards for water quality and control of water pollution
- the *Utilities Act 2000* (ACT), which regulates the provision of water and sewerage services (including by the main supplier of domestic water, ActewAGL)
- the *Utilities (Technical Regulation) Act 2014* (ACT), which, amongst other things, imposes dam safety requirements
- the *Water and Sewerage Act 2000* (ACT), which sets out procedures and requirements for water supply and the supply of plumbing and sewerage arrangements.

This chapter deals mainly with the *Water Resources Act 2007* (ACT) ('*Water Resources Act*') and only briefly touches on the other Acts.

The ACT's water resources fall entirely within the Murray-Darling Basin. At the Commonwealth level, the *Water Act 2007* (Cth) ('*Water Act*') is of particular relevance to the ACT. The *Water Act* establishes the Murray-Darling Basin Authority, which is responsible for preparing a Basin Plan – a legislative instrument setting out a strategic plan for the integrated and sustainable management of water resources in the Murray-Darling Basin.

The Basin Plan was made in November 2012. Perhaps most significantly the Basin Plan provides for limits on the quantity of water that may be taken from the Basin water resources. These limits are called sustainable diversion limits (SDLs) and are intended to set the amount of water that can be taken for town water supplies, industry, agriculture and other human or 'consumptive' uses while ensuring there is enough water to achieve healthy river and ground water systems. From 2019, the ACT, along with the other Basin States (NSW, Victoria, South Australia and Queensland) will be required to comply with the SDLs in managing their water resources.

The implementation of the *Water Act* and the Basin Plan are underpinned by two intergovernmental agreements (IGAs): the IGA on implementing water reform in the Murray-Darling Basin, signed 5 June 2013 and the 2008 IGA on Murray-Darling Basin reform.

Both IGAs build on cooperative arrangements for the use and management of Australia's water resources developed through the Council of Australian Governments (COAG), including the 2004 National Water Initiative, an important IGA which included objectives, outcomes and agreed actions to be undertaken by governments across eight inter-related elements of water management.

COAG is the peak intergovernmental forum in Australia, made up of the Commonwealth, state and territory heads of government and the Australian Local Government Association. COAG's role is to initiate, develop and monitor the implementation of policy reforms of national significance which require cooperative action between all states and territories, such as water reform.

More information on the *Water Act* and the Basin Plan can be found on the [Murray-Darling Basin Authority's](#) and [Commonwealth Department of the Environment's](#) websites (see Contacts list at the back of this book).

## **Water Resources Act 2007 (ACT)**

---

Unless otherwise specified, references in this section to provisions of an Act are references to provisions of the *Water Resources Act 2007 (ACT)* ('*Water Resources Act*').

### ***Introduction***

The objects of the *Water Resources Act* (set out in s 6) include:

- ensuring that the ACT's water resources sustain the physical, economic and social wellbeing of the people of the ACT while protecting the ecosystems that depend on those resources
- protecting aquatic ecosystems and aquifers from damage and, where practicable, reversing damage that has already happened

- ensuring that the reasonably foreseeable water needs of future generations are met.

While the ACT's urban water supply is drawn from the Cotter and Queanbeyan Rivers, other water resources also include:

- other waterways including rivers, creeks, lakes, wetlands
- surface water, including water collected in dams and reservoirs
- storm water
- ground water, generally collected from bores
- waste-water, treated or untreated.

Water resources regulated under the *Water Resources Act* are broad. The *Water Resources Act* defines 'water' as either 'surface water' or 'ground water' and includes water that contains impurities (see Dictionary and ss 8-9). In general terms, surface water is water on or flowing over land. It includes water in a waterway, such as a river, creek, lake or marsh and water collected in a dam, reservoir or tank. Ground water is water below the ground surface and includes water from a bore.

A number of instruments are made to assist in managing the water resources of the territory under the *Water Resources Act*. These are discussed in further detail later in this chapter, and include:

- water management area determinations, which specify water management areas and the amounts of water available for taking in each water management area
- environmental flow guidelines, which specify the amount of water needed to maintain aquatic ecosystems. The guidelines are used in determining the amounts of water which can be taken in a particular area.

The ACT Minister for the Environment (the minister) is responsible for the *Water Resources Act*. The minister is responsible for determining or approving, amongst other things:

- environmental flow guidelines (s 12)
- water management areas for managing the water resources of the territory (s 16)
- amounts of water available for taking in each water management area (s 17)
- water access entitlements (s 21).

The *Water Resources Act* provides for a system of granting water access entitlements and licensing to assist with the management of the territory's water resources. The following licences are required in certain circumstances:

- a licence to take water (ss 29-32)
- a driller's licence (ss 33-36)
- a bore work licence (ss 37-40)

- a waterway work licence (ss 41-46)
- a recharge licence (ss 47-51).

Application fees are payable for these licences (s 107). It is an offence not to hold a licence where required by the *Water Resources Act* and penalties of up to 50 penalty units (currently \$7,500 for an individual and \$37,500 for a corporation), imprisonment for six months or both apply (ss 77A, 77B, 77C(2), 77D). Where waterway work carried out without a licence adversely affects the flow or quality of the water, or the aquatic habitat in the waterway, penalties of up to 100 penalty units (currently \$15,000 for an individual or \$75,000 for a corporation) or 12 months imprisonment or both apply (s 77C(1)).

Details of the granting or variation of a licence must be kept by the Environment Protection Authority (EPA) on a publicly available register (ss 66-67). Details of these licences are discussed in greater detail later in this chapter.

