



CRC for
Water Sensitive Cities

Project A3.2 : Better Regulatory Frameworks
Final Report : Results of Legislative Stock-take for
Western Australia

June, 2014



An Australian Government Initiative



Project A3.2 : Better Regulatory Frameworks
Final Report: Results of Legislative Stock-take for Western Australia

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Table of Contents

Executive Summary	6
1. Introduction	8
2. Methodology	9
Template	9
Scope of instruments considered	9
WSC topics and issues.....	11
Assessment	12
3. Analysis of legislative stock-take results	13
Conservation and sustainable use of water resources	13
Environmental protection	19
Alternative water source projects.....	26
Access to and use of water resources.....	33
Supply of water	37
Economic evaluation and pricing of water	39
Risks to/associated with water sources	40
Risks to health.....	43
Flooding	45
Financial tools.....	47
Research and raising awareness	49
4. Overall assessment of legislative framework	51
Legislative instruments that could facilitate establishment of a Water Sensitive City	51
Legislative instruments that could hinder establishment of a Water Sensitive City	52
Regulatory tools.....	52
Role of regulatory entities in establishing a WSC	53
Current legislative review	53
5. Historical and practical context for assessment of legislative framework	53
APPENDIX	54



TABLE OF ABBREVIATIONS

ABBREVIATION	FULL REFERENCE
Conservation Act	Conservation and Land Management Act 1984
Conservation Regulations	Conservation and Land Management Regulations 2002
EPA	Environment Protection Authority
EP Act	Environmental Protection Act 1986
ERA	Economic Regulation Authority
ERA Act	Economic Regulation Authority Act 2003
Food Act	Food Act 2008
Health Act	Health Act 1911
Local Government Act	Local Government Act 1995
Metropolitan Drainage Act	Metropolitan Arterial Drainage Act 1982
Metropolitan Supply, Sewerage and Drainage Act	Metropolitan Water Supply, Sewerage and Drainage Act 1909
Plumbing Code	Plumbing Code of Australia
Rights in Water Act	Rights in Water and Irrigation Act 1914
Water Agencies Act	Water Agencies (Powers) Act 1984
Water Corporations Act	Water Corporations Act 1995
Water Services Act	Water Services Act 2012
Water Services Regulations	Water Services Regulations 2013
Waterways Conservation Act	Waterways Conservation Act 1976
Waterways Conservation Regulations	Waterways Conservation Regulations 1981
WELS Act	Water Efficiency Labelling and Standards Act 2005
WSC	Water Sensitive Cities

TABLE OF TABLES

TABLE	CONTENTS
1.	Explanation of WSC topics and issues
2.	Summary Table: Conservation and sustainable use of water resources
3.	Summary Table: Environmental protection
4.	Summary Table: Alternative water source projects
5.	Summary Table: Access to and use of water resources
6.	Summary Table: Supply of water
7.	Summary Table: Economic evaluation and pricing of water
8.	Summary Table: Risks to/associated with water resources
9.	Summary Table: Risks to health
10.	Summary Table: Flooding
11.	Summary Table: Financial tools
12.	Summary Table: Research and raising awareness

Executive Summary

This report contains the results of Maddocks' legislative stock-take for Western Australia to determine the extent to which legislative frameworks might facilitate or hinder the establishment of Water Sensitive Cities (WSC). The focus of the review that has been undertaken is on primary and selected secondary State legislation.

The stock-take reveals that there is a plethora of legislative instruments that could directly or indirectly affect the establishment of a WSC. Some of these instruments were assessed as potentially facilitating the establishment of a WSC, whereas others could hinder the establishment of a WSC.

Legislative instruments that could facilitate establishment of a Water Sensitive City

A number of the legislative instruments considered support certain important aspects of a WSC. In particular, the regulatory framework provides significant support for initiatives that seek to ensure conservation and sustainable use of water resources and environmental protection of water resources.

There is a wide range of tools that exist across the legislative framework that could be employed to ensure that these two important WSC objectives are achieved. Nevertheless, these tools are scattered throughout the regulatory framework rather than being consolidated and utilised in a co-ordinated and consistent manner. Accordingly, a more streamlined and coherent approach towards both of these issues across the entire regulatory framework could be beneficial.

Legislative instruments that could hinder establishment of a Water Sensitive City

The regulatory framework also contains some potential obstacles to the establishment of a WSC. Notably, the regulatory framework appears to provide limited support for alternative water sources, which will be critical to the achievement of a WSC.

While tools exist that could be employed to support alternative water source projects, these are limited when compared to regulatory obstacles that could hinder the uptake of such projects. Unclear property rights in relation to alternative water sources and associated infrastructure coupled with limitations on access to alternative water sources and the construction of alternative water source facilities are likely to deter uptake of alternative water source projects.

In addition, the water supply provisions contained in the regulatory framework do not appear to encompass and provide for the broad range of alternative water sources that could be supplied by water authorities.

The prescriptive process for setting prices for water by the Minister could impede a flexible approach to encourage investment in WSC initiatives, including alternative water source projects.

The regulatory framework also contains a range of provisions that are aimed at addressing risks arising from water resources, including risks to health and risks to the environment. These provisions could be particularly relevant for alternative water source projects that rely upon water sources for which the risks to the health and/or to the environment are relatively high. It is possible that the uptake of such projects could be deterred if the risks

associated with these projects are assessed to be too high under the regulatory framework compared to the benefits of alternative water source projects.

When considered as a whole, the various regulatory obstacles could deter the uptake of alternative water source projects.

Regulatory tools

Ideally, efforts should be made to operationalize the facilitative provisions before reform is sought of the provisions that might hinder the establishment of a WSC. In this regard, the review revealed that there is an array of instruments identified in the regulatory frameworks that could potentially be used to further WSC initiatives, including Ministerial directions, licences, conditions, by-laws and codes. These instruments could be further explored to determine whether there are any practical impediments to their use to promote WSC.

Role of regulatory entities in establishing a WSC

The stock-take also revealed a wide variety of regulatory entities that have a role to play in establishing WSC based on the legislative instruments considered, including Ministers, water service providers, councils, regulators (EPA, Building Commission, ERA), other statutory authorities (e.g. Water Resources Council) and planning authorities. The practical relationship and interaction between these entities across the various regulatory frameworks, particularly in the context of pursuing WSC initiatives, is not always clear and would benefit from further analysis and consideration.

Current legislative reviews

Finally, the regulatory framework for the water sector is currently the subject of a major reform process. A further legislative review of the regulatory landscape in Western Australia may be desirable once this reform process has been completed.

1. Introduction

- 1.1 CRC Project A3.2 – ‘Better Regulatory Frameworks for Water Sensitive Cities’ – involves an assessment of regulatory frameworks to determine the extent to which these frameworks facilitate or hinder the establishment of ‘Water Sensitive Cities’ (WSC).
- 1.2 The CRC for Water Sensitive Cities explains the notion of a WSC as follows:
- Water sensitive cities are resilient, liveable, productive and sustainable. They interact with the urban hydrological cycle in ways that: provide the water security essential for economic prosperity through efficient use of the diversity of water resources available; enhance and protect the health of watercourses and wetlands; mitigate flood risk and damage; and create public spaces that harvest, clean and recycle water. Its strategies and systems for water management contribute to biodiversity, carbon sequestration and reduction of urban heat island effects.¹
- 1.3 Maddocks has been commissioned to undertake an assessment of legislative frameworks in Victoria, Western Australia and Queensland to determine the extent to which these frameworks might facilitate or hinder the establishment of a WSC. The focus of the reviews to be undertaken by Maddocks is on primary and selected secondary State legislation.
- 1.4 Project A3.2 conceives of ‘regulation’ in broad terms as a practice that includes not only interventions accomplished through formal legal rules but also extends to interventions made through a range of other mechanisms. Accordingly, this stock-take – which focuses exclusively on legislation – lays the foundation for a separate review, which is being undertaken by other members of the Project Team, focused on mapping the most significant regulatory tools currently at play in the urban water management regulatory space in Perth, Western Australia. In turn, this legislative stock-take as well as the regulatory space mapping will provide the foundation for future case study research to be undertaken by the Project Team to explore in depth specific elements of the regulatory space that are particularly facilitating or hindering the adoption of new urban water technologies and a progressive evolution towards WSC in Western Australia.
- 1.5 This report contains the results of Maddocks’ legislative stock-take for Western Australia, which are contained in the Appendix.

¹ <http://watersensitivecities.org.au/what-is-a-water-sensitive-city/>.

2. Methodology

2.1 This section of the report explains the methodology applied in undertaking the legislative stock-take of Western Australia's regulatory regime.

Template

2.2 A template has been developed to capture the results of the regulatory stock-take for Western Australia.

2.3 The template includes the following:

2.3.1 Overview of legislative instruments considered as part of the stock-take;

2.3.2 Relevant provision(s) of the legislative instrument that may be relevant to the establishment of a WSC;

2.3.3 Specific topic or issue raised by the provision that is relevant to the establishment of a WSC; and

2.3.4 Assessment of the extent to which the provision can facilitate or hinder establishment of a WSC.

Scope of instruments considered

2.4 The legislative stock-take focuses on primary legislation. However, reference has also been made to subordinate instruments where they are intrinsically linked to the primary instruments that have been considered and where the subordinate instruments in question contain relevant provisions.

2.5 The stock-take involved consideration of a broad range of legislative instruments. Some instruments exclusively or predominantly deal with water resources whereas other instruments have more general application.

2.6 The legislative instruments that have been considered for the Western Australian regulatory stock-take and which contain relevant provisions are listed below:

Legislation

2.6.1 Building Act 2011

2.6.2 Conservation and Land Management Act 1984

2.6.3 Environmental Protection Act 1986

2.6.4 Economic Regulation Authority Act 2003

2.6.5 Food Act 2008

2.6.6 Health Act 1911

- 2.6.7 Local Government Act 1995
- 2.6.8 Metropolitan Arterial Drainage Act 1982
- 2.6.9 Metropolitan Water Supply, Sewerage, and Drainage Act 1909
- 2.6.10 Public Works Act 1902
- 2.6.11 Rights in Water and Irrigation Act 1914
- 2.6.12 Water Agencies (Powers) Act 1984
- 2.6.13 Water Corporations Act 1995
- 2.6.14 Water Efficiency Labelling And Standards Act 2006
- 2.6.15 Water Services Act 2012
- 2.6.16 Waterways Conservation Act 1976

Regulations

- 2.6.17 Building Regulations 2012
 - 2.6.18 Conservation and Land Management Regulations 2002
 - 2.6.19 Environmental Protection Regulations 1987
 - 2.6.20 Plumbers Licencing and Plumbing Standards Regulations 2000
 - 2.6.21 Rights in Water and Irrigation Regulations 2000
 - 2.6.22 Water Corporations (Transitional Provisions) Regulations 2013
 - 2.6.23 Water Services (Water Corporations Charges) Regulations 2013
 - 2.6.24 Waterways Conservation Regulations 1981
- 2.7 The legislative stock-take does not include consideration of non-binding instruments.
- 2.8 In addition, because the emphasis of the CRC is on water sensitive 'cities', regulatory instruments relevant to the management of water resources in rural areas have, for the most part, not been included in the stock-take. An example of an instrument that has been excluded from consideration for this reason is the Country Areas Water Supply Act 1947.
- 2.9 Finally, the legislative stock-take does not include consideration of planning instruments because this is being dealt with in CRC Project B5.1 – 'Statutory Planning for Water Sensitive Urban Design'.

WSC topics and issues

- 2.10 The stock-take includes identification of topics or issues that may be relevant to the establishment of a WSC, based on the CRC’s definition of a WSC in paragraph 1.2 above. Each regulatory provision considered in the stock-take was characterised as relating to one or more of these WSC topics or issues.
- 2.11 The complete list of topics and issues identified in the stock-take together with a brief explanation of the types of provisions that may be related to each is set out in Table 1 below.

Table 1. Explanation of WSC topics and issues

WSC TOPICS AND ISSUES	
Conservation and sustainable use of water resources	Provisions associated with the management of water to ensure that it is conserved and used in a way to help meet current and future demand.
Environmental protection	Provisions that deal with environmental protection of water resources and the broader physical context within which those resources are located.
Alternative water source projects	Provisions that address (directly or indirectly) alternative water source projects, including wastewater, recycled water, stormwater and managed aquifer recharge. These provisions may explicitly authorise alternative water source projects. Alternatively, they may include a power, obligation, requirement that may have an impact on the uptake of such projects.
Access to and use of water resources	Provisions that deal with rights of access to take and use water resources.
Supply of water	Provisions that relate to the supply of water (whether recycled or other) by water authorities.
Economic evaluation and pricing of water	Provisions that deal with the manner in which water is valued and priced for supply and delivery of water resources to end-users.
Risks to/associated with water resources	Provisions that deal with the identification and/or management of risks to water resources as well as risks posed by water resources, including water from alternative water source projects.
Risks to health	Provisions that deal with identification and response to risks to health associated with the supply of water, including recycled water and other alternative water



WSC TOPICS AND ISSUES	
	sources.
Flooding	Provisions that address mitigation and/or adaptation to flooding.
Financial tools	Provisions that could provide financial means to advance WSC initiatives and projects.
Research and raising awareness	Provisions that promote research and raising awareness regarding issues that could advance WSC.

Assessment

- 2.12 The primary objective of the legislative stock-take is to determine the extent to which the regulatory frameworks under consideration potentially facilitate or hinder the establishment of a WSC. Accordingly, the vision of a WSC (set out above in paragraph 1.2) has been used as a basis for assessing each provision under consideration. More specifically, the assessment has sought to determine the extent to which each provision could hinder or facilitate achievement of this vision.
- 2.13 However, the assessment needs to be qualified for the following main reasons:
- 2.13.1 The vision of a WSC, which has been used as the basis for the assessment, is abstract rather than concrete. Therefore, in some cases it was difficult to make a definitive assessment of whether or not a particular provision is capable of facilitating or hindering the establishment of a WSC as this could depend upon the how the notion of a WSC is realised in practice.
- 2.13.2 The vision of a WSC is multifaceted. Therefore, a particular provision may support some aspects of a WSC but not others.
- 2.13.3 The assessment of individual provisions has been based on the text of the relevant legislative instrument. It does not account for the historical evolution of that instrument. Nor does it consider the practical context in which the provisions may be applied, including the existence or absence of relevant infrastructure and the mindset of relevant decision-makers. These factors may convert a provision that is, on its face, facilitative into one that is a hindrance and vice versa.
- 2.14 In addition, the Appendix contains an assessment of individual provisions in isolation. An overall assessment has also been undertaken in relation to each WSC topic/issue, considering the regulatory framework as a whole. The results of the overall assessment are outlined in the following section of this report.

3. Analysis of legislative stock-take results

- 3.1 This section of the report sets out the results of the legislative stock-take for Western Australia. In particular, it determines the extent to which the regulatory framework effectively facilitates or hinders WSC when considered through the perspective of each WSC topic or issue identified above in paragraph 2.11.
- 3.2 For each WSC topic or issue, the report includes an identification of the key legislative instruments, decision-makers, regulatory tools and obstacles. It also includes an identification of any other related WSC topics or issues and an overall assessment of how the regulatory framework addresses the relevant topic or issue.

Conservation and sustainable use of water resources

- 3.3 The stock-take revealed a large number of provisions that related to the conservation and sustainable use of water resources in Western Australia. A summary of the main findings of the stock-take in relation to this issue is set out in Table 2 below.

Table 2. Summary Table: Conservation and sustainable use of water resources

SUMMARY TABLE: CONSERVATION AND SUSTAINABLE USE OF WATER RESOURCES	
Definition	- Provisions associated with the management of water to ensure that it is conserved and used in a way that helps to meet current and future demand.
Key regulatory instrument(s)	- Water Agencies Act - Water Services Act
Other relevant regulatory instruments	- Conservation Act - EP Act - ERA Act - Metropolitan Drainage Act - Rights in Water Act - Water Services Regulations - Water Corporations Act - Waterways Conservation Act - WELS Act
Key decision-makers	- Minister - ERA - Water Resources Council



SUMMARY TABLE: CONSERVATION AND SUSTAINABLE USE OF WATER RESOURCES

Main regulatory tools for WSC	<p><u>Tools available to the Minister</u></p> <ul style="list-style-type: none"> - Directions to water corporations (Water Corporations Act) - Regional management plans (Rights in Water Act) - Arterial Drainage Scheme (Metropolitan Drainage Act) - Water use restrictions (Water Services Regulations) - Codes of practice (Water Services Act) - By-laws (Water Agencies Act and Waterways Conservation Act) <p><u>Tools available to the ERA</u></p> <ul style="list-style-type: none"> - Licence conditions (Water Services Act) - Standards (Water Services Act) - Codes of practice (Water Services Act) <p><u>Tools available to other bodies</u></p> <ul style="list-style-type: none"> - Local laws – local government (Rights in Water Act and Waterways Conservation Act) - Conservation polices – Conservation Commission and Marine Authority (Conservation Act) - Management plans - Conservation Commission and Marine Authority (Conservation Act) - Enforcement of the WELS Scheme – WELS Regulator (WELS Act)
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> - Limited scope for conservation and sustainable use of water resources in water corporations' strategic development plans
Other related WSC topics/issues	<ul style="list-style-type: none"> - Environmental protection - Alternative water source projects
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> - Overall, the regulatory framework provides significant support for initiatives that seek to ensure conservation and sustainable use of water resources. This is evident from the fact that there is a wide range of tools that exist across the regulatory framework that could be employed to ensure the conservation and sustainable use of water resources. Nevertheless, the regulatory framework could benefit from a more streamlined and coherent approach towards this issue across the entire regulatory framework.

Legislative instruments

- 3.4 There are numerous legislative instruments that may have an impact on the conservation and sustainable use of water resources. Some of the instruments are specific to the conservation of water resources (e.g. Water Services Act and the Water Agencies Act), whereas others relate to conservation more generally (e.g. the EP Act).

Regulatory objectives

- 3.5 The objects of the Rights in Water Act include to provide for the "sustainable use and development [of water resources] to meet the needs of current and future users"² and "the efficient use of water resources".³ This reflects the importance of conservation and sustainable use of water resources.
- 3.6 The objects and principles clause of the EP Act – which applies to the environment generally, including water resources – refers to a range of principles, including the precautionary principle, the principle of intergenerational equity and the principle of conservation of biological diversity and ecological integrity.⁴ These principles are broad enough to support measures to ensure conservation and sustainable use of water resources.

Key decision-makers

- 3.7 The Minister is a key decision-maker in relation to conservation and sustainable use of water resources. Under the Water Agencies Act, the Minister has general functions including "conserving, protecting and managing water resources",⁵ "promoting the efficient use of water resources"⁶ and "promoting the efficient provision of water resources"⁷. In addition, the Minister may carry out works for purposes "that are related to the conservation, protection or management of water resources".⁸ Moreover, under the Waterways Conservation Act, the Minister has overall responsibility for the conservation and management of certain waters and associated land and environment.⁹
- 3.8 The ERA plays an important role in administering the licensing regime pursuant to the Water Services Act.¹⁰ As discussed in more detail below, the ERA could use

² s. 4(1)(a)(i) Rights in Water Act.

³ s. 4(1)(b) Rights in Water Act.

⁴ s. 4A EP Act.

⁵ s. 9(1)(a) Water Agencies Act.

⁶ s. 9(1)(d) Water Agencies Act.

⁷ s. 9(1)(e) Water Agencies Act.

⁸ s. 82 Water Agencies Act.

⁹ s. 11 Waterways Conservation Act 1976.

¹⁰ s. 207 Water Services Act.



licence conditions on providers of water services to help ensure conservation and sustainable use of water resources.¹¹

- 3.9 Under the Water Agencies Act, the Water Resources Council has functions including "advising the Minister in relation to the management of water resources generally and on any matter that the Minister refers to it for advice".¹² While the Water Resources Council does not have any decision-making power in relation to the management of water resources, it could play an important role in advising the Minister on matters related to the conservation and sustainable use of water resources.

Regulatory tools

- 3.10 The regulatory framework contains a range of tools available to a variety of bodies that are either explicitly designed to ensure conservation and sustainable use of water resources or could be employed to do so.

Tools available to the Minister:

- Directions to water corporations: Under the Water Corporations Act, the Minister may give directions to water corporations in relation to the performance of their functions.¹³ It is possible that directions could be used to require water corporations to pursue WSC objectives and initiatives, including conservation and sustainable use of water resources.
- Regional Management Plans: Under the Rights in Water Act, a regional management plan must contain guidance regarding the management of water resources within a particular region.¹⁴ Similar provisions exist in relation to sub-regional management plans¹⁵ and local area management plans.¹⁶ A regional management plan could be used to further important WSC objectives, including conservation and sustainable use of water resources.
- Arterial Drainage Scheme: Under the Metropolitan Drainage Act, the Minister is responsible for the establishment of an "Arterial Drainage Scheme", which deals with a range of matters, including planning, managing and improving drainage services.¹⁷ In planning and implementing the Scheme, the Minister must consult with a range of bodies in relation to a variety of issues, including conservation.¹⁸

¹¹ s. 12(1)(q) Water Services Act.

¹² s. 18(1)(a) Water Agencies Act.

¹³ s. 64 Water Corporations Act.

¹⁴ s. 26GW(2) Rights in Water Act.

¹⁵ s. 26GX Rights in Water Act.

¹⁶ s. 26GY Rights in Water Act.

¹⁷ s. 98 Metropolitan Drainage Act.

¹⁸ s. 98(4) Metropolitan Drainage Act.