## ***Ownership of water***

The ACT government owns ACT water. Section 7 of the *Water Resources Act* states that, subject to the Act, ‘the right to the use, flow and control of all water of the Territory is vested in the Territory...’.

The *Water Resources Act* imposes a general duty on an owner or occupier of land that adjoins a waterway, or on which a waterway is situated, to take all reasonable steps to prevent damage to the waterway (s 74(1)). Damage is defined to exclude minor damage and damage caused in the normal course of an activity authorised under the *Water Resources Act* (s 74(5)).

## ***Environment Protection Authority***

The Environment Protection Authority (EPA) is responsible for administering the *Water Resources Act*. The EPA is established by the *Environment Protection Act 1997* (ACT) and is a division of the Environment and Planning Directorate.

Section 64 of the *Water Resources Act* gives the EPA broad water management functions. These include to:

- keep the state and condition of the ACT’s water resources under review
- coordinate policies in relation to water resource management
- regulate the allocation of water from waterways
- compile and maintain up-to-date information about the water resources of the territory
- promote the importance, and encourage the efficient use, of water resources
- foster public education about the management of water resources
- implement national water resource measures made under national scheme laws or intergovernmental agreements relating to water resource management

- confer and exchange information, with any entity having functions corresponding to those of the EPA under a law of the Commonwealth, a state or another territory relating to water resource management.

In particular, the EPA is responsible for:

- preparing environmental flow guidelines
- monitoring water quality
- licensing water users and enforcing those licences
- licensing bore work, bore drillers and waterway works
- charging and collecting fees.

### ***Environmental flow guidelines***

Environmental flow guidelines are a statutory instrument under the *Water Resources Act*. The EPA prepares draft environmental flow guidelines for the minister's approval (ss 12-13).

Environmental flow guidelines set out the flow of water that is needed to maintain aquatic ecosystems. The guidelines set environmental flow requirements for all water bodies in the ACT, including ground water. The principle of environmental flows is important as it recognises that waterways, and the ecosystems that rely on them, need to receive a certain amount of water if they are to survive.

In particular, the guidelines are used in determining the amounts of water available for taking in each water management area (s 17(2)(a)) and are taken into account by the EPA when granting licences to take water as well as waterway work licences (ss 30(3)(b)(i), 44(2)(a)(i)).

In preparing draft guidelines for the minister's approval, the EPA must principally consider the ecological needs of aquatic ecosystems. However, the EPA may also take into account the environmental, economic and social impact of the guidelines (s 13(2)).

The first environmental flow guidelines came into effect in December 1999 under the former *Water Resources Act 1998*; the most recent coming into effect in April 2013 under the current *Water Resources Act*.

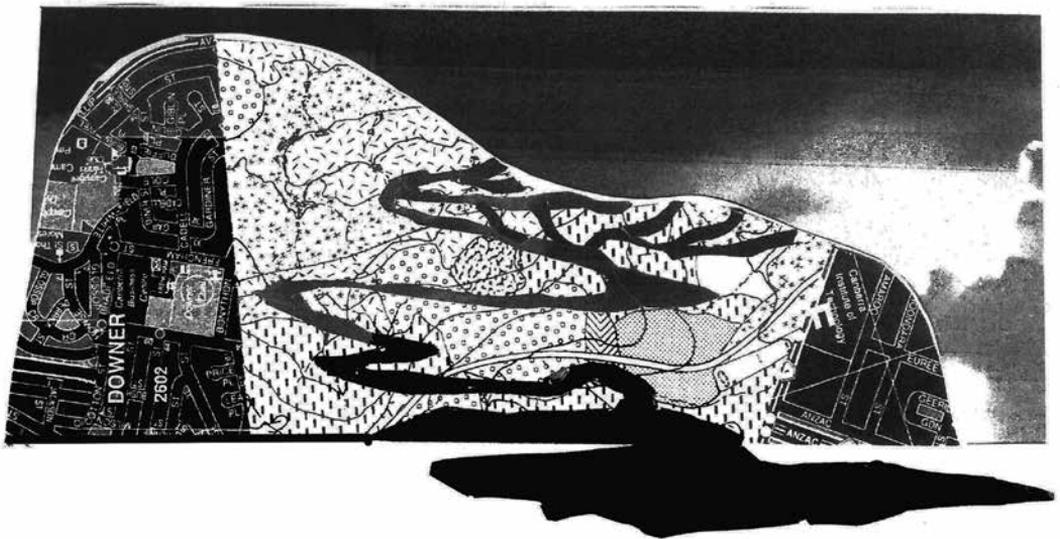
The guidelines specify environmental flows for all waterways lying within the ACT. They include environmental flows for the Molonglo River downstream of Scrivener Dam and drawdown limits for Lake Burley Griffin, which remains under the control of the Commonwealth, and is managed by the National Capital Authority.

The guidelines also discuss the Commonwealth's paramount rights to the waters of the Queanbeyan and Molonglo rivers and their tributaries. The *Canberra Water Supply (Googong Dam) Act 1974* (Cth) specifies that the ACT executive exercises the rights to the waters of the Googong Dam Area, which includes any necessary releases from the Googong Dam.

The guidelines state that, while the only NSW waters developed for ACT urban water supply are those entering Googong Reservoir, the remaining waters over which the Commonwealth has paramount rights (the Molonglo River upstream of the ACT and Jerrabomberra Creek upstream of the ACT) are important for other ACT purposes, including the protection of aquatic ecosystems in the ACT.