- Water use restrictions: Under the Water Services Regulations, the Minister may impose water use restrictions in relation to an area of the State.¹⁹ Water use restrictions could help to ensure the conservation and sustainable use of water resources.
- Codes of practice: Under the Water Services Act, the Minister has power to make codes of practice.²⁰ A code of practice may deal with a variety of matters, including conservation and sustainable use of water resources.²¹ As yet, the Minister's power to make a code of practice has not been employed for this purpose.²²
- By-laws: Under the Water Agencies Act, the Minister has power to make by-laws in relation to a range of matters including "protection of ... water resources"²³ and to "prohibit, impose restrictions on or otherwise regulate the use of water".²⁴ The Minister also has the power to make by-laws for the conservation of waters under the Waterways Conservation Act.²⁵

Tools available to the ERA:

- Licensing: The Water Services Act establishes a licensing regime for providers of water services, which is administered by the ERA.²⁶ The licensing regime – and, in particular, conditions attached to licences – could be used to ensure pursuit of conservation and sustainable use of water resources. The Water Services Act specifically states that a licensee may be subject to conditions requiring development and implementation of programmes for the conservation and efficient use of water, including in relation to the use of water by customers of the licensee.²⁷
- Standards and codes of practice: Under the licensing regime, the ERA may also impose conditions requiring compliance with specified standards or

¹⁹ r. 80 Water Services Regulations.

²⁰ s. 26 Water Services Act.

²¹ ss. 26(2) and 12(1)(q) Water Services Act.

²² At present, only one code has been made under the Water Services Act – namely, the Water Services Customer Code Of Conduct (Customer Service Standards) 2013, which establishes a customer protection framework that prescribes the minimum service standards and requirements for water service providers.

²³ s. 34(3)(c) Water Agencies Act.

²⁴ s. 34(3)(fa) Water Agencies Act.

²⁵ ss. 11 and 54 Waterways Conservation Act.

²⁶ s. 207 Water Services Act.

²⁷ s. 12(1)(q) Water Services Act.

codes of practice.²⁸ These standards and codes of practice could include requirements relating to conservation and sustainable use of water resources.

Tools available to other bodies

- Local laws: Local by-laws made under the Rights in Water Act could conceivably be used to ensure conservation and sustainable use of water resources.²⁹ Similarly, councils are empowered to make local laws for the conservation of waters under the Waterways Conservation Act.³⁰
- Conservation Policies: The Conservation Commission is established under the Conservation Act. Under that Act, the Conservation Commission is empowered to develop policies for the preservation of the natural environment.³¹ Similar policies may be developed by the Marine Authority in relation to natural marine and estuarine environments.³² Such policies may help to ensure conservation and sustainable use of water resources.
- Management Plans: The Conservation Commission and the Marine Authority also have the power to prepare management plans for land and waters vested in or under their respective care, control and management.³³ These plans could also help to ensure conservation and sustainable use of water resources.
- Enforcement of the WELS Scheme: The Water Efficiency Labelling and Standards Scheme (WELS Scheme) is a national scheme, which provides for water efficiency labelling and to establish water efficiency standards. Under the WELS Act, enforcement action can be taken by the State regulator to ensure that these requirements – which help to conserve water supplies by reducing water consumption – are complied with.

Regulatory obstacles

- 3.11 Under the Water Corporations Act, water corporations must perform their functions in accordance with their respective strategic development plans.³⁴ The matters to be included in these plans are specified in the Act and primarily focus on

²⁸ s. 12(1)(c) Water Services Act. The standards and codes of practice, which may be the subject of a licence condition under s. 12(1)(c) Water Services Act, are distinct from codes of practice made by the Minister under s. 26 Water Services Act, with which all licensees must comply.

²⁹ s. 26L Rights in Water Act.

³⁰ s. 56 Waterways Conservation Act.

³¹ s. 19(1)(c) Conservation Act.

³² s. 26B(1)(b) Conservation Act.

³³ ss. 19(1)(f) and 26B(1)(e) respectively of the Conservation Act.

³⁴ s. 28 Water Corporations Act.

economic, financial and economic considerations.³⁵ This focus could limit the use of these strategic development plans to help further WSC objectives and initiatives, including the conservation and sustainable use of water resources.

3.12 In turn, the implicit restrictions on the contents of strategic plans could limit the use of statements of corporate intent to display support for WSC objectives and initiatives. Statements of corporate intent must be consistent with strategic development plans.³⁶

Environmental protection

3.13 The stock-take revealed a large number of provisions that related to the environmental protection of water resources in Western Australia. Many of these provisions overlap with provisions identified as being capable of supporting conservation and sustainable use of water resources. A summary of the main findings of the stock-take in relation to this issue is set out in Table 3 below.

Table 3. Summary Table: Environmental protection

SUMMARY TABLE: ENVIRONMENTAL PROTECTION	
Definition	- Provisions that deal with environmental protection of water resources and the broader physical context within which those resources are located.
Main regulatory instrument(s)	- EP Act - Waterways Conservation Act - Waterways Conservation Regulations
Other relevant regulatory instruments	- Conservation Act - Conservation Regulations - Metropolitan Drainage Act - Metropolitan Supply, Sewerage and Drainage Act - Rights in Water Act - Water Agencies Act

³⁵ s. 43 Water Corporations Act.

³⁶ s. 52(1) Water Corporations Act.



SUMMARY TABLE: ENVIRONMENTAL PROTECTION	
	<ul style="list-style-type: none"> - Water Corporations Act - Water Services Act - Waterways Conservation Act - Waterways Conservation Regulations
Key decision-makers	<ul style="list-style-type: none"> - EPA - Minister
Main regulatory tools for WSC	<p><u>Tools available to the Minister</u></p> <ul style="list-style-type: none"> - Directions to water corporations (Water Corporations Act) - Regional management plans (Rights in Water Act) - Arterial Drainage Scheme (Metropolitan Drainage Act) - Codes of practice (Water Services Act) - By-laws (Water Agencies Act, Metropolitan Supply, Sewerage and Drainage Act and Waterways Conservation Act) <p><u>Tools available to the EPA</u></p> <ul style="list-style-type: none"> - Licence conditions (EP Act) - Environmental Protection Policies (EP Act) - State Environmental Policies (EP Act) - Enforcement of environmental protection legislation (EP Act) <p><u>Tools available to other bodies</u></p> <ul style="list-style-type: none"> - Licence conditions – ERA (Water Services Act) - Local laws – Local government (Rights in Water Act and Waterways Conservation Act) - Conservation polices – Conservation Commission and Marine Authority (Conservation Act) - Management plans – Conservation Commission and Marine Authority (Conservation Act) - Enforcement of conservation legislation – Relevant Government Department of Environment (Conservation Regulations and Waterways Conservation Regulations)

SUMMARY TABLE: ENVIRONMENTAL PROTECTION	
Main regulatory obstacles to WSC	- Limited scope for environmental protection in water corporations' strategic development plans
Other related WSC topics/issues	- Conservation and sustainable use of water resources
Overall assessment of relevant aspects of regulatory regime	- Overall, the regulatory framework provides significant support for initiatives that seek to ensure environmental protection of water resources. This is evident from the fact that there is a wide range of tools in a variety of different instruments that exist across the regulatory framework that could be employed to achieve this objective. Nevertheless, the regulatory framework could benefit from a more streamlined and coherent approach towards this issue across the entire regulatory framework.

Legislative instruments

- 3.14 There is a variety of legislative instruments that contain provisions that may be employed to protect the environment, including water resources. The most important instrument is the EP Act. However, there are also tools available to a range of bodies to help protect the environment under water-specific legislation, including (but not limited to) the Water Corporations Act, the Rights in Water Act, the Water Services Act and the Water Agencies Act.

Regulatory objectives

- 3.15 The objects of the Rights in Water Act include to provide for the "protection of [water] ecosystems and the environment in which water resources are situated".³⁷ This reflects the importance of environmental protection of water resources.
- 3.16 The objects and principles clause of the EP Act – which applies to the environment generally, including water resources – refers to a range of principles, including the precautionary principle, the principle of intergenerational equity and the principle of conservation of biological diversity and ecological integrity.³⁸ These principles are broad enough to support measures to environmental protection of water resources.

³⁷ s. 4(1)(a)(ii) Rights in Water Act.

³⁸ s. 4A EP Act.

Key decision-makers

- 3.17 The EPA has broad functions related to protection of the environment, including water sources.³⁹ The EPA also has a variety of tools available to it (discussed in more detail below), which can be used to ensure environmental protection of water resources.
- 3.18 The Minister is also an important decision-maker in relation to the environmental protection of water resources. Under the Water Agencies Act, the Minister has general functions, including "conserving, protecting and managing water resources".⁴⁰ In addition, the Minister may carry out works for purposes "that are related to the conservation, protection or management of water resources".⁴¹ Under the Waterways Conservation Act, the Minister has overall responsibility for the conservation and management of certain waters and associated land, including "the preservation and enhancement of the quality of the environment and amenity of those waters and that land".⁴² Moreover, under the Metropolitan Supply, Sewerage and Drainage Act, the Minister has "all the powers and authority of a local government" for "preventing the pollution of water" within certain areas.⁴³

Regulatory tools

Tools available to the Minister:

- Directions to water corporations: Under the Water Corporations Act, the Minister may give directions to water corporations in relation to the performance of their functions.⁴⁴ It is possible that directions could be used to require water corporations to pursue WSC objectives and initiatives, including environmental protection of water resources.
- Regional Management Plans: Under the Rights in Water Act, a regional management plan must contain guidance regarding the management of water resources within a particular region.⁴⁵ Similar provisions exist in relation to sub-regional management plans⁴⁶ and local area management plans.⁴⁷ A regional management plan could be used to further important WSC objectives, including environmental protection of water resources.

³⁹ s. 16(b) EP Act.

⁴⁰ s. 9(1)(a) Water Agencies Act.

⁴¹ s. 82 Water Agencies Act.

⁴² s. 11 Waterways Conservation Act 1976.

⁴³ s. 17 Metropolitan Supply, Sewerage and Drainage Act.

⁴⁴ s. 64 Water Corporations Act.

⁴⁵ s. 26GW(2) Rights in Water Act.

⁴⁶ s. 26GX Rights in Water Act.

⁴⁷ s. 26GY Rights in Water Act.

- Arterial Drainage Scheme: Under the Metropolitan Drainage Act, the Minister is responsible for the establishment of an "Arterial Drainage Scheme", which deals with a range of matters, including planning, managing and improving drainage services.⁴⁸ In planning and implementing the Scheme, the Minister must consult with a range of bodies in relation to a variety of issues, including environmental protection.⁴⁹
- Codes of practice: Under the Water Services Act, the Minister has power to make codes of practice.⁵⁰ A code of practice may deal with a variety of matters.⁵¹ Environmental matters are not explicitly referred to in the list of matters with which a code of practice may deal.⁵² Nevertheless, arguably, "performance standards to be met by the licensee in the provision of a water service"⁵³ could include environmental protection standards. As yet, the Minister's power to make a code of practice has not been employed for this purpose.⁵⁴
- By-laws: Under the Water Agencies Act, the Minister has power to make by-laws in relation to a range of matters, including "protection of ... water resources",⁵⁵ to "regulate or prohibit the deposit of anything likely to cause fouling or contamination"⁵⁶ and to "regulate the flow or require the disinfection, cleansing or other treatment of wastewater or other substances, discharged into or otherwise entering any works, reservoir, water services or watercourse".⁵⁷ The Minister also has power under the Metropolitan Supply, Sewerage and Drainage Act to make by-laws to prevent pollution of water and for the protection of water resources, including underground water, in certain areas.⁵⁸ The Minister also has the power to make by-laws for the environmental protection of waters under the Waterways Conservation Act.⁵⁹

⁴⁸ s. 98 Metropolitan Drainage Act.

⁴⁹ s. 98(4) Metropolitan Drainage Act.

⁵⁰ s. 26 Water Services Act.

⁵¹ ss. 26(2) and 12(1) Water Services Act.

⁵² ss. 26(2) and 12(1) Water Services Act.

⁵³ s. 12(1)(a) Water Services Act.

⁵⁴ At present, only one code has been made under the Water Services Act – namely, the Water Services Customer Code Of Conduct (Customer Service Standards) 2013, which establishes a customer protection framework that prescribes the minimum service standards and requirements for water service providers.

⁵⁵ s. 34(3)(c) Water Agencies Act.

⁵⁶ s. 34(3)(d) Water Agencies Act.

⁵⁷ s. 34(3)(g) Water Agencies Act.

⁵⁸ s. 57B Metropolitan Supply, Sewerage and Drainage Act.

⁵⁹ ss. 11 and 54 Waterways Conservation Act.

Tools available to the EPA:

- Licensing: A licensing process is established under the EP Act for "prescribed premises" to help limit the risk of environmental damage arising from these premises. The licensing process for prescribed premises and, particularly, the imposition of conditions on works approvals,⁶⁰ could be used to help ensure environmental protection of water resources.
- Environmental Protection Policies (EPPs): Under the EP Act, the EPA's functions include the development of environmental protection policies,⁶¹ which are statutory policies that have legislative force. A limited number of environment protection policies have been issued by the EPA to date that deal with the protection of water resources.⁶²
- State Environmental Policies (SEPs): Under the EP Act, the EPA's functions include the development of state environmental policies,⁶³ which are non-statutory policies. A SEP is potentially more flexible than an EPP as an instrument to protect the environment because of its non-statutory status. A SEP has not yet been issued that exclusively or predominantly focuses on the protection of water sources.
- Enforcement of environmental protection legislation: The EP Act contains a range of prohibitions that are aimed at protection the environment, including water resources.⁶⁴ Enforcement of these prohibitions will help to promote environmental protection of water resources.

Tools available to other bodies

- Licensing: The Water Services Act establishes a licensing regime for providers of water services, which is administered by the ERA.⁶⁵ The licensing regime – and, in particular, conditions attached to licences – could be used to ensure environmental protection of water resources.⁶⁶ Notably, in deciding whether or not to issue or renew a licence, the ERA is required to assess whether issuance or renewal would be contrary to the "public interest". In making this assessment, the ERA must consider "environmental considerations, including the value of ecologically sustainable development".⁶⁷

⁶⁰ ss. 58, 62 and 62A EP Act.

⁶¹ s. 16(1) EP Act.

⁶² Environment Protection Policies have been issued for South West Agriculture Zone Wetlands, Swan Coastal Plain Lakes, Gngangara Mound Crown Land, Peel Inlet – Harvey Estuary.

⁶³ s. 17(3)(d) EP Act.

⁶⁴ See, for example, ss. 49, 49A, 50, 50A and 50B EP Act.

⁶⁵ s. 207 Water Services Act.

⁶⁶ s. 12(1) Water Services Act.

⁶⁷ s. 46(a) Water Services Act.

- Local laws: Local by-laws made under the Rights in Water Act could conceivably be used to ensure environmental protection of water resources.⁶⁸ Similarly, councils are empowered to make local laws for the conservation of waters under the Waterways Conservation Act.⁶⁹
- Conservation Policies: The Conservation Commission is established under the Conservation Act. Under that Act, the Conservation Commission is empowered to develop policies for the preservation of the natural environment.⁷⁰ Similar policies may be developed by the Marine Authority in relation to natural marine and estuarine environments.⁷¹ Such policies may help to ensure environmental protection of water resources.
- Management Plans: The Conservation Commission and the Marine Authority also have the power to prepare management plans for land and waters vested in or under their respective care, control and management.⁷² These plans could also help to ensure conservation and sustainable use of water resources.
- Enforcement of conservation legislation: The Conservation Regulations and the Waterways Conservation Regulations contain prohibitions regarding pollution of certain waters.⁷³ Enforcement of these regulations can help to promote environmental protection of water resources.

Regulatory obstacles

- 3.19 Under the Water Corporations Act, water corporations must perform their functions in accordance with their respective strategic development plans.⁷⁴ The matters to be included in these plans are specified in the Act and primarily focus on economic, financial and economic considerations.⁷⁵ This focus could limit the use of these strategic development plans to help further WSC objectives and initiatives, including environmental protection of water resources.
- 3.20 In turn, the implicit restrictions on the contents of strategic plans could limit the use of statements of corporate intent to display support for WSC objectives and initiatives. Statements of corporate intent must be consistent with strategic development plans.⁷⁶

⁶⁸ s. 26L Rights in Water Act.

⁶⁹ s. 56 Waterways Conservation Act.

⁷⁰ s. 19(1)(c) Conservation Act.

⁷¹ s. 26B(1)(b) Conservation Act.

⁷² ss. 19(1)(f) and 26B(1)(b) respectively of the Conservation Act.

⁷³ r. 23 Conservation Regulations and r. 8 Waterways Conservation Regulations respectively.

⁷⁴ s. 28 Water Corporations Act.

⁷⁵ s. 43 Water Corporations Act.

⁷⁶ s. 52(1) Water Corporations Act.

Alternative water source projects

- 3.21 Unlike the WSC topics and issues that have been discussed earlier in this report, alternative water source projects are not typically dealt with explicitly in the various instruments that comprise the regulatory framework. Therefore, for the most part, the assessment of the regulatory framework in relation to alternative water source projects has involved consideration of whether or not particular regulatory provisions might facilitate or hinder the uptake of these projects, even though the regulatory provisions in question may have been designed for other objectives. A summary of the main findings of the stock-take in relation to this issue is set out in Table 4 below.

Table 4. Summary Table: Alternative water source projects

SUMMARY TABLE: ALTERNATIVE WATER SOURCE PROJECTS	
Definition	- Provisions that address (directly or indirectly) alternative water source projects, including wastewater, recycled water, stormwater and managed aquifer recharge. These provisions may explicitly authorise alternative water source projects. Alternatively, they may include a power, obligation, requirement that may have an impact on the uptake of such projects.
Main regulatory instrument(s)	- Water Services Act
Other relevant regulatory instruments	- Food Act - Health Act - Local Government Act - Metropolitan Drainage Act - Plumbing Code ⁷⁷ - Rights in Water Act - Water Agencies Act

⁷⁷ The Plumbing Code has not yet been formally adopted in Western Australia although there has been notional agreement to apply it in the State.

SUMMARY TABLE: ALTERNATIVE WATER SOURCE PROJECTS	
Key decision-makers	<ul style="list-style-type: none"> - Minister - Local government
Main regulatory tools for WSC	<p><u>Tools available to the Minister</u></p> <ul style="list-style-type: none"> - Arterial Drainage Scheme (Metropolitan Drainage Act) - Codes of practice (Water Services Act) <p><u>Tools available to water service licensees</u></p> <ul style="list-style-type: none"> - Water service works (Water Services Act) - Infrastructure contributions (Water Services Act) - Fees and charges (Water Services Act) <p><u>Tools available to other bodies</u></p> <ul style="list-style-type: none"> - Licensing - ERA (Water Services Act)
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> - Limits on water service licensees (Water Services Act) - Limits on access to alternative water sources (Water Services Act and Rights in Water Act). - Limitations on construction of alternative water source facilities (Water Services Act and Plumbing Code)⁷⁸ - Unclear property rights in relation alternative water sources and associated infrastructure (Water Services Act, Rights in Water Act, Metropolitan Drainage Act) - Risks to health are dominant (Food Act and Health Act)
Other related WSC topics/issues	<ul style="list-style-type: none"> - Access to and use of water resources - Supply of water - Risks to health
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> - Overall, the regulatory framework appears to provide limited support for alternative water source projects. While tools exist that could be employed to support alternative water source projects, these are limited

⁷⁸ The Plumbing Code has not yet been formally adopted in Western Australia although there has been notional agreement to apply it in the State.

SUMMARY TABLE: ALTERNATIVE WATER SOURCE PROJECTS

	<p>when compared to regulatory obstacles that could hinder the uptake of such projects. Unclear property rights in relation to alternative water sources and associated infrastructure coupled with limitations on access to alternative water sources and the construction of alternative water source facilities are likely to deter uptake of alternative water source projects.</p>
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Legislative instruments

- 3.22 The main regulatory instrument of relevance to alternative water source projects is the Water Services Act. However, the Rights in Water Act and the Metropolitan Drainage Act are also important. The Plumbing Code,⁷⁹ Food Act and Health Act also potentially have a role to play.

Regulatory objectives

- 3.23 The legislative instruments considered do not provide strong support for alternative water source projects through their respective objects clauses.
- 3.24 Nevertheless, the objects clause of the Rights in Water Act notes that the Act provides for the management of water resources including "their sustainable use and development to meet the needs of current and future users".⁸⁰ This reference could be read as supporting alternative water sources to address water needs of consumers now and in the future.

Key decision-makers

- 3.25 Under the Water Agencies Act, the Minister has broad powers regarding the management of water resources. The Act specifically requires the Minister to have regard to water recycling when planning the development of new water resources.⁸¹ This reference to water recycling envisages the establishment of alternative water sources, which could be facilitated by the Minister.
- 3.26 While local government is unlikely to be a dominant player in relation to alternative water source projects, it is notable that the Local Government Act describes councils' role in broad terms. The Act states that "in carrying out its functions, a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental

⁷⁹ The Plumbing Code has not yet been formally adopted in Western Australia although there has been notional agreement to apply it in the State.

⁸⁰ s. 4 Rights in Water Act.

⁸¹ s. 9 Water Agencies Act.

protection, social advancement and economic prosperity".⁸² The reference to future generations could support alternative water resource projects, which help to alleviate the burden on existing water sources.

Regulatory tools

3.27 There is a range of tools contained in the regulatory framework that could help facilitate the uptake of alternative water source projects:

Tools available to the Minister:

- Codes of practice: Under the Water Services Act, the Minister has power to make codes of practice.⁸³ A code of practice may deal with a variety of matters, including "planning for the future provision of water services".⁸⁴ Accordingly, codes of practice could conceivably be developed to encourage the development of alternative water sources. As yet, the Minister's power to make a code of practice has not been employed for this purpose.⁸⁵
- Controlled drainage assets: The Water Services Act provides for the Minister to declare a drainage asset to be controlled by a water service licensee.⁸⁶ The Act anticipates use of water resources contained in drainage assets (i.e. stormwater) in the context of water resource management plans. This implies a recognition that water in drains may be considered as a water resource.
- Arterial Drainage Scheme: Under the Metropolitan Drainage Act, the Minister is responsible for the establishment of an "Arterial Drainage Scheme", which deals with a range of matters, including planning, managing and improving drainage services.⁸⁷ The Arterial Drainage Scheme may make provision for "utilising the potential of the Scheme to conserve water, to re-charge aquifers, or in any other manner, in the best interests of the community",⁸⁸ which anticipates managed aquifer recharge projects as a component of the Arterial Drainage Scheme.

Tools available to water service licensees:

⁸² s. 1.3(2) Local Government Act.

⁸³ s. 26 Water Services Act.