### **Public comment**

The public have an opportunity to comment on draft environmental flow guidelines developed by the EPA. The *Water Resources Act* requires the EPA to prepare draft guidelines, publicly notify these guidelines and invite public comment (ss 13-14). During the consultation period the EPA must consider any written comments given to it, and may revise the draft guidelines in accordance with the comments, as it sees appropriate (s 14). The EPA must submit the draft guidelines to the minister, together with a report outlining the EPA's consultations and issues raised in those consultations (s 15(1)). The minister may then approve the guidelines or direct the EPA to revise the draft or conduct further consultation (s 15(2)). The guidelines approved by the minister are a disallowable instrument (s 12(2)), which means they must be presented to the ACT Legislative Assembly and, within 6 sitting days of being presented, may be disallowed by the Assembly (*Legislation Act 2001* (ACT), ss 64-65).



## ***Water management areas***

Under Part 4 of the *Water Resources Act* the minister must determine a number of matters including:

- water management areas for managing the water resources of the territory (s 16)
- the amount of water available for taking in each water management area (s 17).

These determinations are disallowable instruments that must be presented to the Legislative Assembly and may be disallowed by the Assembly (ss 16(2), 17(5)). Any disallowable instrument made must be listed in the ACT legislation register (*Legislation Act 2001* (ACT), s 19(1)(d)) as well as, generally, any amendment to a disallowable instrument made by the Legislative Assembly (*Legislation Act 2001* (ACT), s 69).

Currently the minister has determined 14 water management areas under the *Water Resources (Water Management Areas) Determination 2007 (No 1)*. The water management areas are comprised of a number of grouped sub-catchments or one larger sub-catchment. Amounts of water available for taking are determined by reference to each water management area.

In determining the total amount of surface water and ground water that is available for taking in each water management area the minister must take into account:

- the environmental flow guidelines
- the total water resources of the territory
- any investigations undertaken by the EPA to establish sustainable yields for the water management area (s 17(2)).

The minister has the power to determine a volume of water in each management area that is to be reserved for future use (s 17(3)).

The minister has determined guidelines for working out the amounts of water that are reasonable for particular uses under the *Water Resources (Amounts of Water Reasonable for Uses Guidelines) Determination 2007 (No 1)* (s 18); commonly referred to as the Efficient Use Guidelines.

Decisions about granting water access entitlements and issuing licences to take water require consideration of what are reasonable amounts for intended uses (see below under 'Water Access Entitlements' and 'Water Licences'). The guidelines state that, should an applicant (for a water access entitlement or licence to take water) request a smaller water volume than the amount specified in the guidelines, then the smaller requested volume will be accepted and issued as the appropriate volume.

## ***Water access entitlements***

A water access entitlement is an entitlement to a stated amount of surface water or ground water from a particular area. However, in most circumstances the holder of a water access entitlement will not be permitted to take water under a water access entitlement unless they also have a licence to take that water (see *Water Resources Act* s 23(1)(b) and *Water Resources Regulation 2007* (ACT) reg 5(1)(a) (*'Water Resources Regulation'*)). That is, a licence to take water must be acquired before the entitlement to water can be realised.

Neither does a water access entitlement give a person the right to build any of the works, such as dams, that may be physically required to extract the water. These works generally require a waterway works licence (see below under 'Waterway Work Licences').

A water access entitlement is granted by the minister (s 21(1)). The minister must not grant a water access entitlement unless satisfied of the following matters:

- the relevant amount of water is available for taking, having regard to the section 17 determination of the amount of water available, and any other water access entitlements and surviving allocations (i.e., an allocation granted under the former *Water Resources Act 1998*) in the water management area
- the relevant amount of water is not more than a reasonable amount for the intended use (having regard to the section 18 determination on amounts of water reasonable for uses)
- the water is not intended for urban residential property use (unless the applicant is a water utility)
- the intended water use is consistent with the Territory Plan (TP)
- the applicant does not hold a surviving allocation
- the grant is appropriate having regard to the applicant's environmental record and other matters considered by the minister to be relevant (s 21(2)).

In deciding applications for water access entitlements, the minister must give priority:

- firstly to land owners or occupiers who were previously entitled to take water without a licence, but can no longer do so because of a boundary change initiated by the territory and the water is for stock or domestic use
- secondly to persons who do not have access to urban water supply and are seeking water for stock or domestic use
- after that, as the minister considers appropriate (s 21(4)).

The EPA has the power to amend a water access entitlement, including by imposing a condition on an entitlement (s 24).

The public has no opportunity to comment on whether a water access entitlement should be granted. However, the public can access details of water access entitlements from the public register that must be maintained by the EPA (s 66).

A water access entitlement may be transferred from one person to another, but only with the approval of the EPA (s 26). The transfer of a water access entitlement will affect any licence to take water granted under the entitlement. Where the whole entitlement is transferred, the licence is cancelled (if the transfer is absolute) or suspended (if the transfer is for a limited period) (s 27(1)-(2)). Where part of an entitlement is transferred, the amount that can be taken under the licence is similarly reduced (s 27(3)-(4)).

Surviving allocations exist because when the current *Water Resources Act* replaced the previous *Water Resources Act 1998*, people who held an existing allocation and licence to take water could keep the existing allocation and licence which remained valid, or could surrender the surviving allocation to the EPA and receive a replacement water access entitlement (s 111).

There is no charge for a non-transferable water access entitlement that replaces a surviving allocation. For any other grant of a water access entitlement, including a transferable or tradable water access entitlement which replaces a surviving allocation, a fee is generally charged (exceptions include for stock and domestic water access entitlements). Under the *Water Resources (Fees) Determination 2015 (No. 1)* (ACT) Schedule 1, the fee is currently \$726.20 per megalitre. Fee determinations can be found under the disallowable instruments section of the [ACT legislation register](#). (see Contacts list at the back of this book). Additionally, an application fee and a yearly administration fee are payable for a licence to take water (see below under 'Licences to take water').

## **Water licences**

### **Introduction**

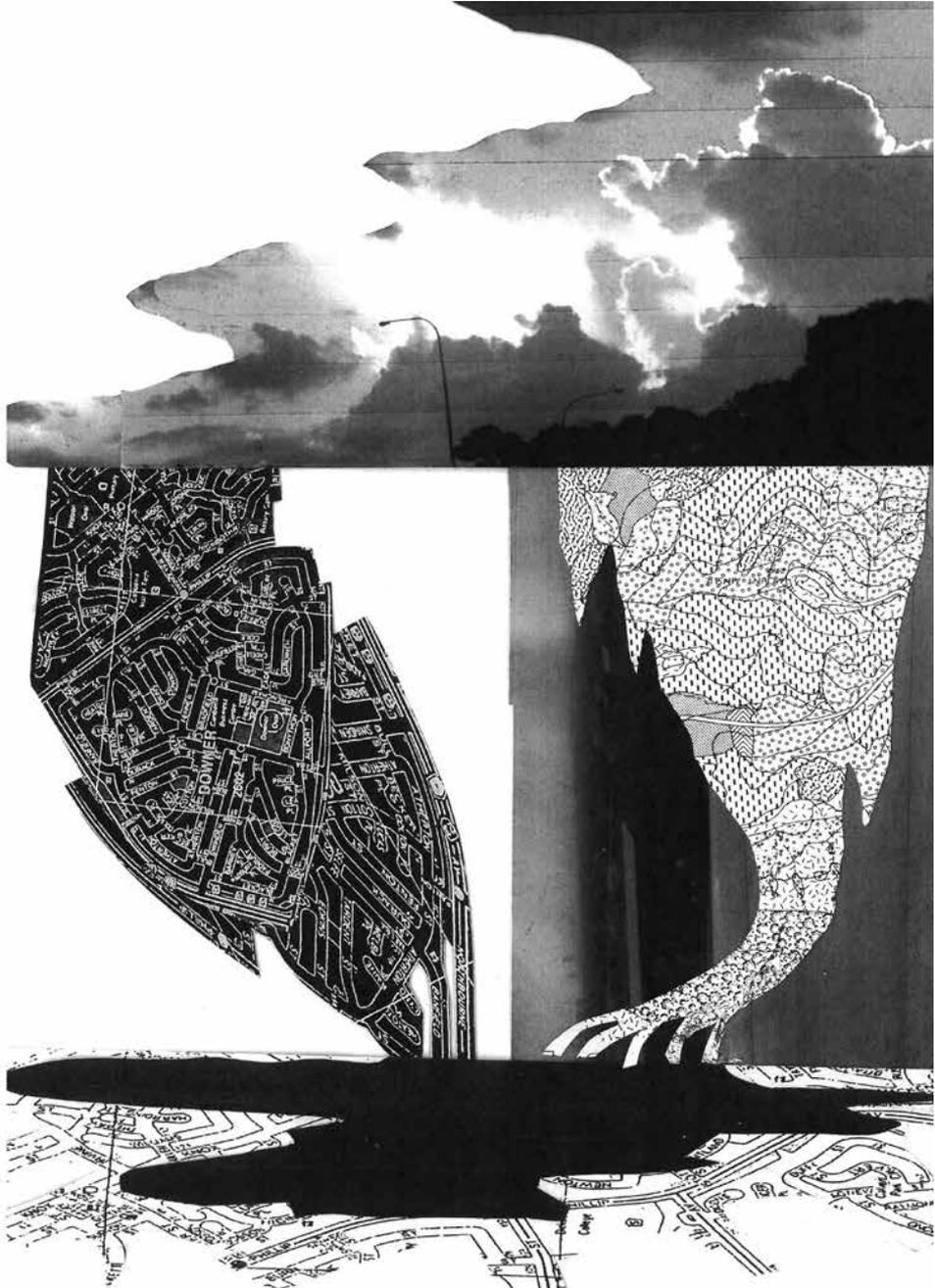
One of the key advantages of the licensing system is that it places an onus on water users to quantify their usage. In the past many users, particularly rural landholders drawing water from bores, were unsure of their actual water usage.

A licence provides a right to use a particular entitlement at a specific site. A licence to take water cannot be issued unless there is a water access entitlement or surviving allocation (see above under 'Water Access Entitlements'). A licence to take water is required in order to use water to which a person has a water access entitlement (s 23(1)(b) of the *Water Resources Act* and reg 5(1)(a) of the *Water Resources Regulation*). Water licences are not transferable (s 54).

The fees applicable to licences and applications are set out in the *Water Resources (Fees) Determination 2015 (No.1)*, which is updated from time to time and published on the ACT legislation register (see Contacts list at the back of this book).

## ***Licences to take water***

Section 28 of the *Water Resources Act* prohibits the taking of water without a licence, unless certain exceptions apply. There are 3 separate offences for taking water without a licence under s 77A(1). The first applies where a person takes surface or groundwater from a place and does not have a licence to take that water. The maximum penalty is 50 penalty units (currently \$7,500 for an individual and \$37,500



for a corporation), imprisonment for six months or both. The other two offences apply, respectively, where the person doing the taking is the owner or occupier of land, and where the person takes surface water in the conduct of a business of carrying or extracting water (s 77A(2)-(5)). In each case the offence is one of strict liability. In other words, the prosecution need only prove that an accused's conduct contravened the Act; the prosecution does not need to prove that the accused intended to contravene the Act. The maximum penalty is 50 penalty units (currently \$7,500 for an individual and \$37,500 for a corporation).