⁸⁴ ss. 26(2) and 12(1)(p) Water Services Act.

⁸⁵ At present, only one code has been made under the Water Services Act – namely, the Water Services Customer Code Of Conduct (Customer Service Standards) 2013, which establishes a customer protection framework that prescribes the minimum service standards and requirements for water service providers.

⁸⁶ s. 109 Water Services Act.

⁸⁷ s. 98 Metropolitan Drainage Act.

⁸⁸ s. 98(3) Metropolitan Drainage Act.

- Water service works: The Water Services Act vests broad power in water service licensees to provide "water service works", which is defined to include "water supply works, sewerage works, drainage assets and irrigation works".⁸⁹ In theory, this section could potentially authorise alternative water source projects to be undertaken by the licensee and/or at the request of a third party.
- Infrastructure contributions: A water service provider may require payment of an "infrastructure contribution" from land owners or project proponents.⁹⁰ It is possible that infrastructure contributions could be used as a financial tool to help finance alternative water source projects.
- Fees and charges: The Water Services Act vests a broad power in water service licensees to impose fees and charges for water services.⁹¹ This power could theoretically be used to collect revenue to fund alternative water source projects.

Tools available to other bodies

- Licensing: The Water Services Act establishes a licensing regime for providers of water services, which is administered by the ERA.⁹² The licensing regime covers "water supply services", the definition of which is broad enough to include the supply of alternative water sources for potable and non-potable uses.⁹³ In addition, a licensee may be subject to conditions requiring planning for "future water sources",⁹⁴ which could include alternative water sources. Therefore, the licensing regime could theoretically be used to promote some alternative water source projects.

⁸⁹ s. 136 Water Services Act.

⁹⁰ s. 83(b) Water Services Act. Infrastructure contributions must be determined in accordance with guidelines made under the Water Services Act. Guidelines for infrastructure contributions made under section 85(3) indicate that the Water Corporation, as licensee under the Act, may require the proponent of "water supply, sewerage or drainage" – which could include alternative water source projects – to pay an infrastructure contribution where the Water Corporation is satisfied that: there will be, or has been, an increase in demand for that type of water service; and water service works are or will be required to meet the demand, either at the time of the increased demand or in the future. This language could be read as supporting the levying of infrastructure contributions for alternative water source projects undertaken/approved by the Water Corporation. However, the Guidelines for infrastructure contributions made under section 85(3) for licensees other than the Water Corporation do not contain the same language.

⁹¹ s. 123 Water Services Act.

⁹² s. 207 Water Services Act.

⁹³ s. 8(2) Water Services Act. "Water supply service" is defined in s. 3(1) of the Water Services Act as a service principally constituted by the supply of water (whether or not potable) by means of reticulated conduits and other appropriate water supply works.

⁹⁴ s. 12(1) Water Services Act.

Regulatory obstacles

3.28 There are also a number of provisions in the regulatory framework that could be an impediment to the uptake of alternative water source projects:

- Limits on water service licensees:
 - The licensing regime for providers of water services established under the Water Services Act covers "sewerage services". However, the definition of this term does not appear to envisage recycling and re-use of sewage. Therefore, it is unclear whether water service providers are authorised to be involved in the recycling and re-use of sewage.⁹⁵
 - Moreover, in deciding whether or not to grant a licence to a water service provider, the ERA is required under the Water Services Act to determine whether or not something would be contrary to the "public interest".⁹⁶ The factors that the ERA must consider in this regard include "public health considerations relating to the provision of reliable water services".⁹⁷ This requirement could have an adverse impact on the uptake of alternative water source projects, particularly where risks to health are considered to be potentially significant.
- Limits on access to alternative water sources:
 - Under the Water Services Act, the taking of water or wastewater from the water service works of a licensee may be prohibited without the approval of the licensee.⁹⁸ Limitations imposed by licensees on third parties regarding access to water or wastewater for alternative water source projects (e.g. sewer mining) may adversely affect the uptake of these projects.
 - Limitations on taking water from underground water sources also exist under the Rights in Water Act.⁹⁹ These limitations could effectively limit access by third parties to alternative water sources (particularly, groundwater).
- Limitations on construction of alternative water source facilities:
 - Under the Water Services Act, the construction of alternative water source facilities that are connected or proximate to water

⁹⁵ s. 8(2) Water Services Act. "Sewerage service" is defined in s. 3(1) as a service principally constituted by the collection, treatment and disposal of wastewater by means of reticulated conduits and other appropriate sewerage works.

⁹⁶ s. 46 Water Services Act and s. 26 ERA Act.

⁹⁷ s. 46(b) Water Services Act.

⁹⁸ s. 89(1)(a) Water Services Act.

⁹⁹ s. 5C Rights in Water Act.

service works of a licensee may be prohibited without the approval of the licensee.¹⁰⁰ Limitations imposed by licensees on third parties regarding construction of alternative water source facilities that are connected or proximate to water service works of a licensee may adversely affect the uptake of these projects.

- Similar limitations could exist in relation fittings, fixtures or pipes that are connected to water service works of a licensee.¹⁰¹ Such fittings, fixtures or pipes may be used to supply alternative water sources, which may pose risks to health. Owners and occupiers are required to manage these risks, which may deter uptake of alternative water source projects.
 - The Plumbing Code of Australia¹⁰² refers in both the performance requirements and the deemed-to-satisfy provisions to a range of risks associated with non-drinking water installations, roof drainage installations, stormwater drainage installations and on-site wastewater management system installations. These risks must be taken into account in the context of the design and construction of these installations.¹⁰³ This requirement could deter the uptake of alternative water source projects, particularly those involving recycled water or wastewater.
- Unclear property rights in relation to alternative water sources and associated infrastructure:
- Under the Rights in Water Act, the Crown is entitled to determine rights to take and use water resources.¹⁰⁴ Depending upon how this right is exercised by the Crown and the mechanisms established to enable access to water resources, the ability of third parties to take and use water for alternative water source projects could be limited.
 - The Water Services Act recognises that there may be pre-existing rights in relation to water resources contained in drainage assets (i.e. stormwater).¹⁰⁵ While the Act provides for the Minister to declare that such assets are controlled by a water service licensee, the Act does not clearly articulate how possible conflicts regarding alternative water sources are to be dealt with.

¹⁰⁰ s. 90(1)(b) Water Services Act.

¹⁰¹ s. 92(1) Water Services Act. See also ss. 93, 94 and 102 Water Services Act.

¹⁰² The Plumbing Code has not yet been formally adopted in Western Australia although there has been notional agreement to apply it in the State.

¹⁰³ Parts B3, D1, D2 and Part F1 Plumbing Code.

¹⁰⁴ s. 5A Rights in Water Act.

¹⁰⁵ s. 109 Water Services Act.

- Under the Metropolitan Drainage Act, the Minister has responsibility for overall administration of the arterial drainage system. However, the Act specifically states that it "does not vest in the Minister the control, management or care of an arterial drain or proposed arterial drain".¹⁰⁶ This raises questions regarding the ownership of drains and the associated water resources (i.e. stormwater). Uncertainty regarding ownership, access to and use of stormwater could deter the uptake of alternative water source projects involving stormwater.
- Risks to health:
 - The Food Act contains a range of provisions that prohibit the handling and sale of unsafe food or in an unsafe manner.¹⁰⁷ These provisions could potentially hinder WSC initiatives (albeit indirectly) – particularly, alternative water sources projects – if the water is destined for human consumption and the risks to health are or could be relatively high.
 - The Health Act also contain a range of provisions to protect public health in relation to water supplies, sewers, drains and other infrastructure where water might be stored (amongst other things).¹⁰⁸ Local laws made under the Health Act relating to water resources for potable use as well as water resources in drains and sewers¹⁰⁹ could also limit the uptake of alternative water sources, where risks to health are considered to be relatively high.

Access to and use of water resources

3.29 A limited number of provisions dealing with access to and use of water resources were identified in the stock-take. A summary of the main findings of the stock-take in relation to this issue is set out in Table 5 below.

¹⁰⁶ s. 99 Metropolitan Drainage Act.

¹⁰⁷ ss. 14, 15, 17, 18 Food Act.

¹⁰⁸ ss. 87, 95, 129, 130 and 131 Health Act.

¹⁰⁹ The Health Act lists the purposes for which local laws may be made including: purposes for which any drains or sewers shall be used or applied (s. 134(3)); drainage for buildings (s. 134(13)); pollution of water supply (ss. 134(41) and (48)).

Table 5. Summary Table: Access to and use of water resources

SUMMARY TABLE: ACCESS TO AND USE OF WATER RESOURCES	
Definition	- Provisions that deal with rights of access to take and use water resources.
Main regulatory instrument(s)	- Rights in Water Act
Other relevant regulatory instruments	- Conservation Regulations - Metropolitan Supply, Sewerage and Drainage Act - Water Services Act
Key decision-makers	- Minister
Main regulatory tools for WSC	<u>Tools available to the Minister</u> - Water resources management committee established by the Minister (Rights in Water Act) - Regional management plans, sub-regional management plans and local area management plans (Rights in Water Act) - Local by-laws (Rights in Water Act)
Main regulatory obstacles to WSC	- Unclear property rights in relation to water resources (Rights in Water Act) - Limits on access to alternative water sources (Water Services Act, Metropolitan Supply, Sewerage and Drainage Act and Rights in Water Act)
Other related WSC topics/issues	- Alternative water source projects - Supply of water
Overall assessment of relevant aspects of regulatory regime	- Key elements of the regulatory framework applicable to the access to and use of water resources was developed at a time when alternative water source projects had not yet been conceived. The regulatory framework vests the right to control all natural water

SUMMARY TABLE: ACCESS TO AND USE OF WATER RESOURCES

	<p>sources in the Crown. Rights to access and use alternative water sources (e.g. stormwater and groundwater) are not explicitly addressed in the regulatory framework. Therefore, the structure of the regulatory framework does not readily accommodate projects that involve taking and using water resources for the purposes of developing and providing alternative water sources for end-users.</p>
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Legislative instruments

- 3.30 The primary legislative instrument that affects access to and use of water resources is the Rights in Water Act. However, relevant provisions are contained elsewhere in the regulatory framework, including in the Conservation Regulations, the Metropolitan Supply, Sewerage and Drainage Act and the Water Services Act.

Key decision-makers

- 3.31 The Minister can play a key role in relation to access to and use of water resources, under the Rights in Water Act. The Minister is also empowered to establish water resources management committees under that Act. Committees of this kind could be the vehicle through which access and management rights and conditions could be vested and imposed respectively in relation to water resources.

Regulatory tools

- 3.32 There is a range of tools contained in the regulatory framework that could help facilitate the access to and use of water resources. These tools are available to the Minister:
- Water resources management committee: Under the Rights in Water Act, the Minister has power to establish a water resources management committee for a locality or area of the State.¹¹⁰ Committees of this kind could be the vehicle through which appropriate access and management rights and conditions are imposed and administered in order to support WSC objectives and projects.
 - Regional management plans: A regional management plan made under the Rights in Water Act¹¹¹ could be used to define entitlements to access and use water resources – for example, in the context of alternative water source projects. Sub-regional management plans and local area management plans¹¹² could also be employed for the same purpose.

¹¹⁰ ss. 26GK and 26 GM Rights in Water Act.

¹¹¹ s. 26GW Rights in Water Act.

¹¹² ss. 26GX and 26GY Rights in Water Act.

- Local by-laws: Under the Rights in Water Act, the Minister may make local by-laws which may, among other things, regulate the manner in which water may be taken within a particular locality.¹¹³ These by-laws could be used to define entitlements to access and use of water resources for alternative water source projects, for example.

Regulatory obstacles

3.33 There are also a number of provisions in the regulatory framework that could be an impediment to efficient and effective access to and use of water resources:

- Unclear property rights in relation to water resources:
 - Under the Rights in Water Act, the Crown is entitled to determine rights to take and use water resources.¹¹⁴ Depending upon how this right is exercised by the Crown and the mechanisms established to enable access to water resources, the ability of third parties to take and use water – particularly, for alternative water source projects – could be limited.
 - The Rights in Water Act vests statutory rights to take water for domestic, stock and ordinary use.¹¹⁵ Notably, the right is to "take" water, but not the right to use or deal with the water (e.g. on-selling). The unlimited right to take water could, in some cases, impact adversely on WSC projects which rely upon the water resources in respect of which a right to take water exists under the relevant sections of the Rights in Water Act.
- Limits on access to alternative water sources:
 - Under the Water Services Act, the taking of water or wastewater from the water service works of a licensee may be prohibited without the approval of the licensee.¹¹⁶ Limitations imposed by licensees on third parties regarding access to water or wastewater for alternative water source projects (e.g. sewer mining) may adversely affect the uptake of these projects.
 - Similar limitations exist under the Metropolitan Supply, Sewerage and Drainage Act in relation to taking water from a watercourse or other source within a water reserve or catchment area¹¹⁷ and under the Conservation Regulations in relation to water on land covered by the Conservation Act.¹¹⁸

¹¹³ ss. 26L and 26M Rights in Water Act.

¹¹⁴ s. 5A Rights in Water Act.

¹¹⁵ ss. 9, 10, 20, 21, 25A Rights in Water Act.

¹¹⁶ ss. 89(1)(a) and 93 Water Services Act.

¹¹⁷ s. 16 Metropolitan Supply, Sewerage and Drainage Act.

¹¹⁸ r. 30 Conservation Regulations.

- In addition, limitations on taking water from underground water sources exist under the Rights in Water Act.¹¹⁹ These limitations could effectively limit access by third parties to alternative water sources (particularly, groundwater).

Supply of water

- 3.34 A limited number of provisions dealing with the supply of water were identified in the stock-take. A summary of the main findings of the stock-take in relation to this issue is set out in Table 6 below.

Table 6. Summary Table: Supply of Water

SUMMARY TABLE: SUPPLY OF WATER	
Definition	- Provisions that relate to the supply of water (whether recycled or other) by water authorities.
Main regulatory instrument(s)	- Water Services Act
Other relevant regulatory instruments	- Metropolitan Supply, Sewerage and Drainage Act - Water Corporations Act
Key decision-makers	- The Water Corporation
Main regulatory tools for WSC	- Possible power to supply alternative water sources - Protection of water supplies from pollution
Main regulatory obstacles to WSC	- Unclear whether supply of recycled sewage authorised
Other related WSC topics/issues	- Alternative water source projects
Overall assessment of relevant aspects of	- The regulatory framework does not explicitly provide for the broad range of alternative water sources that could be supplied to consumers. However, the

¹¹⁹ s. 5C Rights in Water Act.

SUMMARY TABLE: SUPPLY OF WATER

regulatory regime	framework does contain provisions to protect water supplies from pollution.
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Legislative instruments

- 3.35 The key legislative instrument in relation to the supply of water is the Water Services Act.

Key decision-makers

- 3.36 Entities that are licensed to provide a water service are the key decision-makers in relation to the supply of water.¹²⁰

Regulatory tools

- 3.37 The licensing regime covers "water supply services".¹²¹ The definition of "water supply services" is theoretically broad enough to include supply of alternative sources of water for potable and non-potable uses.
- 3.38 The Water Services Act specifically states that a licensee may be subject to conditions requiring planning for "future water sources"¹²² such as, for example, alternative water sources. Therefore, the licensing regime could theoretically be used to authorise the supply of water from alternative water source projects.
- 3.39 The functions of the Water Corporation under the Water Corporations Act states that functions of the Water Corporation include to "supply water for any purpose" and to "collect, store...treat...wastewater".¹²³ It is at least arguable that the Act authorises the Water Corporation to supply alternative water sources, including recycled wastewater.
- 3.40 The regulatory framework contains provisions that prevent the taking of water that may be used for the supply of water to consumers.¹²⁴ In addition, the regulatory framework contains provisions that help to ensure that water supplies are protected from pollution.¹²⁵

Regulatory obstacles

¹²⁰ Part 2 Water Services Act.

¹²¹ s. 8(2) Water Services Act.

¹²² s. 12(1)(p) Water Services Act.

¹²³ s. 27(1) Water Corporations Act.

¹²⁴ s. 16 Metropolitan Supply, Sewerage and Drainage Act.

¹²⁵ s. 17 Metropolitan Supply, Sewerage and Drainage Act and rr. 23 and 30 Conservation Regulations.

The licensing regime covers "sewerage services".¹²⁶ The definition of "sewerage services" does not appear to envisage recycling and re-use of sewage. Therefore, it is unclear whether water service providers are authorised to be involved in the supply of recycled sewage.

Economic evaluation and pricing of water

- 3.41 A summary of the main findings of the stock-take in relation to economic evaluation and pricing of water is set out in Table 7 below.

Table 7. Summary Table: Economic evaluation and pricing of water

SUMMARY TABLE: ECONOMIC EVALUATION AND PRICING OF WATER	
Definition	- Provisions that deal with the manner in which water is valued and priced for supply and delivery of water resources to end-users.
Main regulatory instrument(s)	- Water Agencies Act (together with the Water Agencies (Charges) By-laws 1987) - ERA Act
Other relevant regulatory instruments	
Key decision-makers	- Minister for Water - ERA
Main regulatory tools for WSC	- Input from ERA regarding prices in relation to WSC initiatives (ERA Act)
Main regulatory obstacles to WSC	- Prescriptive process for setting prices under the by-laws (By-laws)
Other related WSC topics/issues	- Alternative water source projects
Overall assessment of	- The prescriptive process for setting prices for water by

¹²⁶ s. 8(2) Water Services Act.

SUMMARY TABLE: ECONOMIC EVALUATION AND PRICING OF WATER

relevant aspects of regulatory regime	the Minister could impede a flexible approach to encourage investment in WSC initiatives, including alternative water source projects.
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Legislative instruments

- 3.42 The legislative instruments considered in this stock-take do not specifically address issues relating to economic evaluation and pricing of water. While the Water Agencies Act vests power in the Minister for Water to determine water charges for the Water Corporation, the actual charges are prescribed pursuant to the Water Agencies (Charges) By-laws 1987.

Key decision-makers

- 3.43 The Minister for Water has the power to determine water charges for the Water Corporation, which are set through by-laws. In determining water charges, the Minister may be informed by inputs provided by the ERA.

Regulatory tools

- 3.44 The process for setting prices for water in Western Australia allows scope for input by the ERA. While the ERA Act focuses on economic considerations (e.g. price, quality and reliability),¹²⁷ these considerations are subject to other considerations to which the ERA is subject under the Water Services Act 2012. That Act requires the ERA to take into account matters related to WSC – particularly, conservation and sustainable use of water resources and environmental protection – in deciding whether or not a something is contrary to the public interest.¹²⁸ The provision also requires public health considerations to be taken into account in this analysis, which could affect the uptake of alternative water source projects, particularly where there are risks to health.
- 3.45 Whether or not the relevant provisions support and promote WSC objectives and initiatives will depend upon how these provisions are applied by the ERA as a matter of practice.

Regulatory obstacles

- 3.46 The prescriptive process for setting prices for water could impede a flexible approach to encourage investment in WSC initiatives, including alternative water source projects.

Risks to/associated with water sources

¹²⁷ s. 26 ERA Act.

¹²⁸ s. 46 Water Services Act.

- 3.47 A limited number of provisions considered in the regulatory framework explicitly address risks to or associated with water sources. However, risks are addressed implicitly in a broader range of instruments. A summary of the main findings of the stock-take in relation to both sets of issues is set out in Table 8 below.

Table 8. Summary Table: Risks to/associated with water sources

SUMMARY TABLE: RISKS TO/ASSOCIATED WITH WATER SOURCES	
Definition	- Provisions that deal with the identification and/or management of risks to water resources as well as risks posed by water resources, including water from alternative water source projects.
Main regulatory instrument(s)	- EP Act - Water Services Act - Water Services Regulations
Other relevant regulatory instruments	
Key decision-makers	- EPA
Main regulatory tools for WSC	- Environmental Protection Policies (EP Act) - State Environmental Policies (EP Act)
Main regulatory obstacles to WSC	- Regulatory controls associated with water sources/infrastructure that could pose environmental, public safety and/or health risks (Water Services Act)
Other related WSC topics/issues	- Environmental protection - Alternative water source projects - Risks to health
Overall assessment of relevant aspects of regulatory regime	- The regulatory framework contains some important tools to ensure environmental protection of water resources. However, the framework also contains provisions that are aimed at addressing risks arising from or associated with water resources. These

SUMMARY TABLE: RISKS TO/ASSOCIATED WITH WATER SOURCES

	provisions could be particularly relevant for alternative water source projects. It is possible that the uptake of such projects could be deterred if the risks associated with these projects are assessed to be too high under the regulatory framework.
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Legislative instruments

- 3.48 There is a variety of legislative instruments that contain provisions that may be employed to protect the environment, including water resources. The most important instrument is the EP Act. Implicitly, these instruments address environmental risks. In addition, the Water Services Act deals indirectly with risks associated with water sources.

Key decision-makers

- 3.49 The EPA has broad functions related to protection of the environment, including water sources.¹²⁹ The EPA also has a variety of tools available to it, which can be used to ensure environmental protection of water resources.

Regulatory tools

- 3.50 The EPA has a range of tools available to it to address environmental risks associated with water sources. For example, under the EP Act, the EPA's functions include the development of environmental protection policies,¹³⁰ which are statutory policies that have legislative force. In addition, the EPA may develop state environmental policies,¹³¹ which are non-statutory policies. A SEP is potentially more flexible than an EPP as an instrument to protect the environment because of its non-statutory status.

¹²⁹ s. 16(b) EP Act.

¹³⁰ s. 16(1) EP Act.

¹³¹ s. 17(3)(d) EP Act.

Regulatory obstacles

- 3.51 The Water Services Act contains provisions that address risks arising from water sources that may be associated with alternative water source projects. For example, there are limitations on the ability to connect additional water supplies, particularly where there is a risk of contamination.¹³² In addition, fittings, fixtures and pipes may be used to supply alternative water source projects. There are regulatory hurdles associated with using and connect these fittings, fixtures and pipes to water and sewerage works of a licensee, particularly where wastage of water, nuisance or a health hazard might arise.¹³³

Risks to health

- 3.52 There were a limited number of provisions that deal explicitly with risks to health in the regulatory framework. A summary of the main findings of the stock-take in relation to this issue is set out in Table 9 below.

Table 9. Summary Table: Risks to health

SUMMARY TABLE: RISKS TO HEALTH	
Definition	- Provisions that deal with identification and response to risks to health associated with the supply of water, including recycled water and other alternative water sources.
Main regulatory instrument(s)	- Food Act - Health Act
Other relevant regulatory instruments	- Plumbing Code ¹³⁴ - Metropolitan Supply, Sewerage and Drainage Act
Key decision-makers	- Department of Health - Local Government
Main regulatory tools for	- None

¹³² s. 94 Water Services Act.

¹³³ See, for example, s. 92(1) Water Services Act.

¹³⁴ The Plumbing Code has not yet been formally adopted in Western Australia although there has been notional agreement to apply it in the State.

SUMMARY TABLE: RISKS TO HEALTH	
WSC	
Main regulatory obstacles to WSC	- Prohibitions on activities that endanger human health (Food Act and Health Act)
Other related WSC topics/issues	- Risks to/associated with water resources
Overall assessment of relevant aspects of regulatory regime	- The provisions within the regulatory framework that are aimed at managing risks to health could hinder WSC initiatives (particularly, alternative water source projects), depending upon the nature of the health risks posed by a WSC project and the way in which those risks are assessed and required to be managed under the regulatory framework.

Legislative instruments

- 3.53 The Health Act contains a range of provisions aimed at protecting the public from health risks associated with water supplies and wastewater. Specific provisions related to water for human consumption are contained in the Food Act.

Key decision-makers

- 3.54 The Department of Health and Local Government are the primary enforcement agencies under the Food Act and the Health Act. Their role is to ensure that public health is not compromised in the context of the sale of products containing water (in the case of the Food Act) and that water supplies are not polluted or contaminated (in the case of the Health Act).

Regulatory objectives

- 3.55 The Food Act and the Health Act have the protection of human health and the mitigation of risks to health as a central objective.

Regulatory obstacles

- 3.56 The Food Act contains a range of provisions that prohibit the handling and sale of unsafe food or in an unsafe manner.¹³⁵ These provisions could potentially hinder WSC initiatives – particularly, alternative water sources projects – if the water is destined for human consumption and the risks to health are or could be relatively high.

¹³⁵ ss. 14, 15, 17, 18 Food Act.

- 3.57 The Health Act also contain a range of provisions to protect public health in relation to water supplies, sewers, drains and other infrastructure where water might be stored (amongst other things).¹³⁶ Local laws made under the Health Act relating to water resources for potable use as well as water resources in drains and sewers¹³⁷ could also limit the uptake of alternative water sources, where risks to health are considered to be relatively high.
- 3.58 The Plumbing Code of Australia¹³⁸ also contains a suite of provisions that require risks to health to be taken into account by those involved in the construction of a variety of installations involving water, including non-drinking water installation, roof drainage installations, stormwater drainage installation, and on-site wastewater management system installation.¹²⁷ While the Plumbing Code of Australia also includes objectives that could support WSC objectives in relation to these types of installations – particularly, conservation and sustainable use of water and environmental protection – the emphasis on risks to health and the need to manage those risks could deter projects involving these kinds of installations.

Flooding

- 3.59 The stock-take did not reveal many provisions dealing with flooding among the regulatory instruments considered. However, it should be noted that flood risk is dealt with more comprehensively under the planning scheme, which is being considered in the context of CRC Project B5.1. A summary of the main findings of the stock-take in relation to this issue is set out in Table 10 below.

Table 10. Summary Table: Flooding

SUMMARY TABLE: FLOODING	
Definition	- Provisions that address mitigation and/or adaptation to flooding.
Main regulatory instrument(s)	- Building Code - Rights in Water Act
Other relevant	- Planning Scheme (assessed in Project B5.1)

¹³⁶ ss. 87, 95, 129, 130 and 131 Health Act.

¹³⁷ The Health Act lists the purposes for which local laws may be made including: purposes for which any drains or sewers shall be used or applied (s. 134(3)); drainage for buildings (s. 134(13); pollution of water supply (ss. 134(41) and (48)).

¹³⁸ The Plumbing Code has not yet been formally adopted in Western Australia although there has been notional agreement to apply it in the State.

SUMMARY TABLE: FLOODING	
regulatory instruments	
Key decision-makers	<ul style="list-style-type: none"> - Minister - Building Commission
Main regulatory tools for WSC	<ul style="list-style-type: none"> - Enforcement of Building Code provisions dealing with flood hazard (Building Code) - Local laws dealing with regulation and control of flood protection levies (Rights in Water Act)
Main regulatory obstacles to WSC	<ul style="list-style-type: none"> - Assessment required after completion of Project B5.1
Other related WSC topics/issues	<ul style="list-style-type: none"> - Planning Scheme (assessed in Project B5.1)
Overall assessment of relevant aspects of regulatory regime	<ul style="list-style-type: none"> - The aspects of the regulatory framework considered in this stock-take do not provide extensive support for flood risk to be mitigated. Rather, this issue is dealt with more extensively in the Planning Scheme, which is the subject of consideration in CRC Project B5.1. An overall assessment will be needed once relevant provisions of the Planning Scheme have been undertaken in CRC Project B5.1.

Legislative instruments

- 3.60 The Building Code is the primary legislative instrument considered in this stock-take that assists in mitigating flood risks. Under the Building Code, certain classes of buildings must comply with standards dealing with flood hazards.¹³⁹

¹³⁹ B1.6 Building Code.

Key decision-makers

- 3.61 Under the Water Agencies Act, the Minister has general power to develop plans for and providing advice on flood management.¹⁴⁰
- 3.62 In relation to relevant provisions under the Building Code, in the first instance, developers and building surveyors are responsible for ensuring compliance with the Building Code. However, the Western Australian Building Commission also has a role in ensuring compliance with these provisions.

Regulatory tools

- 3.63 Under the Rights in Water Act, local laws may be made to address flooding through the regulation and control of flood protection levies.¹⁴¹

Regulatory obstacles

- 3.64 The aspects of the regulatory framework considered do not extensively deal with flood risk, including the ways in which such risk can be mitigated. This issue is dealt with more extensively in the Planning Scheme. It will be necessary to determine whether the provisions in the Planning Scheme are coherent with those contained in the broader regulatory framework, particularly the Building Code once relevant provisions of the Planning Scheme have been undertaken in CRC Project B5.1.

Financial tools

- 3.65 The regulatory framework contains a number of provisions that have been broadly labelled as 'financial tools' – that is, financial measures that could be used to advance WSC issues and projects. A summary of the main findings of the stock-take in relation to this issue is set out in Table 11 below.

Table 11. Summary Table: Financial tools

SUMMARY TABLE: FINANCIAL TOOLS	
Definition	- Provisions that could provide financial means to advance WSC initiatives and projects.
Main regulatory instrument(s)	- Water Services Act
Other relevant regulatory instruments	

¹⁴⁰ s. 9(1)(f) Water Agencies Act

¹⁴¹ s. 26P Rights in Water Act.

SUMMARY TABLE: FINANCIAL TOOLS	
Key decision-makers	- Water service licensees
Main regulatory tools for WSC	- Infrastructure contributions (Water Services Act) - Fees and charges (Water Services Act)
Main regulatory obstacles to WSC	- Functions of water service licensee probably do not extend to for projects involving recycling and re-use of sewage
Other related WSC topics/issues	- Alternative water source projects
Overall assessment of relevant aspects of regulatory regime	- The Water Services Act contains some financial tools that could, potentially, be utilised to pursue WSC initiatives. However, the extent to which these tools for this purpose is limited by the scope of functions and powers of water service licensees, who have these tools at their disposal. It is unclear whether water service providers are authorised to be involved in the recycling and re-use of sewage. Consequently, it is unclear whether the financial tools can be used for these types of projects.

Legislative instruments

- 3.66 The main legislative instrument that contains financial tools that could potentially be utilised to advance WSC initiative and projects is the Water Services Act.

Key decision-makers

- 3.67 Water service providers could play a key role in utilising financial tools available to them to advance WSC objectives and initiatives.

Regulatory tools

- 3.68 A water service licensee may require payment of an "infrastructure contribution" from land owners or project proponents.¹⁴² It is possible that infrastructure contributions could be used as a financial tool to help finance alternative water source projects.
- 3.69 The Water Services Act vests a broad power in water service licensees to impose fees and charges for water services.¹⁴³ This power could theoretically be used to collect revenue to fund alternative water source projects.

Regulatory obstacles

- 3.70 The extent to which the financial tools contained in the Water Services Act can be utilised to pursue WSC objectives and initiatives will depend upon the scope of the functions and powers vested in water service licensees, who have these tools at their disposal.
- 3.71 The licensing regime covers "water supply services" and "sewerage services". The definition of "water supply services" is broad enough to include supply of alternative sources of water for potable and non-potable uses. However, the definition of "sewerage services" does not appear to envisage recycling and re-use of sewage. Therefore, it is unclear whether water service providers are authorised to be involved in the recycling and re-use of sewage. Consequently, it is unclear whether the financial tools can be used for projects involving recycling and re-use of sewage.

Research and raising awareness

- 3.72 The legislative stock-take revealed a number of provisions that could support research and raising awareness in relation to WSC objectives and projects. A summary of the main findings of the stock-take in relation to this issue is set out in Table 12 below.

¹⁴² s. 83(b) Water Services Act. Infrastructure contributions must be determined in accordance with guidelines made under the Water Services Act. Guidelines for infrastructure contributions made under section 85(3) indicate that the Water Corporation, as licensee under the Act, may require the proponent of "water supply, sewerage or drainage" – which could include alternative water source projects – to pay an infrastructure contribution where the Water Corporation is satisfied that: there will be, or has been, an increase in demand for that type of water service; and water service works are or will be required to meet the demand, either at the time of the increased demand or in the future. This language could be read as supporting the levying of infrastructure contributions for alternative water source projects undertaken/approved by the Water Corporation. However, the Guidelines for infrastructure contributions made under section 85(3) for licensees other than the Water Corporation do not contain the same language.

¹⁴³ s. 123 Water Services Act.

Table 12. Summary Table: Research and raising awareness

SUMMARY TABLE: RESEARCH AND RAISING AWARENESS	
Definition	- Provisions that promote research and raising awareness regarding issues that could advance WSC.
Main regulatory instrument(s)	- Water Agencies Act - Waterways Conservation Act
Other relevant regulatory instruments	- Conservation Act - EP Act
Key decision-makers	- Minister - Water Resources Council
Main regulatory tools for WSC	- Minister's power to conduct research (Waterways Conservation Act) - Water Resources Council's power to advise the Minister (Water Agencies Act)
Main regulatory obstacles to WSC	- There are no regulatory obstacles as such. However, lack of resources and prioritisation of WSC topics/issues could mean that, in practice, the regulatory tools are not employed to further WSC objectives and initiatives.
Other related WSC topics/issues	- Research and raising awareness are linked with most of the other WSC topics and issues.
Overall assessment of relevant aspects of regulatory regime	- The existence of regulatory provisions that promote research and raise awareness regarding issues that could foster WSC is significant and could help to further the WSC agenda. However, commitment to WSC will be necessary before these provisions can be operationalized to progress WSC initiatives.

Legislative instruments

- 3.73 Legislative provisions that promote research and raise awareness regarding WSC objectives and issues do not feature prominently in the regulatory frameworks. Nevertheless, some support can be found in the Water Agencies Act and the Waterways Conservation Act.

Key decision-makers

- 3.74 The Minister and the Water Resources Council could have a role to play in undertaking research and raising awareness regarding WSC topics and issues.

Regulatory tools

- 3.75 Under the Waterways Conservation Act, the Minister has power to conduct or promote relevant research.¹⁴⁴ This power could conceivably be utilised to support research into WSC issues and projects.
- 3.76 Under the Water Agencies Act, the Water Resources Council has the power to advise the Minister on whether the objectives underlying each water resources Act are being achieved.¹⁴⁵ This power could be used to raise awareness of issues associated with WSC, particularly conservation and sustainable use of water resources and environmental protection of water resources.

4. Overall assessment of legislative framework

- 4.1 This report contains the results of Maddocks' legislative stock-take for Western Australia to determine the extent to which legislative frameworks might facilitate or hinder the establishment of Water Sensitive Cities (WSC). The focus of the review that has been undertaken is on primary and selected secondary State legislation.
- 4.2 The stock-take reveals that there is a plethora of legislative instruments that could directly or indirectly affect the establishment of a WSC. Some of these instruments were assessed as potentially facilitating the establishment of a WSC, whereas others could hinder the establishment of a WSC.

Legislative instruments that could facilitate establishment of a Water Sensitive City

- 4.3 A number of the legislative instruments considered support certain important aspects of a WSC. In particular, the regulatory framework provides significant support for initiatives that seek to ensure conservation and sustainable use of water resources and environmental protection of water resources.

¹⁴⁴ s. 11(2)(g) Waterways Conservation Act.

¹⁴⁵ s. 18(1)(c) Water Agencies Act.

- 4.4 There is a wide range of tools that exist across the legislative framework that could be employed to ensure that these two important WSC objectives are achieved. Nevertheless, these tools are scattered throughout the regulatory framework rather than being consolidated and utilised in a co-ordinated and consistent manner. Accordingly, a more streamlined and coherent approach towards both of these issues across the entire regulatory framework could be beneficial.

Legislative instruments that could hinder establishment of a Water Sensitive City

- 4.5 The regulatory framework also contains some potential obstacles to the establishment of a WSC. Notably, the regulatory framework appears to provide limited support for alternative water sources, which will be critical to the achievement of a WSC.
- 4.6 While tools exist that could be employed to support alternative water source projects, these are limited when compared to regulatory obstacles that could hinder the uptake of such projects. Unclear property rights in relation to alternative water sources and associated infrastructure coupled with limitations on access to alternative water sources and the construction of alternative water source facilities are likely to deter uptake of alternative water source projects.
- 4.7 In addition, the water supply provisions contained in the regulatory framework do not appear to encompass and provide for the broad range of alternative water sources that could be supplied by water authorities.
- 4.8 The prescriptive process for setting prices for water by the Minister could impede a flexible approach to encourage investment in WSC initiatives, including alternative water source projects.
- 4.9 The regulatory framework also contains a range of provisions that are aimed at addressing risks arising from water resources, including risks to health and risks to the environment. These provisions could be particularly relevant for alternative water source projects that rely upon water sources for which the risks to the health and/or to the environment are relatively high. It is possible that the uptake of such projects could be deterred if the risks associated with these projects are assessed to be too high under the regulatory framework compared to the benefits of alternative water source projects.
- 4.10 When considered as a whole, the various regulatory obstacles could deter the uptake of alternative water source projects.

Regulatory tools

- 4.11 Ideally, efforts should be made to operationalize the facilitative provisions before reform is sought of the provisions that might hinder the establishment of a WSC. In this regard, the review revealed that there is an array of instruments identified in the regulatory frameworks that could potentially be used to further WSC initiatives, including Ministerial directions, licences, conditions, by-laws and codes. These instruments could be further explored to determine whether there are any practical impediments to their use to promote WSC.

Role of regulatory entities in establishing a WSC

- 4.12 The stock-take also revealed a wide variety of regulatory entities that have a role to play in establishing WSC based on the legislative instruments considered, including Ministers, water service providers, councils, regulators (EPA, Building Commission, ERA), other statutory authorities (e.g. Water Resources Council) and planning authorities. The practical relationship and interaction between these entities across the various regulatory frameworks, particularly in the context of pursuing WSC initiatives, is not always clear and would benefit from further analysis and consideration.

Current legislative review

- 4.13 Finally, the regulatory framework for the water sector is currently the subject of a major reform process in Western Australia. A further legislative review of the regulatory landscape in Western Australia may be desirable once this reform process has been completed.

5. Historical and practical context for assessment of legislative framework

- 5.1 As mentioned earlier in this report, the assessment of the legislative framework – and particular elements thereof – to determine whether it facilitates or hinders the establishment of a WSC has been based on the text of the relevant legislative instrument.
- 5.2 The assessment does not account for the historical evolution of that instrument. Nor does it consider the practical context in which the provisions may be applied, including the existence or absence of infrastructure and the mindset of relevant decision-makers. These factors may convert a provision that is, on its face, facilitative into one that is a hindrance and vice versa.
- 5.3 These factors could be considered through, for example, input from stakeholders in order to ‘reality check’ the desktop risk assessment of the legislative framework, the results of which are contained in this report.

APPENDIX

STOCK-TAKE OF RELEVANT LEGISLATIVE INSTRUMENTS AND PROVISIONS THAT MAY FACILITATE OR HINDER WSC PRINCIPLES, OBJECTIVES AND INITIATIVES