The *Water Resources Act's* definition of 'taking water' is broad and includes actions such as pumping, extracting or using surface water, diverting surface water for use, doing anything that results in a flow reduction of surface water in a waterway, and allowing ground water to flow or be pumped from a bore (s 11).

There are a number of exceptions to the prohibition on taking water without a licence. In certain circumstances a person may take water from a waterway for stock or domestic use (s 28(2)(c)). Other exceptions include taking water for camping purposes, for watering travelling stock, taking water from an approved (or exempt) rainwater tank or where an exemption under a regulation applies (s 28(2)(a), (b), (e)). This final exemption is discussed in more detail below under '*Water Resources Regulation 2007*'.

Exceptions also apply if water is taken by certain emergency services personnel, including fire and rescue members, rural fire service officers and police officers, in an emergency for the exercise or purported exercise of a function under the *Emergencies Act 2004* (ACT), for the purpose of protecting life or property or extinguishing, controlling or preventing spread of a fire (s 28(2)(d)).

Licences to take water are issued by the EPA (s 30(1)). The EPA must not issue a licence unless satisfied that it is appropriate to do so having regard to the following matters:

- the applicant's environmental record
- whether the issue of the licence would or may have an adverse effect on:
  - environmental flows required under the environmental flow guidelines
  - the environment generally or
  - the interest of other water users
- anything else the EPA considers relevant (s 30(3)).

In addition, a licence can only be issued if the EPA is satisfied that:

- the applicant holds a water access entitlement or surviving allocation on which to base the taking of water under the licence (unless exempt)
- the water is to be taken from the water management area stated in the entitlement (or subcatchment area for surviving allocations)
- the amount of water to be taken under the licence is a reasonable amount (having regard to the Efficient Use Guidelines)

- the water is not intended to be used on urban residential property
- the intended use is consistent with the TP
- the applicant has lawful authority to access the place where the water is to be taken
- a development approval is in place, if required (s 30(2)).

At the time of writing, the application fee for a licence to take water is \$154.10 and over 200 licences to take water are listed on the *Water Resources Act* Register.

There is also an annual administration fee for each licence and the amount of the fee depends on the volume of water licensed to be taken. At the time of writing, the annual administration fee for a licensed volume greater than 1000 megalitres per year, is \$7,760.50. For a licensed volume of up to 1000 megalitres per year the fee is \$399.70, except where a licensee has entered into a data collection sharing agreement with the EPA.

A data collection sharing agreement may be entered into where the EPA is interested in collecting particular data for a specific location. For example, it may wish to take water samples for laboratory analysis or it may wish to measure the static level of a bore to determine how an underground aquifer is changing. In this case the annual administration fee is waived.

The application fee and first year's administration fees are payable at the time of applying for a licence to take water. Added to this is an abstraction fee of currently 26 cents per kilolitre for water extracted other than through the urban water supply network. Water taken for the purposes of urban water supply attracts a water abstraction fee of currently 54 cents per kilolitre. There is no charge for water taken by the owner or occupier of land on or immediately adjacent to the waterway used for stock and domestic purposes as no licence is required (s 28(2)(c)).

When the holder of a licence under the *Water Resources Act* is carrying out an activity under their licence, it is a strict liability offence (defined above) to fail to produce that licence at the request of the EPA (s 77E). The maximum penalty is 5 penalty units (currently \$750 for an individual and \$3,750 for a corporation).

The EPA can impose conditions on a licence to take water (s 31). The types of conditions that may be imposed include: the licensee keeping records; installing a water meter; or conducting monitoring and testing of the water taken. Conditions may also specify the rate at which water may be taken and the maximum amount of water to be taken, or that water must not be taken from a waterway at a time when there is little or no flow in the waterway.

The holder of a licence commits an offence if they contravene a condition of their licence to take water (s 77F). Again, it is a strict liability offence. The maximum penalty is 50 penalty units (currently \$7,500 for an individual and \$37,500 for a corporation). There are also strict liability offences relating to the contravention of certain specified conditions, for which the maximum penalties range between 10 and 50 penalty units (currently between \$1,500 and \$7,500 for an individual) (ss 77F(2), 77G).

## ***Restriction or prohibition on taking surface water or ground water***

The Act gives the responsible minister power to prohibit or restrict the taking of water where he or she is satisfied that, because of contamination, the taking of the water may pose a risk of damage to property or the environment, or may pose a safety or health risk (s 71). In such a case, notice must be given to each affected licensee (s 71(4)), and the notice must be published in the ACT legislation register (*Legislation Act 2001*, s 19(1)(e)).

## ***Bore work licences and driller's licences***

Section 37 of the *Water Resources Act* prohibits an owner or occupier of land from allowing bore work to be done on that land if that person does not have a bore work licence. Under section 77B(2), a person who is the owner or occupier of land commits an offence if bore work is done on the land and the person does not have a bore work licence for the bore work. The maximum penalty is 50 penalty units (currently \$7,500 for an individual and \$37,500 for a corporation), imprisonment for six months or both.