WESTERN AUSTRALIA

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
1.	Water Services Act 2012	<i>The Water Services Act regulates the provision of water services and of water service providers. It consolidates and modernises pre-existing water service legislation. The main intent underlying the Act is to enable and regulate the provision of water services in a way that best serves the public interest. It does this by: enabling the Minister to make regulations and codes, set conditions and standards and determine charges for water services provision that protect customers and are fair to water service providers; to ensure the safety, reliability, efficiency and quality of water services are maintained by means of regulatory and licensing requirements; and to enable an effective, competitive and sustainable water services industry that is responsive to the needs of Western Australians.</i>					
PART 2 – LICENSING OF WATER SERVICE PROVIDERS							
		s. 5(1)	Requirement for licences A person must not provide a water service except under a licence.	Supply of water Conservation and sustainable use of water Environmental protection	✓		The licensing regime (and, in particular, conditions attached to licences) could be used to advance WSC objectives and issues, including conservation and sustainable use of water and environmental protection of water resources.
		s. 8(2)	Classification of water services A licence may authorise the provision of one or more classes of “water service”. “Water service” is defined in s.8(1) as: (a) water supply services; (b) sewerage services; (c) irrigation services; (d) drainage services “Water supply service” is defined in s.3(1) as a service principally constituted by the supply of water (whether or not potable) by means of reticulated conduits and other appropriate water supply works. “Sewerage service” is defined in s. 3(1) as a service principally constituted by the collection, treatment and disposal of wastewater by means of reticulated conduits and other appropriate sewerage works.	Supply of water Alternative water source projects	?	?	The licensing regime covers “water supply services” and “sewerage services”. The definition of “water supply services” is broad enough to include supply of alternative sources of water for potable and non-potable uses. However, the definition of “sewerage services” does not appear to envisage recycling and re-use of sewage. Therefore, it is unclear whether water service providers are authorised to be involved in the recycling and re-use of sewage. In this regard, it is important to note that there is no third party access regime for wastewater in WA.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 12(1)	<p>Conditions of licence</p> <p>A licence may be subject to conditions which, without limiting that, may deal with the following</p> <p>(a) the quality and performance standards to be met by the licensee in the provision of a water service authorised by the licence;</p> <p>...</p> <p>(c) the licensee complying with specified standards or codes of practice, with specified modifications, other than a code of practice made under section 26;</p> <p>...</p> <p>(p) planning for the future provision of water services, including planning for the development of future water sources;</p> <p>(q) the licensee developing and implementing programmes for the conservation and efficient use of water, including in relation to the use of water by customers of the licensee;</p> <p>...</p>	<p>Supply of water</p> <p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>A licensee could be made subject to standards and codes, which could include mechanisms to advance WSC objectives and issues, such as development of alternative water source projects, conservation and sustainable use of water resources and environmental protection of water resources.</p> <p>Section 12(1) specifically states that a licensee may be subject to conditions requiring planning for “future water sources” (such as, for example, alternative water sources) and programmes for “conservation and efficient use of water”. Therefore, the licensing regime could theoretically be used to promote alternative water source projects and to ensure the conservation and sustainable use of water resources.</p>
		s. 26	<p>Compliance with codes of practice made by Minister</p> <p>(1) The Minister may make codes of practice, and amend or revoke them from time to time.</p> <p>(2) A code of practice may deal with any matter listed in a paragraph of section 12(1) (except in paragraph (s)) or any prescribed matter.</p> <p>(3) It is a condition of every licence that the licensee must comply with each code of practice made under this section, as in force from time to time, to the extent to which it applies to the licensee...</p>	<p>Supply of water</p> <p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>When read in conjunction with s.12(1) above, codes of practice could potentially be used to advance WSC objectives and issues, including alternative water source projects, the conservation and sustainable use of water resources and environmental protection of water resources.</p> <p>At present, only one code has been made under the Act – the Water Services Customer Code of Conduct (Customer Service Standards) 2013, which establishes a customer protection framework that prescribes the minimum service standards and requirements for the water service providers.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 46	<p>Matters relevant to the determination of public interest</p> <p>If the Authority is required under this Part to determine whether or not something would be contrary to the public interest, then, without limiting the things that the Authority may take into account, the following matters must be taken into account to the extent to which the Authority considers that they are relevant to the particular case —</p> <p>(a) environmental considerations, including the value of ecologically sustainable development;</p> <p>(b) public health considerations relating to the provision of reliable water services.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p> <p>Alternative water source projects</p>	?	?	<p>This provision specifically requires the Economic Regulation Authority to take into account matters related to WSC – particularly, conservation and sustainable use of water resources and environmental protection – in deciding whether or not something is contrary to the public interest in relation to licensing decisions.</p> <p>The provision also requires public health considerations to be taken into account in this analysis, which could adversely affect the uptake of alternative water source projects, particularly where there are risks to health.</p> <p>The public interest must be taken into account in the context of a variety of decisions under the Act, including the decision of whether or not to issue a licence (s.11) and to renew a licence (s.13).</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		PART 5 – WATER SERVICES					
		s. 83	<p>Satisfying requirements for additional water services</p> <p>(1) This section applies if one or more of the following apply —</p> <p>...</p> <p>(e) a person applies to a licensee for the provision of a water supply, sewerage or drainage service in respect of particular land;</p> <p>...</p> <p>(3) The licensee may, by notice given to the proponent, applicant or owner of the land, require one or more of the following —</p> <p>(a) that the water service works described in the notice be provided according to its requirements and specifications;</p> <p>(b) that the licensee be paid an infrastructure contribution determined in accordance with the guidelines referred to in section 85(3);</p> <p>(c) that the licensee be paid an amount to cover the costs of the licensee doing the water service works referred to in the notice.</p>	Financial tools Alternative water source projects	✓		<p>It is possible that infrastructure contributions could be used as a financial tool to help finance infrastructure to advance WSC objectives, particularly alternative water source projects.</p> <p>Guidelines for infrastructure contributions made under section 85(3) indicate that the Water Corporation, as licensee under the Act, may require the proponent of “water supply, sewerage or drainage” – which could include alternative water source projects – to pay an infrastructure contribution where the Water Corporation is satisfied that:</p> <ul style="list-style-type: none"> - there will be, or has been, an increase in demand for that type of water service; and - water service works are or will be required to meet the demand, either at the time of the increased demand or in the future. <p>This language could be read as supporting the levying of infrastructure contributions for alternative water source projects undertaken/ approved by the Water Corporation.</p> <p>The Guidelines for infrastructure contributions made under section 85(3) for licensees other than the Water Corporation do not contain the same language.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 85	<p>Infrastructure contributions</p> <p>(1) An infrastructure contribution is a financial contribution to a licensee, the purpose of which is to assist in offsetting present or future costs to the licensee of providing or upgrading infrastructure, the provision or upgrading of which is or will be necessitated, in part, by the increase in demand for water services brought about, or to be brought about, by the activity of a person.</p> <p>...</p> <p>(3) The Minister must approve guidelines that set out the extent to which an infrastructure contribution can be required and the methods for determining, or guiding the determination of, the amounts of infrastructure contributions.</p>	<p>Financial tools</p> <p>Alternative water source projects</p>	✓		<p>It is possible that infrastructure contributions could be used as a financial tool to help finance infrastructure to advance WSC objectives, particularly alternative water source projects.</p> <p>Guidelines for infrastructure contributions made under section 85(3) indicate that the Water Corporation, as licensee under the Act, may require the proponent of “water supply, sewerage or drainage” – which could include alternative water source projects – to pay an infrastructure contribution where the Water Corporation is satisfied that:</p> <ul style="list-style-type: none"> - there will be, or has been, an increase in demand for that type of water service; and - water service works are or will be required to meet the demand, either at the time of the increased demand or in the future. <p>This language could be read as supporting the levying of infrastructure contributions for alternative water source projects undertaken/ approved by the Water Corporation.</p> <p>The Guidelines for infrastructure contributions made under section 85(3) for licensees other than the Water Corporation do not contain the same language.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 89	<p>Taking water without or contrary to approval</p> <p>(1) A person must not take, or permit the taking of, water or wastewater from the water service works of a licensee, or a conduit connected to those works, except —</p> <p>(a) in accordance with the approval of the licensee or a person deriving authority to give such approval from the licensee; or</p> <p>(b) under the Fire Brigades Act 1942, the Bush Fires Act 1954 or another written law; or</p> <p>(c) under section 97(1); or</p> <p>(d) in accordance with any other right to take water that the person has because of owning or occupying land adjoining the works.</p>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>	?	?	The extent to which this provision might further WSC objectives and projects will depend upon how it is applied in practice. Limitations imposed by licensees on third parties regarding access to water or wastewater for alternative water source projects (e.g. sewer mining) may affect the uptake of these projects. A formal framework to allow third parties to access water and wastewater may be necessary to overcome this problem.
		s. 90	<p>Construction etc. over or in vicinity of water service works of licensee</p> <p>(1) A person must not erect, construct, install, place or demolish any building, plant, wall, fence or other obstruction —</p> <p>(a) in, on, over or under; or</p> <p>(b) within the prescribed proximity (if any) to, water service works of a licensee, except in accordance with the approval of the licensee.</p>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>	?	?	The extent to which this provision might further WSC objectives and projects will depend upon how it is applied in practice. Limitations imposed by licensees on third parties regarding construction of alternative water source facilities connected or proximate to water service works of a licensee may adversely affect the uptake of these projects. A formal framework to allow third parties to access water and wastewater may be necessary to overcome this problem.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 91	<p>Requirement to use etc. approved fittings, fixtures and pipes</p> <p>(1) A person must not —</p> <p>(a) install an unapproved fitting, fixture or pipe if it will be connected to the water service works of a licensee; or</p> <p>(b) install a prohibited fitting, fixture or pipe if it will be connected to the water service works of a licensee; or</p> <p>(c) modify a fitting, fixture or pipe connected to the water service works of a licensee except in an approved way; or</p> <p>(d) use a prohibited material or substance in connection with a fitting, fixture or pipe connected to the water service works of a licensee.</p> <p>...</p> <p>(3) A fitting, fixture or pipe, a way of modifying a fitting, fixture or pipe or a material or substance is approved or prohibited if it is approved or prohibited as provided for in regulations made for the purposes of this section.</p>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>		✓	<p>This provision could effectively prohibit the installation of fittings, fixtures and pipes that are used to supply alternative water sources if they require connection to water service works of a licensee. Such connection will depend upon approval by the licensee. In turn, this could deter the uptake of alternative water source projects.</p>
		s. 92(1)	<p>Requirement to maintain etc. fittings, fixtures and pipes</p> <p>(1) An owner or occupier of land must ensure that each fitting, fixture or pipe for which the owner or occupier is responsible —</p> <p>(a) is maintained so that it does not cause or allow the waste of water, a nuisance or a health hazard; and</p> <p>(b) is not used or arranged so as to cause or allow the waste of water, a nuisance or a health hazard; and</p> <p>(c) in the case of a fitting, fixture or pipe connected to the sewerage works of a licensee — is not used or arranged so as to allow water other than wastewater to enter the works, unless the licensee has approved of that.</p>	<p>Alternative water source projects</p> <p>Risks to/ associated with water resources</p> <p>Risks to health</p>		✓	<p>This provision emphasises the risks (including health risks) associated with fittings, fixtures or pipes for which a land owner or occupier is responsible that are connected to water service works of a licensee. It requires the owner or occupier to effectively manage those risks.</p> <p>Fittings, fixtures or pipes may be used to supply alternative water source projects, which may pose risks to health. Approval to use such fittings, fixtures or pipes will depend upon approval by the licensee. Accordingly, this provision may deter the uptake of alternative water source projects.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 92(5)	<p>Requirement to maintain etc. fittings, fixtures and pipes</p> <p>The regulations may provide for standards of maintenance for the purposes of subsection (1)(a) and that a person who complies with an applicable standard is to be taken to have complied with the person's obligation under subsection (1)(a).</p>	<p>Alternative water source projects</p> <p>Risks to/ associated with water resources</p> <p>Risks to health</p>	✓		The regulations could potentially be used to specify standards to manage the risks identified in s.92(1). In turn, this could reduce the uncertainty associated with risks associated with alternative water source projects that involve the installation of fittings, fixtures and pipes which are connected to water service works of a water licensee.
		s. 93	<p>Approval required before connecting to water supply</p> <p>(1) A person must not connect, or permit the connection of, a water supply outlet on land to —</p> <p>(a) the water supply works of a licensee; or</p> <p>(b) a property water supply connection (whether on that or other land) connected to the water supply works of a licensee, except in accordance with the approval of the licensee.</p> <p>Penalty: a fine of \$25 000.</p> <p>Daily penalty: a fine of \$1 000.</p> <p>(2) A licensee may approve of the connection of a water supply outlet described in subsection (1) even though the connection has already been made.</p> <p>(3) A person who has failed to comply with subsection (1) is liable, in addition to any penalty imposed under that subsection, to pay the licensee an amount equal to the fees and charges relating to the connection that the person would have had to pay if the person had applied for approval for the connection and the licensee had approved of the connection.</p>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>		✓	The extent to which this provision might hinder pursuit of WSC objectives and projects will depend upon how it is applied in practice. Limitations imposed by licensees on third parties regarding access to water supply works (including the relevant water source) may affect the uptake of alternative water source projects. A formal framework to allow third parties to connect to and access water and wastewater may be necessary to overcome this problem.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 94	<p>No connection of additional water supply without approval</p> <p>(1) An owner or occupier of land in respect of which a water supply service is provided by a licensee must not connect a supply of water to —</p> <p>(a) the property water supply connection; or</p> <p>(b) anything connected to the property water supply connection, except in accordance with the approval of the licensee.</p> <p>Penalty: a fine of \$10 000.</p> <p>(2) In considering whether to approve of the connection of a supply of water under subsection (1), and any conditions to which the approval will be subject, the licensee may take into account the risk of contamination of the water supply, the effectiveness of the licensee’s water supply system and any other relevant matter, but may not take into account commercial considerations.</p>	<p>Alternative water source projects</p> <p>Risks to/ associated with water resources</p> <p>Risks to health</p>		✓	<p>The extent to which this provision might hinder pursuit of WSC objectives and projects will depend upon how it is applied in practice. Limitations imposed by licensees on third parties regarding access to water supply works (including the relevant water source) may affect the uptake of alternative water source projects.</p> <p>The fact that the risks of contamination of the water supply is explicitly mentioned in the range of factors for consideration by the licensee of the water supply works may mean that this factor is given particular weight by the licensee in deciding whether or not to grant connection/access to the water supply works and the associated water source. In turn, this may deter the uptake of alternative water source projects. A formal framework to allow third parties to connect to and access water and wastewater may be necessary to overcome this problem.</p>
		s. 102	<p>Discharge of trade waste without or contrary to licensee’s approval</p> <p>(1) A person must not discharge, or permit the discharge of, trade waste into a wastewater inlet connected to the sewerage works of a licensee except in accordance with this section.</p> <p>(2) The owner of the land on which the inlet is located may discharge, or permit the discharge of, trade waste into the inlet in accordance with the approval of the licensee.</p> <p>(3) An occupier of the land, or a portion of the land, on which the inlet is located may discharge trade waste into the inlet in accordance with the approval of the licensee, given either to the owner or to the occupier.</p>	<p>Alternative water source projects</p> <p>Risks to/ associated with water resources</p>		✓	<p>The extent to which this provision might hinder pursuit of WSC objectives and projects will depend upon how it is applied in practice. Conditions imposed by licensees regarding discharge of trade waste may affect the use of this source for alternative water source projects.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 103	<p>Approval of licensee</p> <p>(1) The conditions to which the approval of a licensee may be subject include conditions dealing with the following —</p> <p>(a) the quality and quantity of trade waste to be discharged;</p> <p>(b) the rate and timing of discharge;</p> <p>(c) the doing of works and the installation of fittings and fixtures before trade waste can be discharged;</p> <p>(d) the maintenance and monitoring of fittings, fixtures and pipes;</p> <p>(e) the monitoring of, and reporting in relation to, trade waste discharged;</p> <p>(f) the inspection of fittings and fixtures by employees of the licensee or other persons and the taking of samples;</p> <p>(g) rights of entry;</p> <p>(h) interruptions to service;</p> <p>(i) indemnities against loss arising from discharge;</p> <p>(j) the responsibilities as between the owner of the land and any occupier of the land.</p>	<p>Alternative water source projects</p> <p>Risks to/ associated with water resources</p>		✓	The extent to which this provision might hinder pursuit of WSC objectives and projects will depend upon how it is applied in practice. Conditions imposed by licensees regarding discharge of trade waste may affect the use of this source for alternative water source projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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		s. 109	<p>Controlled drainage assets</p> <p>(1) The Water Resources Minister may, by instrument in writing, declare that a drainage asset is controlled by a licensee, for the purposes of this Act, if satisfied that —</p> <p>(a) the asset is necessary for the drainage services provided or to be provided by the licensee; and</p> <p>(b) the drainage to be provided by the asset is in accordance with any relevant water resources management plan (however described) made under a written law; and</p> <p>(c) it would be in the public interest to do so.</p> <p>(2) That a drainage asset is declared to be controlled by a licensee does not affect —</p> <p>(a) the rights a person has, or might obtain, to drain water from the land; or</p> <p>(b) a right to take water that a person has because of owning or occupying land adjoining the asset.</p>	Alternative water source projects	✓		<p>This provision identifies a possible connection between, on the one hand, drainage assets and services and, on the other hand, water resources management plans. This implies a recognition that water in drains (e.g. stormwater) may be considered as a water resource and treated accordingly in the relevant water resources management plan.</p> <p>This provision also recognises that there may be pre-existing rights in relation to the drainage assets and/or associated water resources, which may need to be managed.</p>

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		s. 123	<p>Licensees may impose fees and charges for water services</p> <p>(1) A licensee may impose and collect, in relation to the provision of a water service authorised by a licence —</p> <p>(a) charges for the provision of the service; and</p> <p>(b) charges for things done, or goods and services provided, as part of or incidental to the provision of the service; and</p> <p>(c) fees, provided for in the regulations, for things done under this Act.</p> <p>(2) The charges are to be determined by the licensee in accordance with prudent commercial principles and may allow for the making of a profit and the depreciation of assets.</p> <p>(3) Subsection (2) does not prevent the conditions on a licensee’s licence, a code of practice or the regulations from limiting what charges a licensee may impose, how the charges are to be determined, the amounts of the charges or the circumstances in which charges may be imposed.</p>	Financial tools Alternative water source projects	✓		This section vests broad powers in licensees to impose fees and charges for water services. However, this power may be limited by the actual conditions of a licensee’s licence, a code of practice or regulation. This section could theoretically be used to collect revenue to fund alternative water source projects.
		s. 124	<p>Regulations may provide for water service charges</p> <p>(1) The regulations may deal with the imposition, determination, payment and recovery of water service charges.</p>	Financial tools Alternative water source projects	✓		<p>Regulations could potentially empower licensees to impose fees and charges for water services, including water services associated with alternative water sources.</p> <p>The Water Services (Water Corporations Charges) Regulations 2013 do not deal with the question of whether or not water service charges can be levied to fund alternative water source projects</p>

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PART 6 – POWERS IN RELATION TO WATER SERVICE WORKS							
		s. 136	<p>Powers in respect of water service works</p> <p>(1) A licensee may provide —</p> <p>(a) water service works that in the opinion of the licensee are necessary for the provision of the water services authorised by a licence held by the licensee (which includes the water service works specified in the licence for the purposes of section 11(3)); and</p> <p>(b) water service works that are requested by, and provided wholly or partly at the expense of, another person if those works are of a kind that are related to the provision of the water services authorised by a licence held by the licensee.</p> <p>(2) A licensee may do all things necessary or expedient for —</p> <p>(a) the provision of water service works of that kind; and</p> <p>(b) the maintenance, operation, alteration, replacement, discontinuance or removal of water service works of the licensee.</p> <p>“water service works” is defined in section 3 as including—</p> <p>(a) water supply works, sewerage works, drainage assets and irrigation works; and</p> <p>(b) surveys, excavations, structures and buildings provided by or used or intended to be used by a licensee in the provision of any water service; and</p> <p>(c) plant, equipment and structures attached to or otherwise associated with the works and things referred to in paragraphs (a) and (b); and</p> <p>(d) in the case where the works or assets are a part of land — the land of which the works or assets are a part;</p> <p>Note: Works or assets that are a part of land include drains, swales and reservoirs.</p>	Alternative water source projects	✓		<p>This section vest licensees with a broad power to provide “water service works”, which is also defined in broad terms to include “water supply works, sewerage works, drainage assets and irrigation works”.</p> <p>In theory, this section could potentially authorise alternative water source projects to be undertaken by the licensee and/or at the request of a third party.</p> <p>Regarding whether the licensee may supply alternative water sources, as noted above in relation to section 8(3), the definition of “water supply services” is broad enough to include supply of alternative sources of water, including for non-potable uses. However, the definition of “sewerage services” does not appear to envisage recycling and re-use of sewage. Therefore, it is unclear whether water service providers are authorised to be involved in the recycling and re-use of sewage.</p>

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PART 10 - ADMINISTRATION							
		s. 207	<p>Functions of Authority</p> <p>The functions of the Authority under this Act are —</p> <p>(a) to administer the licensing scheme provided for in Part 2; and</p> <p>(b) to monitor and report to the Minister on the operation of that licensing scheme and on compliance by licensees with their licences; and</p> <p>(c) to monitor and report to the Minister on —</p> <p>(i) the performance of the water services industry and of the participants in that industry; and</p> <p>(ii) the performance of providers of water services, and, for the purposes of such monitoring, to consult with interested groups and persons; and</p> <p>(d) to inform the Minister about any material failure by a licensee to meet operational standards or other requirements of its licence or licences; and</p> <p>...</p> <p>(g) the other functions conferred on the Authority under this Act.</p>	<p>Supply of water</p> <p>Conservation and sustainable use of water</p> <p>Environmental protection</p>	✓		The licensing regime (and, in particular, conditions attached to licences) administered by the Economic Regulation Authority could be used to advance WSC objectives and issues, including conservation and sustainable use of water and environmental protection of water sources.

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	Economic Regulation Authority Act 2003	<i>This Act establishes the Economic Regulation Authority – an independent body with responsibility for a range of economic regulatory functions across a variety of sectors, including water. Under the Act, the Economic Regulation Authority’s functions include inquiry, reporting, access regulation and licensing.</i>					
		PART 4 – FUNCTIONS OF AUTHORITY					
		s. 26	<p>(1) In performing its functions [including functions under section 207 of the Water Services Act 2012], the Authority must have regard to –</p> <p>(a) the need to promote regulatory outcomes that are in the public interest;</p> <p>(b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;</p> <p>(c) the need to encourage investment in relevant markets;</p> <p>(d) the legitimate business interests of investors and service providers in relevant markets;</p> <p>(e) the need to promote competitive and fair market conduct;</p> <p>(f) the need to prevent abuse of monopoly or market power;</p> <p>(g) the need to promote transparent decision-making processes that involve public consultation.</p> <p>(2) The Authority has a discretion as to the weight it gives to each of the matters referred to in subsection (1) in the performance of a particular function.</p> <p>(3) Nothing in subsection (1) limits a provision of another written law that requires the Authority, in performing a particular function, to have regard to, or take into account, particular objectives, considerations or other matters.</p> <p>(4) If there is any conflict or inconsistency between subsection (1) and a provision described in subsection (3), the latter provision prevails to the extent of the conflict or inconsistency.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p> <p>Alternative water source projects</p>	?	?	<p>The functions of the ERA identified in s.26 focus on economic considerations (e.g. price, quality and reliability).</p> <p>These considerations are subject to other considerations to which the ERA is subject under the Water Services Act 2012.</p> <p>Section 46 of that Act requires the ERA to take into account matters related to WSC – particularly, conservation and sustainable use of water resources and environmental protection – in deciding whether or not a something is contrary to the public interest in relation to licensing decisions. The provision also requires public health considerations to be taken into account in this analysis, which could affect the uptake of alternative water source projects, particularly where there are risks to health.</p> <p>Whether or not the relevant provisions support and promote WSC objectives and initiatives will depend upon how these provisions are applied by the ERA as a matter of practice.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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	Water Services Regulations 2013	<i>The Water Services Regulations 2013 are made under the Water Services Act, which regulates the provision of water services and of water service providers. These Regulations address a number of matters, including several relevant to WSC.</i>					
		PART 5 – WATER USE RESTRICTIONS					
		r. 77	Use of scheme water restricted (1) A person must not use scheme water in contravention of the water use restrictions applicable under this Part.	Conservation and sustainable use of water resources Risks to/ associated with water resources	✓		Water restrictions imposed under Part 5 could be used to help conserve water resources when water resources are at risk.
		r. 80	Minister may impose further restrictions (1) The Minister may, by order published in the Gazette, impose further water use restrictions in relation to an area of the State if satisfied that, in relation to a water supply service in the area, the water use restrictions that apply in relation to the area under regulation 78 are inadequate to ensure that — (a) there will be sufficient water to continue providing the service in the short term; or (b) the quality of the service can be maintained in the short term.	Conservation and sustainable use of water resources Risks to/ associated with water resources	✓		Water restrictions imposed by the Minister under Part 5 could be used to help conserve water resources when water resources are at risk.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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	Water Agencies (Powers) Act 1984	<i>The Water Agencies (Powers) Act 1984 vests certain functions and powers in the Minister in relation to water management. Among those functions, the Minister is authorised to establish the Water Resources Ministerial Body and the Water Resources Council, which could play an important role in the establishment of WSC.</i>					
		PART II – THE MINISTER AND THE WATER RESOURCES MINISTERIAL BODY					
		s. 9	<p>General functions and powers of Minister</p> <p>(1) The Minister has the general functions of –</p> <p>(a) conserving, protecting and managing water resources;</p> <p>(b) assessing water resources;</p> <p>(c) planning for the use of water resources;</p> <p>(d) promoting the efficient use of water resources;</p> <p>(e) promoting the efficient provision of water services;</p> <p>(f) developing plans for and providing advice on flood management.</p> <p>(2) The Minister has power to do all things necessary or convenient to be done for or in connection with the performance of the Minister’s functions.</p> <p>(3) Without limiting subsection (2), the Minister may acquire, hold, manage, improve, develop, dispose of and otherwise deal in real and personal property, including for the general purposes of the Department.</p> <p>(4) In performing the Minister’s functions under this section –</p> <p>(a) the Minister is to have regard to water recycling and efficient water use measures when planning the development of new water resources; and</p> <p>(b) the Minister, where appropriate, is to promote decision making processes that involve public consultation.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Alternative water source projects</p> <p>Economic evaluation and pricing of water</p> <p>Flooding</p>	✓		<p>This provision vests broad powers in the Minister to conserve and protect water resources. Section 9(4) specifically requires the Minister to have regard to water recycling and efficient water use measures when planning new water sources, which envisages the establishment of alternative water sources.</p> <p>Under this section, the Minister for Water has the power to determine water charges for the Water Corporation, which are set through by-laws. In determining water charges, the Minister may be informed by inputs provided by the ERA.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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PART IIA – THE WATER RESOURCES COUNCIL							
		s. 18	<p>Functions of Council</p> <p>(1) The Council has the following functions —</p> <p>(a) advising the Minister in relation to the management of water resources generally and on any matter that the Minister refers to it for advice;</p> <p>(b) consulting with persons, or bodies, having functions under, or related to the purposes of, a water resources Act;</p> <p>(c) advising the Minister on whether the objectives of each water resources Act are being achieved.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Research and raising awareness</p>	✓		The Council's function of providing advice to the Minister could be used to raise awareness regarding WSC issues and objectives, particularly conservation and sustainable use of water resources and environmental protection of water resources.

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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
PART IIB – REGULATION AND BY-LAWS							
		s. 34	<p>By-laws</p> <p>(1) The Minister may make by-laws prescribing all matters that are required or permitted by this Act or any relevant Act to be prescribed, or are necessary or convenient to be prescribed, for the purposes of the performance by the Minister or the Corporation of their respective functions under this Act or any relevant Act.</p> <p>...</p> <p>(3) Without limiting subsection (1), by-laws made under that subsection may –</p> <p>...</p> <p>(b) provide for the due management and use of water, works, water services, water resources and property of the Minister;</p> <p>(c) include measures for the protection of works, water services or water resources, and for preventing or remedying the waste, misuse, undue consumption, fouling or contamination of, water;</p> <p>(d) regulate or prohibit the deposit of anything likely to cause fouling or contamination in, or within a prescribed distance of, any works, water services, watercourse, surface water or underground water;</p> <p>(e) provide for the construction, provision, maintenance, repair and cleansing of works and water services;</p> <p>(f) control or limit the use of, or interference with, any watercourse or the flow of water;</p> <p>(fa) prohibit, impose restrictions on or otherwise regulate the use of water;</p> <p>(g) regulate the flow or require the disinfection, cleansing or other treatment of wastewater or other substances, discharged into or otherwise entering any works, reservoir, water services or watercourse.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Alternative water source projects</p>	✓		The Minister is authorised to make by-laws in relation to a broad range of issues, including conservation and environmental protection of water resources. While alternative water source projects are not explicitly identified in section 34, it is arguable that by-laws could deal with such projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		PART VIII - WORKS					
		s. 82	<p>Power to carry out works</p> <p>(1) Subject to this Act and any relevant Act, the Minister may carry out works for the purposes of this Act or any relevant Act that are related to the conservation, protection or management of water resources.</p> <p>(1aa) The conservation, protection or management of water resources is to be regarded as a public work for the purposes of this Act and Part 9 of the Land Administration Act 1997, even though the conservation, protection or management of water resources may be achieved on or in relation to an area of land without any works being carried out on the land.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		This provision authorises the Minister to undertake works for the conservation and environmental protection of water resources.
	Water Corporations Act 1995	<i>The Water Corporations Act provided for the establishment of, corporations with the function of providing water services, and with functions necessary for and related to that purpose, and for connected purposes. The WA Water Corporation, which was established under this Act, treats and supplies water and disposes of wastewater.</i>					
		PART 3 – FUNCTIONS AND POWERS OF CORPORATIONS					
		s. 27	<p>Functions of corporations</p> <p>(1) The functions of a corporation are –</p> <p>(a) to acquire, store, treat, distribute, market and otherwise supply water for any purpose;</p> <p>(b) to collect, store, treat, market and dispose of wastewater and surplus water;</p> <p>...</p>	<p>Supply of water</p> <p>Alternative water source projects</p>	✓		This provision states that water corporations' functions include to supply water for any purpose. While the provision is not explicit in this regard, it is arguable that this provision could authorise the supply of alternative water sources by water corporations, although the reference to "dispose" or wastewater in section 27(1)(b) casts doubt on this interpretation.
		s. 28	<p>Corporation to act in accordance with policy instruments</p> <p>A corporation must perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.</p>	<p>Supply of water</p> <p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		Policy instruments developed for the water corporations – particularly, the strategic development plan and statement of corporate intent – could theoretically be used to further WSC objectives and projects, including the supply of alternative water sources and conservation and protection of water resources. However, see possible limitations on the use of strategic development plans and statements of corporate intent for this purpose based on section 43 (below).

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 29	<p>Powers of corporation</p> <p>(1) A corporation may do all things necessary or convenient to be done for or in connection with the performance of its functions.</p>	<p>Supply of water</p> <p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		The powers of water corporations are broad and could conceivably be used to further WSC objectives and projects, including the supply of alternative water sources and conservation and protection of water resources.
		s. 43	<p>Matters to be included in plan</p> <p>(1) The strategic development plan for a corporation and any subsidiary of the corporation must set out economic and financial objectives and operational targets and how those objectives and targets will be achieved.</p> <p>(2) The matters which are to be considered in the preparation of the strategic development plan include competitive strategies, pricing of products, productivity levels, financial requirements, capital expenditure, customer service arrangements, relevant government policy and personnel requirements.</p> <p>(3) A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.</p>	<p>Supply of water</p> <p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>		✓	The reference to economic, financial and operational considerations as the primary focus for strategic development plans in this section could limit their use used to further WSC objectives and projects, including the supply of alternative water sources and conservation and protection of water resources.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 52	<p>Matters to be included in statement</p> <p>(1) The statement of corporate intent for a corporation and any subsidiary of the corporation must be consistent with the strategic development plan under Division 1 for the corporation and any subsidiary.</p> <p>(2) The statement of corporate intent must specify —</p> <p>(a) an outline of objectives including —</p> <p>(i) the continuity of the provision of water services; and</p> <p>(ii) the maintenance of assets to ensure the proper provision of water services; and</p> <p>(iii) the delivery of an optimum service to customers in meeting their requirements for water services; and</p> <p>(b) the performance targets and other measures by which performances may be judged and related to objectives; and</p> <p>(c) measures to be taken to protect the environment</p> <p>...</p>	<p>Supply of water</p> <p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	?	?	<p>The reference to economic, financial and operational considerations as the primary focus for statements of corporate intent (because of the requirement that they be consistent with strategic development plans) could limit their use to further WSC objectives and projects, including the supply of alternative water sources and conservation and protection of water resources.</p> <p>Nevertheless, the specific reference to “measures to protect the environment” in section 52(2)(c) provides support for environmental protection of water resources.</p> <p>In addition, the reference to “the delivery of an optimum service to customers in meeting their requirements for water services” in section 52(2)(c) could be read as implicitly authorising measures to conserve and protect water resources and to supply alternative water sources, if these objectives are consistent with customers’ requirements.</p>
PART 4 – PROVISIONS AS TO ACCOUNTABILITY							
		s. 64	<p>Minister may give directions</p> <p>(1) The Minister may give directions in writing to a corporation generally with respect to the performance of its functions and, subject to section 65, the corporation is to give effect to any such direction.</p>	<p>Supply of water</p> <p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>As noted above, under section 29, the powers of water corporations are broad and could conceivably be used to further WSC objectives and projects, including the supply of alternative water sources and conservation and protection of water resources. Ministerial directions could be used to further these objectives.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
	Rights In Water And Irrigation Act 1914	<i>The Rights In Water And Irrigation Act 1914 deals with rights in water resources. Among other things, the Act makes provision for the regulation, management, use and protection of water resources.</i>					
		PART III – CONTROL OF WATER RESOURCES					
		s. 4	<p>Objects of this Part</p> <p>(1) The objects of this Part are —</p> <p>(a) to provide for the management of water resources, and in particular —</p> <p>(i) for their sustainable use and development to meet the needs of current and future users; and</p> <p>(ii) for the protection of their ecosystems and the environment in which water resources are situated, including by the regulation of activities detrimental to them; and</p> <p>(b) to promote the orderly, equitable and efficient use of water resources; and</p> <p>(c) to foster consultation with members of local communities in the local administration of this Part, and to enable them to participate in that administration; and</p> <p>(d) to assist the integration of the management of water resources with the management of other natural resources.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Alternative water source projects</p>	✓		<p>The objects of this Act, as reflected in section 4, are broad and clearly encompass important WSC objectives, including conservation, sustainable use and environmental protection of water resources. In addition, the reference to “development to meet the needs of current and future users” could be read as supporting alternative water sources to address water needs of consumers now and in the future, although the definition of “water resources” does not include wastewater.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 5A	<p>Natural waters vest in Crown</p> <p>The right to the use and flow, and to the control, of the water at any time in any —</p> <p>(a) watercourse; or</p> <p>(b) wetland; or</p> <p>(c) underground water source,</p> <p>vests in the Crown except as allocated under this Act or another written law.</p>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>		✓	<p>This section (as well as counterparts in other jurisdictions) has triggered a debate as to whether or not this section vests absolute ownership of water resources in the Crown. The current consensus appears to be that the section reflects state sovereignty, rather than ownership, over water resources and that this implies the Crown's right to control, regulate and appropriate water resources. Based on this interpretation, this section entitles the Crown to determine rights to take and use water resources. Depending on how this right is exercised by the Crown and the mechanisms established to enable access to water resources, the ability of third parties to take and use water for WSC projects could be limited.</p>
		s. 5C	<p>Taking of certain water without right or licence, offence</p> <p>(1) A person must not —</p> <p>(a) take water from any watercourse, wetland or underground water source to which this section applies; or</p> <p>(b) cause or permit any of those things to be done, except under and in accordance with —</p> <p>(c) a right conferred by —</p> <p>(i) section 9, 10, 20, 21, 22 or 25A; or</p> <p>(ii) a local by-law of the kind referred to in section 26L(3)(d); or</p> <p>(iii) another written law; or</p> <p>(d) a licence under this section granted by the Minister in accordance with Schedule 1.</p>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>		✓	<p>The effect of s. 5C is that only persons (including public utilities) with land tenure can apply for a licence.</p> <p>Access to water resources by, for example, third parties for WSC projects, including alternative water source projects could be limited because of the absence of explicit authorisation under the Act. Third party access to water resources is at the discretion of the Minister.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 9	<p>Riparian owner etc., rights of</p> <p>(1) Subject to this section, the owner or occupier of any land alienated from the Crown through or contiguous to which runs any watercourse, or contiguous to which, or partly within which, is situate any wetland, has the right, as such owner or occupier, to take water in that watercourse or wetland free of charge —</p> <p>(a) for the domestic and ordinary use of himself and of his family and servants; and</p> <p>(b) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4), and every owner of land alienated from the Crown before the relevant day has a further right to take such water for the irrigation of a garden not exceeding 2 ha in extent and from which no produce is sold, being part of that land and used in connection with a dwelling.</p>	Access to and use of water resources		✓	<p>This section vests a statutory right to take water from a watercourse or wetland for domestic and stock use. This right arises as a result of ownership or occupation of land that is proximate to the watercourse or wetland.</p> <p>Notably, the section refers to the right to “take” water, but not the right to use or deal with the water (e.g. on-selling).</p> <p>The unlimited right to take water under this section could, in some cases, impact adversely on WSC projects which rely upon the watercourse or wetland in respect of which a right to take water exists under this section.</p>
		s. 10	<p>Rights to water to which there is access by public road etc.</p> <p>(1) Any person may take water for domestic and ordinary use, and for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4), from any watercourse or wetland vested in the Crown and to which there is access by a public road or reserve at the point at which the water is taken.</p>	Access to and use of water resources		✓	<p>This section vests a statutory right to take water from a watercourse or wetland for domestic, stock and ordinary use.</p> <p>Notably, the section refers to the right to “take” water, but not the right to use or deal with the water (e.g. on-selling).</p> <p>The unlimited right to take water under this section could, in some cases, impact adversely on WSC projects which rely upon the watercourse or wetland in respect of which a right to take water exists under this section.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 20	<p>Riparian owners etc., rights of</p> <p>(1) The owner or occupier of any land (riparian land) alienated from the Crown through or contiguous to which runs any watercourse, or contiguous to which, or partly within which, is situate any wetland, has the right, as such owner or occupier, to take water in that watercourse or wetland free of charge —</p> <p>(a) for the domestic and ordinary use of himself and of his family and servants; and</p> <p>(b) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4); and</p> <p>(c) to the extent that the flow of water in the watercourse or the amount of water in the wetland, as the case may be is not thereby sensibly diminished, for any other purpose,</p> <p>but the right described in paragraph (c) may be made inapplicable to, or be restricted in relation to, any riparian land by the provisions of local by-laws that apply to the land, and that paragraph is to be read subject to any such provisions.</p>	Access to and use of water resources		✓	<p>This section vests a statutory right to take water for domestic and stock use from a watercourse or wetland. This right arises as a result of ownership or occupation of land that is proximate to a watercourse or wetland.</p> <p>Notably, the section refers to the right to “take” water, but not the right to use or deal with the water (e.g. on-selling).</p> <p>The unlimited right to take water under this section could, in some cases, impact adversely on WSC projects which rely upon the watercourse or wetland in respect of which a right to take water exists under this section.</p>
		s. 21	<p>Rights to water to which there is access by public road etc.</p> <p>(1) Any person may take water —</p> <p>(a) for domestic and ordinary use; and</p> <p>(aa) for firefighting; and</p> <p>(b) for watering cattle or other stock other than those being raised under intensive conditions; and</p> <p>(c) subject to subsection (2), to the extent that the flow of water in the watercourse or the amount of water in the wetland, as the case may be, is not thereby sensibly diminished, for any other purpose, from any watercourse or wetland that is vested in the Crown and to which there is access by a public road or by a reserve for public access at the point where the water is taken.</p>	Access to and use of water resources		✓	<p>This section vests a statutory right to take water from a watercourse or wetland for domestic, ordinary and other limited uses.</p> <p>Notably, the section refers to the right to “take” water, but not the right to use or deal with the water (e.g. on-selling).</p> <p>The unlimited right to take water under this section could, in some cases, impact adversely on WSC projects which rely upon the waterway in respect of which a right to take water exists under this section.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 25A	<p>Non-artesian wells in prescribed areas, rights to take water from</p> <p>(2) A person may take water from a non-artesian well to which this section applies and to which the person has lawful access —</p> <p>(a) for domestic and ordinary use; and</p> <p>(b) for firefighting; and</p> <p>(c) for watering cattle or other stock, other than those being raised under intensive conditions as defined in section 21(4); and</p> <p>(d) for any other purpose that is prescribed by a local by-law referred to in subsection (1).</p> <p>(3) The right conferred by subsection (2) does not include authority to install any works or object on the land concerned.</p>	Access to and use of water resources		✓	<p>This section vests a statutory right to take water from non-artesian wells for domestic, ordinary and other limited uses.</p> <p>Notably, the section refers to the right to “take” water, but not the right to use or deal with the water (e.g. on-selling).</p> <p>The unlimited right to take water under this section could, in some cases, impact adversely on WSC projects which rely upon the water resource in respect of which a right to take water exists under this section.</p>
		s. 26	<p>Local by-laws for s. 25A(2)</p> <p>Local by-laws may be made for the regulation and control of the taking of water under subsection (2) of section 25A, and may include a prohibition in particular circumstances on the taking of water for a purpose mentioned in that subsection.</p>	Access to and use of water resources	✓		<p>The risks to WSC projects identified in relation to section 25A above associated with the unlimited right to take water could be mitigated through local laws made under this section to prohibit the taking of water in certain cases.</p>
		s. 26D	<p>Licence for construction etc. of well, application for and issue of</p> <p>(1) Every application for a licence for the commencement or construction of an artesian well or a non-artesian well or for the enlargement, deepening or altering of an existing well shall be made to the Minister in the prescribed form and shall be accompanied by the prescribed plans and specifications, together with a statement of the purposes for which it is proposed to use the water.</p> <p>(2) The Minister may —</p> <p>(a) issue a licence to the applicant subject to such terms, limitations and conditions as the Minister thinks fit; or</p> <p>(b) before granting a licence, require such alterations to be made in, or in connection with, the work or the plans and specifications as the Minister thinks fit; or</p> <p>(c) refuse a licence.</p>	Access to and use of water resources	?	?	<p>The extent to which access to groundwater (through construction of a well) could be limited through the imposition of conditions by the Minister under this section depends upon the factors that the Minister takes into account in deciding whether or not to grant a licence under section 26D and, if so, the conditions that may be imposed. See Regulation 35 (of the Regulations made under this Act) below which identifies the factors that the Minister may consider in making these determinations.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 26GC	<p>Taking and use of certain water, Minister's powers to restrict etc.</p> <p>(1) Where this section applies to a water resource, the Minister may by notice in writing served on a person give directions to the person —</p> <p>(a) restricting —</p> <p>(i) the amount of water that the person may take from the water resource; or</p> <p>(ii) the rate at which the water may be taken by the person from the water resource; or</p> <p>(iii) the purpose for which the water taken from the water resource may be used by the person; or</p> <p>(b) prohibiting —</p> <p>(i) the taking of water by the person from the water resource; or</p> <p>(ii) the purpose for which water taken from the water resource by the person may be used; or</p> <p>(c) imposing on the person obligations in terms of any combination of the matters in paragraphs (a) and (b).</p>	Access to and use of water resources	✓		The risks to WSC projects identified above associated with the unlimited right to take water could be mitigated through restrictions imposed by the Minister under this section.
		s. 26GK	<p>Establishment committees and subcommittees</p> <p>(1) The Minister may determine that a water resources management committee (a committee) is to be established for any locality or area of the State.</p>	Access to and use of water resources	✓		A water resources management committee could be the vehicle through which appropriate access and management rights and conditions are imposed and administered in order to support WSC objectives and projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 26GM	<p>Functions of committees</p> <p>(1) The functions of a committee are, in respect of the locality or area for which it is established —</p> <p>(a) to provide the Minister with —</p> <p>(i) assistance; and</p> <p>(ii) advice,</p> <p>on matters relating to the functions of the Minister to the extent that the Minister asks the committee to do so; and</p> <p>(b) to perform the functions given to it —</p> <p>(i) by section 26N(2), in respect of local by-laws; and</p> <p>(ii) by section 26GZ, in respect of a plan under Division 3D; and</p> <p>(c) to perform any function of the Minister that may be delegated to it by the Minister under section 26GP; and</p> <p>(d) to ensure that the Minister is informed of, and has access to, community views on matters relating to water resources; and</p> <p>(e) to assist the Minister in the resolution of disputes about the use of water resources involving persons having rights under this Act or persons affected by the exercise of those rights.</p>	Access to and use of water resources	✓		A water resources management committee could be the vehicle through which appropriate access and management rights and conditions are imposed and administered in order to support WSC objectives and projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 26GW	<p>Regional management plans, purposes of</p> <p>(2) The purpose of a regional management plan is to set out the matters that are to guide the general management by the Minister of water resources in the region to which it applies, in relation to —</p> <p>(a) the definition of water resource values, including environmental values, and the protection of those values; and</p> <p>(b) the use of water resources; and</p> <p>(c) the integration of water resources planning and management with land use planning and management.</p> <p>(3) A regional management plan is to specify the monitoring and reporting (which is to occur at least once in every 7 years) to be carried out by the Minister to ensure, as far as is practicable, that the objects of this Part are achieved in the implementation of the plan.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Access to and use of water resources</p>	✓		<p>A regional management plan could be used to further important WSC objectives, including conservation, sustainable use and environmental protection of water resources. These plans could also be used to define entitlements to access and use of water resources , for example, for alternative water source projects.</p> <p>Similar provisions under the Act for sub-regional management plans (s. 26GX) and local area management plans (s. 26GY).</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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		s. 26L	<p>Local by-laws, Minister’s powers to make etc.</p> <p>(1) The Minister may make by-laws for the purposes of this Act (local by-laws) that are applicable in a locality or localities in the State specified in the by-laws.</p> <p>(2) Local by-laws may be made under subsection (1) prescribing or providing for any matter —</p> <p>(a) that is required or permitted by this Act to be prescribed or provided for by local by-laws; or</p> <p>(b) that is necessary or convenient to be prescribed for the purpose of achieving the objects of this Act.</p> <p>(3) Without limiting subsection (2), local by-laws may make provision for and in relation to —</p> <p>(a) the construction, provision, maintenance, repair and removal of works relating to water resources; and</p> <p>(b) the manner in which water may be taken; and</p> <p>(c) the exemption or exclusion of —</p> <p>(i) acts, persons or things; or</p> <p>(ii) acts, persons or things in a specified area, from the application of particular provisions of this Act, the regulations or the by-laws; and</p> <p>(d) the authorisation of persons to take water from a watercourse, wetland or underground source —</p> <p>(i) for particular purposes; or</p> <p>(ii) under particular circumstances, or both of those kinds of cases</p> <p>...</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Access to and use of water resources</p>	✓		<p>Local by-laws could be used to further important WSC objectives, including conservation, sustainable use and environmental protection of water resources. These laws could also be used to define entitlements to access and use of water resources , for example, for alternative water source projects.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 26M	<p>Licensing schemes, local by-laws as to</p> <p>Local by-laws that provide for the licensing of persons to do anything that is otherwise prohibited may make provision for —</p> <p>(a) the matters that are to be, or may be, taken into account in considering applications for licences; and</p> <p>...</p> <p>(d) the conditions and restrictions that may be attached to licences, whether at the time of grant or later, and the cancellation, variation and enforcement of conditions and restrictions</p> <p>...</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Access to and use of water resources</p>	✓		Local by-laws could be used to further important WSC objectives, including conservation, sustainable use and environmental protection of water resources through the imposition of conditions on licences. Licence conditions could also be used to define entitlements to access and use of water resources , for example, for alternative water source projects.
		s. 26P	<p>Flood protection works, local by-laws as to</p> <p>Local by-laws may be made —</p> <p>(a) providing for the regulation and control of flood protection levees so far as they obstruct or interfere with the flow of a watercourse, including the flow of its flood waters ...</p>	<p>Flooding</p>	✓		Local by-laws could be used to help address flooding through the regulation and control of flood protection levees.
		s. 27B	<p>Regulations as to licences and permits</p> <p>Where this Act authorises or requires the regulations to provide for the grant of a licence or permit by the Minister, the regulations may make provision for —</p> <p>(a) the matters that are to be, or may be, taken into account by the Minister in considering applications for licences or permits; and</p> <p>...</p> <p>(d) the conditions and restrictions that may be attached to licences or permits, whether at the time of grant or later, and the cancellation, variation and enforcement of conditions and restrictions</p> <p>...</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Access to and use of water resources</p>	✓		Regulations could be used to further important WSC objectives, including conservation, sustainable use and environmental protection of water resources through the imposition of conditions on licences. Licence conditions could also be used to define entitlements to access and use of water resources , for example, for alternative water source projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 27C	<p>Review of this Part</p> <p>(1) The Minister is to carry out a review of the operation and effectiveness of this Part as soon as is practicable after the expiry of 5 years from the commencement of the Rights in Water and Irrigation Amendment Act 2000.</p>				The review of the Act could be used to help entrench and mobilise WSC objectives and initiatives. The review of the Act has not yet been undertaken.
	Rights in Water and Irrigation Regulations 2000	<i>The Rights in Water and Irrigation Regulations 2000 are made under the Rights In Water And Irrigation Act 1914, which deals with rights in water resources and makes provision for the regulation, management, use and protection of water resources.</i>					
		r. 35	<p>Deciding applications</p> <p>(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 Minister.</p> <p>(2) In exercising that discretion the Minister is to have regard to all matters that the Minister considers relevant, including whether the construction or action proposed in the application —</p> <p>(a) is in the public interest;</p> <p>(b) is ecologically sustainable;</p> <p>(c) is environmentally acceptable;</p> <p>(d) may prejudice other current and future needs for water;</p> <p>(e) would, in the opinion of the Minister, have a detrimental effect on another person;</p> <p>...</p>	Access to and use of water resources	?	?	<p>The extent to which access to groundwater could be limited through the imposition of conditions by the Minister under this section depends upon the factors that the Minister takes into account in deciding whether or not to grant a licence under section 26D of the Act and, if so, the conditions that may be imposed.</p> <p>Regulation 35 identifies the factors that the Minister may consider in making these determinations, which include factors that may support alternative water sources using groundwater (Reg 35(a) - “is in the public interest”) and those that may militate against granting access to ground water (Reg 35(b) – “is ecologically sustainable”; Reg 35(c) – “is environmentally acceptable”; Reg 35(d) – “may prejudice other current and future needs for water”).</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
	Metropolitan Water Supply, Sewerage and Drainage Act 1909	<i>The Metropolitan Water Supply, Sewerage and Drainage Act 1909 establishes methods to control access to and use of water resources.</i>					
		PART IV – WATER RESERVES					
		s. 16	<p>Unauthorised taking etc. of water, offence</p> <p>Any person who, other than with the authority of the Minister or under another written law —</p> <p>(a) diverts, or causes the diversion of, water coming from any watercourse or other source within a water reserve or catchment area; or</p> <p>(b) takes, or causes the taking of, any water found on or under land comprising a water reserve or catchment area; or</p> <p>(c) does, or causes the doing of, any act that may diminish the quantity or injure the quality or purity of water coming from any watercourse or other source within a water reserve or catchment area; or</p> <p>(d) alters, or causes the alteration of, the course of any watercourse within a water reserve or catchment area,</p> <p>commits an offence against this Act.</p>	<p>Access to and use of water resources</p> <p>Supply of water</p> <p>Conservation and sustainable use of water resources</p>	✓		The prohibition contained in this section can be used to control access to and use of water resources so as to ensure the sustainability of water supply.
		s. 17	<p>Pollution of water, Minister's powers to prevent</p> <p>(1) For preventing the pollution of water within or under a water reserve or catchment area, the Minister has all the powers and authority of a local government, including the power to make and enforce local laws under any Act relating to public health.</p>	<p>Access to and use of water resources</p> <p>Supply of water</p> <p>Environmental protection</p> <p>Risks to health</p>	✓		The prohibition contained in this section can be used to control access to and use of water resources so as to ensure the environmental protection of water resources.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
PART VI – THE PROTECTION OF UNDERGROUND WATER							
		s. 57B	<p>By-laws for pollution areas</p> <p>(1) The Minister may make by-laws for all or any of the following purposes –</p> <p>(a) protecting the purity of underground water within any pollution area for the supply of water;</p> <p>(b) controlling, regulating, limiting or prohibiting, on lands, anywhere within a pollution area or within any specified part or parts thereof, the placing or discharging on, onto, or into the ground therein of anything that is liable to effect detrimentally the purity of underground water in the pollution area either directly or indirectly.</p>	<p>Access to and use of water resources</p> <p>Supply of water</p> <p>Environmental protection</p>	✓		By-laws made under this section can be used to control access to and use of water resources so as to ensure the environmental protection of water resources.
PART XI – BY-LAWS							
		s. 146	<p>Minister may make by-laws</p> <p>(1) Without prejudice to the generality of that power, the power conferred by section 34 of the Water Agencies (Powers) Act 1984 to make by-laws may be exercised for the purposes of this Act with respect to the following matters, that is to say: –</p> <p>(a) for the prevention of the pollution of water within or under any water reserve or catchment area;</p> <p>(b) preventing or minimising the pollution of watercourses and sources of supply;</p> <p>(c) the regulation or prohibition of bathing in watercourses and reservoirs;</p> <p>(d) the preservation of good order and decency on watercourses and dams and their banks.</p>	Environmental protection	✓		By-laws could be used to help ensure environmental protection of water sources in a water reserve or catchment area.