The holder of a driller's licence commits an offence if they do bore work on land and the owner or occupier of the land does not have a bore work licence for that work (s 77B(3)). The maximum penalty is 50 penalty units (currently \$7,500 for an individual and \$37,500 for a corporation), imprisonment for six months or both.

A 'bore' is defined in the Act as a bore, hole, well, excavation or other opening in the ground or an underground cavity (whether natural or not) which is, or can be, used to intercept or collect ground water; from which groundwater is, or can be, obtained or used; which is, or can be, used for the disposal of water or waste below the ground's surface; or which extends into an aquifer.

Bore work includes drilling, constructing, altering, plugging, backfilling or sealing off a bore; removing, replacing, altering, slotting or repairing the casing, lining or screen of a bore; or deepening a bore (Dictionary in the Act).

A bore work licence is issued by the EPA (s 39). The EPA must not issue a bore work licence unless satisfied either that the bore work is for a monitoring bore (ie a bore entering an aquifer to monitor its depth and fluctuations of depth), or that the applicant holds a water access entitlement or surviving allocation for ground water to be taken from the bore (s 39(2)(a), (3)). It must also be satisfied that it is appropriate to grant the licence having regard to the proximity of any existing bores and anything else the authority considers relevant (s 39(2)(b)).

The bore work licence is issued to the owner or occupier of the land on which the bore work is to be done.

The application fee for a bore work licence is currently \$154.10. At the time of writing, three bore work licences were listed on the *Water Resources Act* Register.

In addition to requiring a bore work licence, if bore work is undertaken the person who does the bore work must hold a driller's licence. Section 33 of the Act prohibits

a person from doing bore work if the person does not have a driller's licence to do that work. The related offence is set out in s 77B(1), for which the maximum penalty is 50 penalty units (currently \$7,500 for an individual and \$37,500 for a corporation), imprisonment for six months or both.

The EPA is responsible for issuing driller's licences upon application and payment of a fee (s 35).

The EPA must not issue a driller's licence unless satisfied that the applicant has the relevant qualifications as approved by the EPA under section 35(3) (s 35(2)(a)). This includes a driller's licence held under the corresponding legislation of any other state or territory as an approved qualification (see the *Water Resources (Driller's Licence) Notice 2008 (No 1)*). The EPA must also have regard to the applicant's environmental record and anything else it considers relevant before issuing a licence (s 35(2)(b)).

The fee for a three-year driller's licence is currently \$154.10 if the applicant holds an equivalent licence outside the territory. At the time of writing, over 60 driller's licences are listed on the *Water Resources Act* Register.

To take water from a bore it may be necessary to have a water access entitlement and/or a licence to do so (see above under 'Water Access Entitlements' and 'Water Licences' for details).

### **Waterway work licences**

The construction of a dam or other water retention structure (a water structure) is likely to reduce the volume of water available to downstream users and for environmental flows. Therefore, section 42 of the *Water Resources Act* prohibits a person from constructing or altering a water structure, that is, a dam (wherever located) or other water retention structure (in or on a waterway), or doing other work in or on a waterway, where that adversely affects or may adversely affect the waterway's water flow, water quality or aquatic habitat, without a licence. The relevant offence is set out in section 77C(1); the maximum penalty is 100 penalty units (currently \$15,000 for an individual and \$75,000 for a corporation), imprisonment for one year or both. A person also commits an offence if the person does waterway work (as described above) and does not have a licence (i.e. even if the work does not adversely affect the flow or quality of water, or aquatic habitat). This is a strict liability offence and the maximum penalty is 50 penalty units (\$7,500 for individuals and \$37,500 for corporations).

There are some exceptions to the waterway work licensing requirements. A structure not in a waterway and of less than two megalitres capacity can be built without a licence, as can a structure prescribed by regulation (s 42(2)).

The EPA is responsible for issuing waterway work licences upon application and payment of a fee (s 44). The EPA must not issue a waterway work licence unless it is satisfied it is appropriate to do so having regard to:

- any adverse effect on the environment, environmental flows required under the environmental flow guidelines, or the interest of other water users
- the public interest
- where relevant, whether the structure is designed to allow water to pass over, under or through it, the need for the structure and whether a more appropriate approach is available
- anything else the EPA considers relevant (s 44(2)).

The EPA may impose conditions on the licence reflecting these considerations (s 45). The application fee for a waterway work licence is currently \$154.10 and, at the time of writing, there are over 30 waterway work licences listed on the *Water Resources Act* Register.

A dam may also be a development that requires development approval from the ACT Planning and Land Authority (ACTPLA) under the *Planning and Development Act 2007* (ACT) (see Chapter 3 in this Handbook for information on development approvals.) A water access entitlement and/or a licence to take water may be required to use the water in the dam (see above under ‘Water Access Entitlements’ and ‘Water Licences’ for details).

### ***Recharge licences***

Section 47 prohibits a person constructing, operating or altering works to increase the quantity of ground water without a recharge licence. Section 77D makes it an offence to undertake these activities without a recharge licence for the work in question. The maximum penalty is 50 penalty units (currently \$7,500 for an individual and \$37,500 for a corporation), imprisonment for six months or both.

The EPA is responsible for issuing recharge licences upon application and payment of a fee (s 49).

The EPA must not issue a recharge licence unless satisfied that it is appropriate to do so having regard to relevant considerations, including the applicant’s environmental record, the risk of damage to soil, rock or structures, to ecosystems, or to the natural drainage of surface water (s 49(2)).

The application fee for a recharge licence is currently \$154.10 and an additional yearly administration fee of currently \$399.70 also applies. There is currently only one recharge licence listed on the *Water Resources Act* Register.

## **Water Resources Regulation 2007**

---

The *Water Resources Regulation* exempts certain activities from the requirements under the *Water Resources Act* to have a water access entitlement or a bore work licence. It enables the EPA to exempt certain activities from such requirements (or a requirement to have a licence to take water) if satisfied that they would lead to improved environmental outcomes or other public benefit.

The *Regulation* provides an exemption for:

- the requirement for a water access entitlement in relation to water to be taken from the Cotter water management area if a utility is transferring that water to the Googong water management area
- the requirement to hold a bore work licence for certain specified bore work, including excavation for buildings or swimming pools and trench work for the laying of gas, water or electricity pipes.

Some of the exemptions that the EPA may grant if satisfied that it would lead to improved environmental outcomes (or reduced demand on urban water supply) include:

- an exemption from the requirement for a water access entitlement (in the context of obtaining a licence to take water) where the taking is part of a treated sewage water reuse scheme, and certain criteria are satisfied (s 7)
- an exemption from a requirement to have a licence to take water if the water is to be used for certain purposes including testing a bore, or geothermal heating or cooling (s 6(1)(f)-(g)).

## **Enforcement of the Water Resources Act**

---

The EPA has extensive powers to investigate and enforce breaches of the *Water Resources Act*. For example, authorised officers of the EPA may, in certain circumstances, undertake enforcement activities such as entering premises, carrying out inspections, seizing things, and applying for and executing warrants (Part 10).

Further, the EPA has the power to take disciplinary action (which includes amending, suspending or cancelling a licence, allocation or entitlement) in certain circumstances, including where satisfied that a person has contravened a condition of the licence, allocation or entitlement (Part 6).

The EPA also has the power to issue orders to a person requiring them to do things such as stop taking water, remediate damage done to land or water sources, or modify or remove a water structure, provided certain criteria are satisfied (Part 9).

### ***Review of decisions in ACAT***

Schedule 1 to the *Water Resources Act* sets out decisions that, for the purposes of Part 11, are 'reviewable decisions' (s 94). These include decisions to refuse to issue various types of licences under the *Water Resources Act*, to impose conditions on these licences, to amend or refuse to approve transfer of a water access entitlement, and to take certain types of disciplinary action.

An entity mentioned in column 4 of Schedule 1, or any other person whose interests are affected by the decision, may apply to the ACT Civil and Administrative Tribunal (ACAT) for the review of such a decision (s 96 and s 22Q of the *ACT Civil and*

*Administrative Tribunal Act 2008 (ACAT Act)*). An application to ACAT for a review of the decision must be made within 28 days of the date of the decision (*ACAT Act*, s 10(2)) (see Chapter 12 in this Handbook for a further discussion of ACAT).

## **Other legislation and instruments**

---

### ***Planning and Development Act 2007 (ACT)***

The *Planning and Development Act 2007 (ACT)* (*'Planning Act'*) provides for the preparation of the Territory Plan (TP). The TP includes a Water Use and Catchment General Code (s 11.8 of the Plan) (see Chapter 2 in this Handbook for more information on ACT planning).

The code recognises the competing and often conflicting demands made on the territory's water resources. It protects the water and catchments of the ACT by specifying permitted water uses and environmental values for each catchment area. It identifies the purposes for which water may be used in different parts of the ACT and identifies the environmental values and the water quality and stream flow criteria to protect these uses and values.

There are three types of water use catchment categories which have been classified according to the predominant water use or environmental value within that catchment. These are:

- conservation
- water supply
- drainage and open space.

Secondary uses are also permitted for individual waterways, as long as they can be managed so that they are consistent with the primary environmental value.

The mechanisms for ensuring that the principles relating to each of these catchments are implemented will generally be one of the following:

- the identification of appropriate provisions in the relevant land use policies in the TP
- the issue of licences to discharge to streams or to divert or abstract water for use or to undertake activities on or in waters or
- the preparation of management plans by the relevant authority responsible for land management and the preparation of water-sharing plans by the relevant authority responsible for administration of the territory's water resources.

## ***Environment Protection Act 1997 (ACT)***

The *Environment Protection Act 1997 (ACT)* ('*Environment Protection Act*') is the ACT's main legislation for managing pollution, which includes water pollution. It requires that certain activities be licensed and subject to environmental standards. The *Environment Protection Act* also establishes the EPA (as discussed in greater detail above).

The *Environment Protection Act* defines 'pollutant' to mean certain listed things (which include a gas, liquid or solid, and an organism) that, when discharged, emitted, deposited or disturbed, may cause environmental harm (see the Dictionary to the *Environment Protection Act*). Water quality standards and the environmental values of a waterway are set out in the *Environment Protection Regulation 2005*, made under the *Environment Protection Act*.

In addition, the EPA makes Environmental Protection Policies (EPPs) that help to explain and apply the *Environment Protection Act*. Currently only one EPP relates specifically to water resources: the Water Quality Environment Protection Policy adopted in April 2008 (see Chapter 10 in this Handbook for more detail on environmental harm).

## ***Utilities Act 2000 (ACT) and Utilities (Technical Regulation) Act 2014 (ACT)***

The *Utilities Act 2000 (ACT)* ('*Utilities Act*') deals with the services and networks established to deliver water, electricity and gas throughout the ACT. The *Utilities (Technical Regulation) Act 2014 (ACT)* establishes a framework for technical regulation of utility networks. It is concerned, among other things, with maintaining the integrity of these networks and it establishes the offence of contaminating water in a water network (s 34). It also establishes the offence of introducing a prohibited substance or allowing a prohibited substance to be introduced into a water network or sewerage network (s 35). For both offences, the maximum penalty is 100 penalty units (currently \$15,000 for an individual and \$75,000 for a corporation), imprisonment for one year or both (s 35).