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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
	Metropolitan Arterial Drainage Act 1982	<i>The Metropolitan Arterial Drainage Act 1982 provides for the establishment of an Arterial Drainage Scheme, whereby provision is made for the planning, maintenance, finance, extension and improvement of drainage services is made.</i>					
		PART IX - DRAINAGE					
		s. 98	<p>Scheme</p> <p>(1) The Minister is charged with ensuring that a scheme is compiled, to be known as the Arterial Drainage Scheme, whereby practical and economic provision is made, in consultation with all relevant licensees, for the planning, managing, maintaining, financing, extending and improving of drainage services to serve the Area.</p> <p>(2) The Minister shall prepare, and from time to time review and amend, plans which together will ultimately illustrate the Arterial Drainage Scheme in such a manner as to show —</p> <p>(a) drainage catchments; and</p> <p>(b) lakes, swamps, wetlands, watercourses and other features related to natural drainage; and</p> <p>(c) areas of existing, proposed or potential development; and</p> <p>(d) the existing drainage system — differentiating as to the kinds of drainage; and</p> <p>(e) the proposed drainage system — differentiating as to the proposed kinds of drainage and the persons or bodies to be liable for the provision and maintenance of that drainage; and</p> <p>(f) land which, in the opinion of the Minister —</p> <p>(i) benefits from drainage; and</p> <p>(ii) contributes to the need for drainage; and</p> <p>(g) any other matter or thing prescribed by regulations made under the Water Agencies (Powers) Act 1984 for the purposes of this section.</p> <p>Cont'd.</p>	<p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		This provision provides for the establishment of a drainage scheme, which may take into account the potential offered by stormwater. The reference to conservation and environmental protection also indicates that the drainage scheme must support these important WSC objectives.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 98	<p>(3) The Arterial Drainage Scheme shall make provision for —</p> <p>(a) the classification of drainage assets as arterial drains; and</p> <p>[(b), (c) deleted]</p> <p>(d) drainage courses,</p> <p>and may make provision for utilising the potential of the Scheme to conserve water, to re-charge aquifers, or in any other manner, in the best interests of the community and for the management of the natural environment.</p> <p>(4) In planning and implementing the Scheme the Minister shall consult and collaborate with all relevant licensees and the local governments of the districts which are affected, and, in so far as that is practicable, shall consult with the respective authorities or bodies having responsibility for health, planning, roads, railways, conservation and environmental protection, and waterways, having regard to their statutory duties and practical requirements.</p> <p>(5) In preparing the Scheme, the Minister shall take into account environmental, conservation and management considerations, and the financial implications as to the provision and maintenance of drainage assets and the Scheme is to be prepared in such a manner as to ultimately make provision for the division of responsibilities, by agreement, as between the Minister, relevant licensees, local governments and other persons.</p>	<p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>This provision provides for the establishment of a drainage scheme, which may take into account the potential offered by stormwater. The reference to conservation and environmental protection also indicates that the drainage scheme must support these important WSC objectives.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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		s. 99	<p>Management of arterial drains</p> <p>(1) The Minister has responsibility for the over-all administration of the system of arterial drainage and of arterial drains comprised within the Scheme, notwithstanding that the control, management and care of any particular arterial drain or any portion of an arterial drain may for the time being be vested in some other person or body.</p> <p>[(2) deleted]</p> <p>(3) This Act does not vest in the Minister the control, management or care of an arterial drain or proposed arterial drain.</p>	Alternative water source projects		✓	This section (and the broader regulatory framework) raises questions regarding the ownership of drains and the associated water resource – namely, stormwater. This uncertainty regarding ownership and access to and use of stormwater could deter the uptake of alternative water source projects involving stormwater.
	Conservation and Land Management Act 1984	<i>The Conservation and Land Management Act provides for the use, protection and management of certain public lands and waters and the flora and fauna. While the Act focuses predominantly on land management, the definition of “land” in section 3 includes (a) tidal land; and (b) tidal waters in any inlet, estuary, lagoon, river, stream or creek; and (c) the waters of any inlet, estuary, lake, lagoon or swamp or of any river, stream or creek whether flowing continuously or intermittently. In addition, section 5 explains that “land to which the Act applies includes land and waters comprising a range of public parks, forests, reserves and other areas”.</i>					
		PART II – LAND SUBJECT TO THIS ACT					
		s. 13A	<p>Marine nature reserves, purpose of and prohibited acts in</p> <p>(1) The reservation of a marine nature reserve shall be for —</p> <p>(a) the conservation and restoration of the natural environment; and</p> <p>(b) the protection, care and study of indigenous flora and fauna; and</p> <p>(c) the preservation of any feature of archaeological, historic or scientific interest.</p> <p>(2) Subject to section 13D, aquaculture, commercial fishing, recreational fishing and pearling activity shall not be carried out in a marine nature reserve.</p> <p>Under section 3, “marine nature reserve” means waters, land, or land and waters, that are a marine nature reserve under section 6(6).</p>	Conservation and sustainable use of water resources Environmental protection	✓		This provision supports conservation and environmental protection of marine waters.

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		s. 13B	<p>Marine parks, purpose of and prohibited acts in</p> <p>(1) The reservation of a marine park shall be for the purpose of allowing only that level of recreational and commercial activity which is consistent with the proper conservation and restoration of the natural environment, the protection of indigenous flora and fauna and the preservation of any feature of archaeological, historic or scientific interest.</p> <p>“marine park” means waters, land, or land and waters, that are a marine park under section 6(6).</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		This provision supports conservation and environmental protection of marine waters.
		s. 13C	<p>Marine management areas, purpose of and permitted acts in</p> <p>(1) The reservation of a marine management area shall be for the purpose of managing and protecting the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.</p> <p>“marine management area” means waters, land, or land and waters, that are a marine management area under section 6(6)</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		This provision supports conservation and environmental protection of marine waters.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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PART III – CONTROLLING BODIES ESTABLISHED							
		s. 19(1)	<p>Functions</p> <p>(1) The functions of the Conservation Commission are as follows —</p> <p>(c) to develop policies —</p> <p>(i) for the preservation of the natural environment of the State and the provision of facilities for the enjoyment of that environment by the community</p> <p>...</p> <p>(f) in accordance with Part V, to prepare and deal with proposed management plans for land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body;</p> <p>(g) in relation to management plans for land vested in or under the care, control and management of the Conservation Commission, whether solely or jointly with an associated body —</p> <p>(i) to develop guidelines for monitoring; and</p> <p>(ii) to set performance criteria for evaluating; and</p> <p>(iii) to conduct periodic assessments of, the implementation of the management plans by those responsible for implementing them, including the CEO and, if the land is State forest or a timber reserve, the Forest Products Commission;</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>Policies and management plans developed by the Conservation Commission could be used to further important WSC objectives, particularly conservation and sustainable use of water resources and environmental protection.</p>
		s. 20	<p>Powers</p> <p>(1) The Conservation Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		<p>The Conservation Commission has broad powers to further important WSC objectives, namely, conservation and sustainable use of water resources and environmental protection.</p>

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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 20	<p>Powers</p> <p>(6) Without limiting subsection (1), the Conservation Commission has the rights to take water from land vested in or under the care, control and management of the Conservation Commission that would apply if —</p> <p>(a) that land was land alienated from the Crown; and</p> <p>(b) the Conservation Commission was the occupier of that land, within the meaning of the Rights in Water and Irrigation Act 1914.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		It is possible that the Conservation Commission could take water from land in the Commission's care to further important WSC objectives, namely, conservation and sustainable use of water resources and environmental protection.
		s. 26B	<p>Functions</p> <p>(1) The functions of the Marine Authority are as follows —</p> <p>(b) to develop policies —</p> <p>(i) to preserve the natural marine and estuarine environments of the State</p> <p>...</p> <p>(e) in accordance with Part V, to prepare and deal with proposed management plans for land and waters vested in or under the care, control and management of the Marine Authority, whether solely or jointly with an associated body;</p> <p>(f) in relation to management plans for land and waters vested in or under the care, control and management of the Marine Authority, whether solely or jointly with an associated body —</p> <p>(i) to develop guidelines for monitoring; and</p> <p>(ii) to set performance criteria for evaluating; and</p> <p>(iii) to conduct periodic assessments of, the implementation of the management plans by those responsible for implementing them, including the CEO.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		Policies and management plans developed by the Marine Authority could be used to further important WSC objectives, particularly conservation and sustainable use of water resources and environmental protection.

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		s 26C	<p>Minister may give Authority directions</p> <p>(1) The Minister may give directions in writing to the Marine Authority with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Marine Authority shall give effect to any such direction.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		Ministerial directions issued to the Marine Authority could be used to further important WSC objectives, particularly conservation and sustainable use of water resources and environmental protection.
		s. 26G	<p>Functions</p> <p>(1) The functions of the Marine Committee are —</p> <p>(a) to provide scientific advice to the Minister, where the Minister has sought that advice, on issues relevant to the conservation of —</p> <p>(i) marine and estuarine fauna, flora and environments; and</p> <p>(ii) marine reserves, both generally, and as those issues relate to the functions of the Marine Authority; and</p> <p>(b) to provide scientific advice to the Marine Authority —</p> <p>(i) where the functions of the Marine Authority may be affected by a matter being considered by the Marine Committee; and</p> <p>(ii) on matters referred to the Marine Committee by the Marine Authority; and</p> <p>(iii) on matters which, in the opinion of the Marine Committee, should be brought to the attention of the Marine Authority.</p>	<p>Research and raising awareness</p> <p>Conservation and sustainable use of water resources</p>	✓		The Marine Committee could use its functions under this section to raise awareness of initiatives to advance conservation and sustainable use of water resources with the Minister.
		PART IV – ADMINISTRATION					
		s. 33	<p>CEO, functions of</p> <p>(1) The functions of the CEO are, subject to the direction and control of the Minister —</p> <p>...</p> <p>(dc) subject to paragraph (dd), to promote the conservation of water, as to both quantity and quality, on land referred to in paragraph (a);</p> <p>...</p>	<p>Conservation and sustainable use of water resources</p>	✓		This section explicitly acknowledges that the functions of the CEO of the Department include to promote conservation.

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		s. 33	<p>CEO, functions of</p> <p>(1) The functions of the CEO are, subject to the direction and control of the Minister —</p> <p>...</p> <p>(dd) to develop policies that provide for water to be taken from land referred to in paragraph (a);</p> <p>...</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		It is possible that the CEO of the Department could arrange for water to be taken from land to further important WSC objectives, namely, conservation and sustainable use of water resources and environmental protection.
PART V – MANAGEMENT OF LAND							
		s. 54(1)	<p>Plans, when required and who has to prepare</p> <p>(1) A management plan prepared and approved under this Part is required for —</p> <p>(a) all land that is vested in or under the care, control and management of a controlling body, whether solely or jointly with an associated body; and</p> <p>(b) all section 8A land.</p> <p>(2) The responsible body for land referred to in subsection (1) is responsible for —</p> <p>(a) the preparation of the initial and every other proposed management plan; and</p> <p>(b) the review of each expiring management plan, for the land.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		Management plans could be used to further important WSC objectives, particularly conservation and sustainable use of water resources and environmental protection.
		s. 56	<p>Objectives of plans</p> <p>(1) In preparing a proposed management plan for any land, the responsible body for the land shall have the objective of achieving or promoting the purpose for which the land is reserved</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p>	✓		Management plans could be used to further important WSC objectives, particularly conservation and sustainable use of water resources and environmental protection.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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	Conservation and Land Management Regulations 2002	<i>The Conservation and Land Management Regulations 2002 are made under the Conservation and Land Management Act, which provides for the use, protection and management of certain public lands and waters and the flora and fauna.</i>					
		PART 2 – PROTECTION OF THE ENVIRONMENT					
		r. 23	<p>Pollution of water supply</p> <p>(1) A person must not discharge or place any refuse or any poisonous, noxious or polluting matter, or cause any refuse or poisonous, noxious or polluting matter to be discharged or placed —</p> <p>(a) in any —</p> <p>(i) reservoir or tank that holds or is intended to hold water for human consumption or use on CALM land, or in any area on CALM land where the matter is likely to pass to such a reservoir or tank; or</p> <p>(ii) pipe, conduit or fitting through which such water is passed or intended to be passed; or</p> <p>(iii) pit, manhole or other structure containing valves, meters, fittings or connections for the distribution of such water; or</p> <p>(b) in any public water catchment area on CALM land, or in any area on CALM land where the matter is likely to pass to a public water catchment area; or</p> <p>(c) except as permitted under regulation 21, in any naturally occurring water course or water body on CALM land, or in any area on CALM land where the matter is likely to pass to a naturally occurring water course or water body.</p>	Environmental protection Supply water	✓		This provision helps to support an important WSC objective – namely, environmental protection of water resources. It also helps to protect precious potable water supplies.



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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		r. 30	<p>Water</p> <p>(1) A person must not, without lawful authority —</p> <p>(a) take water from, or interfere with water on, CALM land; or</p> <p>(b) drain any part of CALM land; or</p> <p>(c) interfere with any drain on CALM land; or</p> <p>(d) divert water on or onto CALM land; or</p> <p>(e) make any construction for a purpose referred to in paragraph (a), (b), (c) or (d).</p> <p>(2) Subregulation (1)(a) does not apply to an individual who takes water for the personal needs of the individual or others associated with the individual.</p>	<p>Supply water</p> <p>Access to and use of water resources</p>	✓		This provision restricts access to water resources on CALM land, including precious potable water supplies.

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	Waterways Conservation Act 1976	<i>The Waterways Conservation Act 1976 provides for the conservation and management of certain waters and of the associated land and environment.</i>					
		PART 3 – FUNCTIONS OF THE MINISTER					
		s. 11	<p>Functions of the Minister</p> <p>(1) The Minister has the overall responsibility for the conservation of the waters and associated land to which this Act applies and for —</p> <p>(a) the preservation and enhancement of the quality of the environment and amenity of those waters and that land; and</p> <p>(b) the control and prevention of any act or omission which may cause the pollution of those waters or that land.</p> <p>(2) In addition to any other functions of the Minister, the Minister has the following functions —</p> <p>(a) to maintain and manage all areas to which this Act applies and to carry out works for the purposes of improving and maintaining the condition of the waters and associated land to which this Act applies;</p> <p>(b) to carry out, or cause to be carried out, river training, dredging, reclamation and structural works;</p> <p>(c) to control, under the regulations, acts or omissions which may cause the pollution of waters and associated land to which this Act applies;</p> <p>(d) to promote coordinated action by owners and occupiers of land, and public authorities having the control of land adjacent to or associated with any of the waters to which this Act applies, for the control and prevention of pollution;</p> <p>(e) to establish and develop criteria for the assessment of the extent of environmental change or pollution;</p> <p>Cont'd.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Research and raising awareness</p>	✓		<p>This provision confirms the broad role that the Minister plays in supporting important WSC objectives, particularly conservation and sustainable use of water resources and environmental protection. Section 11(2)(g) could also be used to support research into WSC issues and projects.</p>



ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		s. 11	<p>(f) to specify standards and criteria and the methods of sampling and testing to be used for any purpose;</p> <p>(g) to conduct or promote relevant research or enter into projects for research or the collation of information;</p> <p>(h) to provide advice and disseminate knowledge on the conservation and good management of rivers, inlets and estuaries and of associated lands;</p> <p>(i) to publish reports and provide information for the purpose of increasing public awareness of the problems and remedies that exist in relation to environmental pollution as it relates to waters and associated land;</p> <p>(j) to carry out, or cause to be carried out, works for the preservation or enhancement of amenities or facilities for recreation;</p> <p>(k) to control, under the regulations, the excision or reclamation of any waters or associated land;</p> <p>(l) generally promote, encourage, coordinate and carry out planning and projects in the management and conservation of rivers, inlets and estuaries.</p> <p>(3) In performing his or her functions under this Act, the Minister may arrange for local governments and other public authorities to carry out works and may finance the works or reimburse the local government or authority concerned.</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Research and raising awareness</p>	✓		<p>This provision confirms the broad role that the Minister plays in supporting important WSC objectives, particularly conservation and sustainable use of water resources and environmental protection. Section 11(2)(g) could also be used to support research into WSC issues and projects.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
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PART 4 – AGREEMENTS, MANAGEMENT PROGRAMMES AND CONSULTATION							
		s. 35	Management programmes (1) The Minister, in consultation with the appropriate local governments and other public authorities, may cause to be prepared a detailed documented programme of the operations that are to be undertaken pursuant to this Act on or in relation to waters and associated land to which this Act applies, during the period to which the programme relates.	Conservation and sustainable use of water resources Environmental protection	✓		Management programmes may be made by the Minister to give effect to some important WSC objectives reflected in this Act, including conservation and sustainable use and environmental protection of water resources.
PART 6 – GENERAL PROVISIONS							
		s. 54	By-laws (1) The Minister may make by-laws for the purposes of this Act that are applicable in the management area or areas specified in the by-laws.	Conservation and sustainable use of water resources Environmental protection	✓		By-laws may be made by the Minister to give effect to some important WSC objectives reflected in this Act, including conservation and sustainable use and environmental protection of water resources.
		s. 56	Local laws (1) Subject to the provisions of this section, a local government may make local laws for carrying into effect the provisions of this Act within its district, and may repeal, amend, vary or suspend the operation of any such local law.	Conservation and sustainable use of water resources Environmental protection	✓		Local laws may be made by local government to give effect to some important WSC objectives reflected in this Act, including conservation and sustainable use and environmental protection of water resources.