The *Utilities (Technical Regulation) Act 2014* also imposes dam safety requirements (Part 8).

The *Utilities (Water Conservation) Regulation 2006*, made under the *Utilities Act*, provides for ministerial approval of water conservation measures and temporary water restrictions developed by a utility as well as the imposition of penalties for contravention of such conservation measures and temporary water restrictions.

## ***Commissioner for Sustainability and the Environment Act 1993 (ACT)***

The *Commissioner for Sustainability and the Environment Act 1993 (ACT)* requires the Commissioner to prepare a State of the Environment Report for the ACT (s 19) on or before a date to be determined by the minister. The latest report was the 2011 ACT State of the Environment Report covering the period 1 July 2007 to 30 June 2011. It included a chapter on 'Land and water'. The report is available on the [commissioner's website](#) (see Contacts list at the back of this book). The next report will be the 2015 ACT State of the Environment Report and will cover the period 1 July 2011 to 30 June 2015. It will be delivered to the minister on 21 December 2015 (see Chapter 12 in this Handbook for more information on the Commissioner for Sustainability and the Environment).

### ***Catchment management***

In 2000 the Environment and Recreation network within TAMS, in consultation with the community, developed an *Integrated Catchment Management Framework for the ACT*, which recognises that 'integrated management of our resources is the most effective way of dealing with environmental issues'.

In 2015 the ACT and region catchment management coordination group was established under the *Water Resources Act 2007* (s 67A). The group has been created to advise the minister and assist in the coordination of catchment management in the ACT including streams that flow into and out of the ACT. The coordination group is comprised of members as appointed by the minister or prescribed by regulation and includes: the director-general of the Environment and Planning Directorate as well as the Health directorate, a representative of the National Capital Authority, a representative of the New South Wales government agency with responsibility for water catchment management in the Australian capital water catchment region and a representative of the community's interest in water catchment management (s 67E). The minister is required to consider any relevant advice given by the coordination group (s 67C). The coordination group is required to produce an annual report on the activities of the group (s 67D(1)) to be tabled by the minister in the Legislative Assembly along with a statement by the minister in response to the report (s 67D(3)). The ACT has three community based [volunteer catchment groups](#) (Southern ACT, Ginninderra and Molonglo Catchment Groups) that tackle issues such as water quality, environmental restoration, weeds and pests in ACT catchments.

These volunteer groups developed the Waterwatch ACT initiative that aims to encourage and support the community to take responsibility for monitoring and improving the water quality of local creeks, wetlands, lake, rivers and storm water drains. It involves local community groups such as Landcare, Park Care and catchment groups as well as residents, schools, utilities and landowners. Waterwatch ACT launched the Upper Murrumbidgee Waterwatch database, which currently contains over 9,000 volunteer collected water quality records spanning 15 years (see Contacts list at the back of this book).

The ACT Government has produced the ACT Water Strategy 2014-44: Striking the Balance (discussed below) under which new arrangements for catchment management in the ACT will be developed. The new arrangements aim to bring together the ACT Government, NSW state and local governments and land management agencies, technical experts and the community to strengthen current catchment management initiatives and integrate Waterwatch ACT activities into a broader monitoring program.

### ***ACT Water Strategy***

The ACT Water Strategy 2014-44: Striking the Balance sets out how the ACT Government will manage the Territory's water resources over the next 30 years to meet its urban and environmental needs and regional responsibilities. The strategy builds on the previous water strategy, Think Water, Act Water, and aims to deliver security of water supply, improved water quality and catchment health, and a 'water smart' community. A copy is available on the [Environment and Planning Directorate website](#) (see Contacts list at the back of this book).

The Strategy sets targets to maintain or improve water quality across all ACT sub-catchments, to live within the sustainable diversion limit set for the ACT under the *Water Act 2007* (Cth), and to increase community understanding and participation in managing and improving waterways in the ACT region.

The Strategy states that the condition of ACT catchments will continue to be reported through the State of the Environment Report, undertaken every 4 years by the Commissioner for Sustainability and the Environment and the annual ACT Water Report by the ACT Government Environment and Sustainable Development Directorate.

### ***Rain water tanks and greywater***

A [Rainwater Tank Guide](#) has been prepared by the ACT Government, which provides guidance on the installation of rainwater tanks in residential properties. Tanks can be installed and the water used for garden irrigation, pools, drinking water, household water and flushing toilets. The Guide states that a development application (and perhaps building approval) is not required if:

- the rainwater tank is forward of the front building line and buried
- the tank has a maximum capacity of 20,000 litres
- the tank does not affect a significant tree
- the tank is not located in a heritage listed area
- the tank is not more than 3 metres above natural ground level.

A development application (and perhaps building approval) is required if:

- the rainwater tank is forward of the front building line and not buried
- the tank is installed within 1.5 metres of a side boundary or rear boundary of the block
- other Class 10 structures are within 1.5 metres of the boundary (Class 10 structures include pools, garden sheds, gazebos, existing rainwater tanks).

ACT Health has issued a second edition of a pamphlet titled *Greywater use: guidelines for residential properties in Canberra* which was published in October 2007 and is available on its [website](#). The guidelines cover system design considerations, owner obligations, health and environmental implications and legislative requirements associated with the use of greywater (see Contacts list at the back of this book).