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	Waterways Conservation Regulations 1981	<i>The Waterways Conservation Regulations 1981 are made under the Waterways Conservation Act 1976, which provides for the conservation and management of certain waters and of the associated land and environment.</i>					
		r. 8	<p>Certain acts prohibited in relation to waters</p> <p>(1) A person shall not —</p> <p>(a) put any mud, earth, gravel, litter or other matter into any waters; or</p> <p>(b) put or keep disused car bodies or other visually offensive things on associated land proximate to any waters; or</p> <p>(c) discard any litter on associated land proximate to any waters; or</p> <p>(d) construct or use any drain designed to discharge directly or indirectly into any waters except with the approval of the Minister; or</p> <p>(e) launch any boat or other craft directly from a trailer into any waters except —</p> <p>(i) from privately-owned land abutting on the waters; or</p> <p>(ii) at a launching place approved for that purpose by the Minister;</p> <p>or</p> <p>(f) except on behalf of the Minister disturb the bed, banks, or foreshore of any waters so as, in the opinion of the Minister, to endanger the stability of any part of the banks or foreshore or the vegetation thereon; or</p> <p>(g) except on behalf of the Minister excavate or dig channels in any part of the bed of any waters below high water mark, whether or not that part is then covered by water; or</p> <p>(h) except on behalf of, or with the approval in writing of, the Minister, construct any groyne, breakwater, or other structure intended to impede or alter the flow of any waters; or</p> <p>(i) discharge or permit the discharge of oil from any boat or craft into any waters, whether by the pumping out of a bilge, or by any other means; or</p>	Environmental protection	✓		These provisions, which effectively prohibit pollution – including of water resources – help to ensure environmental protection of water resources.

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		r. 8	(j) except in an emergency — (i) land or touch down an aircraft on any waters or associated land; or (ii) take-off an aircraft from any waters or associated land; or (iii) stand, park, dock or moor an aircraft on any waters or associated land; or (iv) embark passengers onto or disembark passengers from an aircraft on any waters or associated land; or (v) load freight onto or unload freight from an aircraft on any waters or associated land; or (vi) refuel, service or repair an aircraft on any waters or associated land.	Environmental protection	✓		These provisions, which effectively prohibit pollution – including of water resources – help to ensure environmental protection of water resources.
	Environmental Protection Act 1986	<i>The Environmental Protection Act 1986 provides for the establishment of the Environmental Protection Authority, for the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment.</i>					
		PART I – PRELIMINARY					
		s. 4A	Objects and principles of Act The Act creates a legislative framework for the protection of the environment having regard to the principles of environment protection, which include: - the precautionary principle - principle of intergenerational equity - principle of conservation of biological diversity and ecological integrity - principles relating to improved valuation, pricing and incentive mechanisms - principle of waste minimisation	Conservation and sustainable use of water resources Environmental protection	✓		The principles underlying this Act are broad enough to accommodate WSC principles and objectives, particularly conservation and sustainable use of water resources and environmental protection.
		PART II – ENVIRONMENTAL PROTECTION AUTHORITY					
		s. 16(b)	Functions of Authority The functions of the EPA include to consider and initiate the means of protecting the environment and the means of preventing, controlling and abating pollution and environmental harm.	Environmental protection	✓		The EPA has power to take environmental protection measures, including in relation to water resources.

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		s. 16(f)	<p>Functions of Authority</p> <p>The functions of the EPA include to prepare, and seek approval for, environmental protection policies.</p>	<p>Alternative water source projects</p> <p>Environmental protection</p>	✓		<p>Environmental protection policies could be used to protect water resources.</p> <p>Environmental Protection Policies (EPPs) are statutory policies developed under Part III of the Environmental Protection Act 1986 (EP Act). They are whole-of-Government policies that are ratified by Parliament and have the force of law from the day they are published in the Western Australian Government Gazette.</p> <p>A limited number of EPPs have been issued for particular bodies of inland waters (South West Agriculture Zone Wetlands, Swan Coastal Plain Lakes, Gnarara Mound Crown Land, Peel Inlet – Harvey Estuary).</p>
		s. 16(g)	<p>Functions of Authority</p> <p>The functions of the EPA include to promote environmental awareness within the community and to encourage understanding by the community of the environment.</p>	<p>Research and raising awareness</p>	✓		<p>The EPA has power to undertake activities aimed at raising awareness of the need to protect water resources.</p>
		s. 17(3)(d)	<p>Powers of Authority</p> <p>The Authority, if it considers it appropriate or is requested to do so by the Minister, may consider and make proposals as to the policy to be followed in the State with regard to environmental matters</p>	<p>Environmental protection</p>	✓		<p>Policies issued by the EPA could be used to protect water resources.</p> <p>State Environmental Policies (SEPs) are non-statutory policies developed by the EPA under Part II Section 17(3) (d) of the EP Act. They are considered by Cabinet for adoption on a whole-of-Government basis.</p> <p>A SEP, being non-statutory, is a more general and flexible instrument than an EPP. However, both documents can establish environmental values and environmental quality objectives for a particular environment or component of the environment.</p> <p>As yet, a SEP that is focused on water has not been issued.</p>

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		s. 17(3)(d)	Powers of Authority The Authority, if it considers it appropriate or is requested to do so by the Minister, may conduct and promote relevant research.	Research and raising awareness	✓		The EPA has power to undertake research regarding environmental protection of water resources.
PART V – ENVIRONMENTAL REGULATION							
		s. 49	Causing pollution and unreasonable emissions (2) A person who intentionally or with criminal negligence — (a) causes pollution; or (b) allows pollution to be caused, commits an offence. (3) A person who causes pollution or allows pollution to be caused commits an offence.	Environmental protection	✓		These provisions, which effectively prohibit pollution – including of water resources – help to ensure environmental protection of water resources.
		s. 49A	Dumping waste (1) In this section — place includes water, a vehicle and a receptacle. (2) A person who discharges or abandons, or causes or allows to be discharged or abandoned, any solid or liquid waste in water to which the public has access commits an offence. (3) A person who discharges or abandons, or causes or allows to be discharged or abandoned, any solid or liquid waste on or in any place, other than water to which the public has access, commits an offence.	Environmental protection	✓		These provisions, which effectively prohibit pollution – including of water resources – help to ensure environmental protection of water resources.

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		s. 50	<p>Discharging waste in circumstances likely to cause pollution</p> <p>(1) A person who intentionally or with criminal negligence —</p> <p>(a) causes waste to be placed; or</p> <p>b) allows waste to be placed, in any position from which the waste —</p> <p>(c) could reasonably be expected to gain access to any portion of the environment; and</p> <p>(d) would in so gaining access be likely to result in pollution, commits an offence.</p> <p>(2) A person who causes or allows waste to be placed in any position from which the waste —</p> <p>(a) could reasonably be expected to gain access to any portion of the environment; and</p> <p>(b) would in so gaining access be likely to result in pollution, commits an offence.</p>	Environmental protection	✓		These provisions, which effectively prohibit pollution – including of water resources – help to ensure environmental protection of water resources.
		s. 50A	<p>Causing serious environmental harm</p> <p>(1) A person who, intentionally or with criminal negligence —</p> <p>(a) causes serious environmental harm; or</p> <p>(b) allows serious environmental harm to be caused, commits an offence.</p> <p>(2) A person who —</p> <p>(a) causes serious environmental harm; or</p> <p>(b) allows serious environmental harm to be caused, commits an offence.</p>	Environmental protection	✓		These provisions, which effectively prohibit pollution – including of water resources – help to ensure environmental protection of water resources.

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		s. 50B	<p>Causing material environmental harm</p> <p>(1) A person who intentionally or with criminal negligence —</p> <p>(a) causes material environmental harm; or</p> <p>(b) allows material environmental harm to be caused,</p> <p>commits an offence.</p> <p>(2) A person who —</p> <p>(a) causes material environmental harm; or</p> <p>(b) allows material environmental harm to be caused,</p> <p>commits an offence.</p>	Environmental protection	✓		These provisions, which effectively prohibit pollution – including of water resources – help to ensure environmental protection of water resources.
		s. 52	<p>Changing premises to become prescribed premises requires approval</p> <p>The occupier of any premises who carries out any work on or in relation to the premises which causes the premises to become, or to become capable of being, prescribed premises commits an offence unless he does so in accordance with a works approval.</p>	Environmental protection	✓		The licensing process for prescribed premises (particularly, the imposition of conditions on works approvals) could be used to help ensure environmental protection of water resources. See discussion of licence conditions under sections 62 and 62A below.
		s. 58	<p>Contravening licence conditions</p> <p>(1) A holder of a licence who contravenes a condition to which the licence is subject commits an offence.</p> <p>(2) If a person contravenes on premises in respect of which a licence is in force a condition to which the licence is subject, the occupier of those premises is himself deemed to have contravened that condition whether or not the person acted contrary to the instructions of that occupier in contravening that condition.</p>	Environmental protection	✓		The licensing process for prescribed premises (particularly, the imposition of conditions on works approvals) could be used to help ensure environmental protection of water resources. See discussion of licence conditions under sections 62 and 62A below.

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		s. 62	<p>Works approval and licence conditions</p> <p>(1) A works approval or licence may be granted subject to such conditions as the CEO considers to be necessary or convenient for the purposes of this Act relating to the prevention, control, abatement or mitigation of pollution or environmental harm.</p> <p>(2) Section 62A sets out some kinds of conditions that may be attached to a works approval or licence and further kinds of conditions may be prescribed, but nothing in that section or the regulations prevents other conditions from being attached.</p>	Environmental protection	✓		The licensing process for prescribed premises (particularly, the imposition of conditions on works approvals) could be used to help ensure environmental protection of water resources.

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		s. 62A	<p>Some kinds of conditions</p> <p>(1) The following list sets out things that the occupier of premises to which a works approval or licence relates can be required to do (at the expense of the occupier) under conditions attached to the works approval or licence —</p> <p>(a) design, construct or operate any facilities or plant in accordance with specified criteria;</p> <p>(b) install or operate any equipment for preventing, controlling, abating or monitoring pollution or environmental harm in accordance with specified criteria;</p> <p>(c) take specified measures for the purpose of minimising the likelihood of pollution or environmental harm;</p> <p>...</p> <p>(f) comply with requirements set by management plans or other specified programmes;</p> <p>...</p> <p>(i) provide information on the nature and quantity of wastes and on materials leading to the generation of those wastes;</p> <p>(j) dispose of waste in a specified manner;</p> <p>(k) if practicable —</p> <p>(i) reuse waste wholly or in part; or</p> <p>(ii) make waste available for reuse by another person;</p> <p>(l) investigate options for measures for preventing, controlling or abating pollution or environmental harm;</p> <p>...</p>	<p>Environmental protection</p> <p>Alternative water source projects</p>	✓		<p>The licensing process for prescribed premises (particularly, the imposition of conditions on works approvals) could be used to help ensure environmental protection of water resources. Section 62A lists examples of conditions that could be imposed to protect water resources. In addition section 62A(k) could encourage alternative water source projects involving the recycling of wastewater.</p>



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		s. 65	<p>Environmental protection notices, issue and effect of</p> <p>(1) If the CEO suspects on reasonable grounds that —</p> <p>(a) there is, or is likely to be, an emission from any premises, and the emission —</p> <p>(i) does not comply with or would not if it were emitted comply with a standard required by or under an approved policy or a prescribed standard; or</p> <p>(ii) has caused or is likely to cause pollution;</p> <p>or</p> <p>(b) a person is doing, or is likely to do, an act in contravention of section 50A or 50B on any premises; or</p> <p>(c) an activity on premises does not comply with a standard required by or under an approved policy or a prescribed standard, the CEO may cause to be given to the owner or the occupier, or both the owner and the occupier, of the premises a notice (an environmental protection notice) in respect of the premises.</p>	Environmental protection	✓		Environmental protection notices could be used to help ensure environmental protection of water resources.
	Water Efficiency Labelling and Standards Act 2005	<p><i>The Water Efficiency Labelling and Standards Scheme (WELS Scheme) is a joint initiative of the Australian, State, and Territory governments. The federal government enacted the Water Efficiency Labelling and Standards (WELS) Act 2004 to provide for water efficiency labelling and to set out water efficiency standards. The States then passed legislation to implement this Act. Section 18 of the Commonwealth Act enables the Commonwealth Minister to determine that water-use or water-saving products are WELS products and set out the WELS standard for the products. Section 19 of the Commonwealth Act states what must be set out in WELS standards and enables WELS standards to require products to be registered, and registered products to be WELS labelled, for the purposes of specified supplies of the product. The Western Australian Act needs to be read in conjunction with the Commonwealth Act. The primary aims underlying the Western Australian Act are to provide for water efficiency labelling and for the establishment of water efficiency standards.</i></p>					
		PART 1 - PRELIMINARY					
		s. 3	<p>Objects of the Act are:</p> <ul style="list-style-type: none"> - to conserve water supplies by reducing water consumption; - to provide information for purchasers of water-use and water-saving products; - to promote the adoption of efficient and effective water-use and water-saving technologies. 	Conservation and sustainable use of water resources	✓		The objectives underlying the Act are clearly in line with WSC principles.

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PART 7 – OFFENCES RELATING TO THE SUPPLY OF WELS PRODUCTS							
		s. 33	<p>Registration requirement</p> <p>A person commits an offence if—</p> <p>(a) the person supplies a WELS product; and</p> <p>(b) the applicable WELS standard requires the product to be registered for the purposes of the supply; and</p> <p>(c) the product is not registered.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
		s. 34	<p>Labelling registered products</p> <p>A person commits an offence if—</p> <p>(a) the person supplies a WELS product; and</p> <p>(b) the product is registered; and</p> <p>(c) the applicable WELS standard requires registered products to be WELS-labelled for the purposes of the supply; and</p> <p>(d) the product is not WELS-labelled.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
		s. 35	<p>Minimum water efficiency—products required to be registered</p> <p>A person commits an offence if—</p> <p>(a) the person supplies a WELS product; and</p> <p>(b) the applicable WELS standard requires the product—</p> <p>(i) to be registered for the purposes of the supply; and</p> <p>(ii) to comply with minimum water efficiency requirements for the purposes of the supply; and</p> <p>(c) the product does not comply with those minimum water efficiency requirements.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.

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		s. 36	<p>Minimum general performance—products required to be registered</p> <p>A person commits an offence if—</p> <p>(a) the person supplies a WELS product; and</p> <p>(b) the applicable WELS standard requires the product—</p> <p>(i) to be registered for the purposes of the supply; and</p> <p>ii) to comply with minimum general performance requirements for the purposes of the supply; and</p> <p>(c) the product does not comply with those minimum general performance requirements.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
		s. 37	<p>Misuse of WELS standards and information</p> <p>A person commits an offence if the person—</p> <p>(a) supplies a WELS product; and</p> <p>(b) uses a WELS standard, or information included in a WELS standard, for, or in relation to, the supply of the product; and</p> <p>(c) uses the standard, or information, in a manner that is inconsistent with the standard.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.
		s. 38	<p>Information inconsistent with WELS standards</p> <p>A person commits an offence if—</p> <p>(a) the person uses information for, or in relation to, the supply of a WELS product; and</p> <p>(b) the information is inconsistent with the information contained in the applicable WELS standard for the product.</p>	Conservation and sustainable use of water resources	✓		This provision helps to ensure that the objectives underlying the WELS scheme – which are consistent with WSC principles – are upheld.

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	Local Government Act 1995	<i>The Local Government Act 1995 sets out the purpose, functions and powers conferred on local government in Western Australia.</i>					
		PART 1 – INTRODUCTORY MATTERS					
		s. 1.3(2)	In carrying out its functions a local government is to use its best endeavours to meet the needs of current and future generations through an integration of environmental protection, social advancement and economic prosperity.	Environmental protection Conservation and sustainable use of water resources Alternative water source projects	✓		This provision could help support the pursuit by local government of WSC objectives and initiatives. The provision explicitly refers to “environmental protection”. In addition, it refers to the needs of future generations, which could support the conservation and sustainable use for water resources for future generations, including through alternative water source projects.
		SCHEDULE 9.1 – CERTAIN MATTERS FOR WHICH GOVERNOR MAY MAKE REGULATIONS					
		cl 9	Protection of watercourses, drains, tunnels and bridges Regulations may be made for regulating or preventing the alteration or obstruction of, or interference with, any watercourse, drain, tunnel, or bridge that is local government property.	Environmental protection	✓		Regulations made pursuant to this provision could help support the environmental protection of watercourses that are local government property and stormwater in council drains.

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		cl 11	<p>Works required for supply of gas or water</p> <p>(1) Regulations may authorise a local government that is responsible for supplying water or gas to do certain works for the purposes of providing, maintaining, or modifying the supply system.</p> <p>(2) Regulations cannot authorise a local government to interfere with a supply system that is not local government property without the consent of a person who has authority to consent.</p> <p>(3) Regulations may authorise a local government to do works in a public place that is not local government property but, unless there are exceptional circumstances, only after the prescribed notice has been given to the person having the management or control of the place and only if that person, or that person’s representative —</p> <p>(a) is present while the work is being done; or</p> <p>(b) has notified the local government that the work may be done without the person, or the person’s representative, being present.</p>	Alternative water source projects	✓		Arguably, regulations could be made pursuant to this provision that could authorise councils to invest in alternative water source projects that supply water (for whatever application).
	Building Code of Australia	<p><i>The Building Code of Australia is a national building standards code that has been enacted in all Australian States and Territories. In Western Australia, it applies pursuant to the Building Regulations 2012, which are made under the Building Act 2011. The Building Code identifies the standards that apply to the design and construction of buildings depending upon the use or intended use of the building in question. Notably, the Building Code is performance-based. Therefore, there is some flexibility regarding the way in which the Building Code can be applied when the performance requirements are relied upon. The Building Code also contains prescriptive ‘deemed-to-satisfy’ provisions, which may be relied upon instead of the performance requirements. The Building Commission (a division of the Department of Commerce) is the regulator under the Building Act 2011.</i></p>					
		PART B1 – STRUCTURAL PROVISIONS (VOLUME 1)					
		B1.6	A Class 2 or 3 building, Class 9a health-care building, Class 9c aged-care building or Class 4 part of a building, in a flood hazard area must comply with the ABCB Standard for Construction of Buildings in Flood Hazard Areas.	Flooding	✓		Notably, this requirement does not apply to all classes of buildings. In addition, for those buildings that are covered by this requirement, the extent to which they are protected from flood risks will depend upon whether the ABCB Standard for Construction of Buildings in Flood Hazard Areas is capable of responding to future flood risks.

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	Plumbing Code of Australia	<i>The Plumbing Code of Australia is a national plumbing standards code that has been enacted in all Australian States and Territories. It is Volume 3 of the Building Code of Australia. In Western Australia, the Plumbing Code has not yet been incorporated into the legislative regime but a decision to do so has been made. Notably, the Plumbing Code (like the Building Code) is performance-based. Therefore, there is some flexibility regarding the way in which the Plumbing Code can be applied when the performance requirements are relied upon. The Plumbing Code also contains prescriptive 'deemed-to-satisfy' provisions, which may be relied upon instead of the performance requirements. The Building Commission (a division of the Department of Commerce) is the regulator under the Building Act 2011.</i>					
SECTION B – WATER SERVICES							
PART B3 – NON-DRINKING WATER SERVICES							
		B3.0	Scope This Part sets out the requirements for the design, construction, installation, replacement, repair, alteration and maintenance of any part of a non-drinking water service of a property from the point of connection to the points of discharge.	Alternative water source projects	?	?	The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects. However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		BO3	Objective The Objective of this Part is to- (a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of a non-drinking water installation; and (b) ensure that a non-drinking water installation (including an installation provided for use by people with a disability) is suitable; and (c) conserve water and energy; and (d) safeguard the environment; and (e) safeguard public and private infrastructure; and (f) ensure that a non-drinking water installation throughout its serviceable life will continue to satisfy the requirements of Objectives (a) to (e).	Conservation and sustainable use of water resources Environmental protection Risks to health	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water source projects.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		BP3.3	<p>Performance requirement for non-drinking water service installations</p> <p>A non-drinking water service must be designed, constructed and installed in such a manner as to-</p> <p>(a) avoid the likelihood of contamination of drinking water, and</p> <p>(b) provide non-drinking water to fixtures and appliances at flow rates and pressures which are adequate for the correct functioning of those fixtures and appliances under normal conditions and, in a manner that does not create undue noise; and</p> <p>(c) avoid the likelihood of leakage or failure including uncontrolled discharges; and</p> <p>(d) allow adequate access for maintenance of mechanical components and operational controls; and</p> <p>(e) allow the system, appliances and backflow prevention devices to be isolated for testing and maintenance.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	<p>This performance requirement emphasises risks to health in the context of non-drinking water installations, which may deter the uptake of alternative water source projects (particularly, those involving recycled water or wastewater).</p>
		B3.2	<p>Deemed-to-Satisfy Provisions</p> <p>(8) The distribution of non-drinking water must be limited to the following uses-</p> <p>(i) garden watering; and</p> <p>(ii) toilet and urinal flushing ; and</p> <p>(iii) clothes washing; and</p> <p>(iv) vehicle washing; and</p> <p>(v) path/wall washing; and</p> <p>(vi) industrial purposes; and</p> <p>(vii) fire-fighting; and</p> <p>(viii) dust suppression; and.</p> <p>(ix) any other use authorised by the authority having jurisdiction.</p> <p>(b) The design, construction, installation, replacement, repair, alteration and maintenance of a non-drinking water service must be in accordance with AS/NZS 3500.1 or Section 2 of AS/NZS 3500.5 as appropriate.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	<p>This deemed-to-satisfy requirement limits the application of non-drinking water installations, which may deter the uptake of alternative water source projects (particular, those involving recycled water or wastewater).</p> <p>The deemed-to-satisfy requirements require non-drinking water installations to comply with AS/NZS 3500.1 or Section 2 of AS/NZS 3500.5. Reference to these documents may be necessary to assess whether or not these standards may also hinder WSC.</p>

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
SECTION D – STORMWATER DRAINAGE SYSTEMS							
PART D1 – ROOF DRAINAGE SYSTEMS							
		D1.0	<p>Scope</p> <p>This Part sets out the requirements for the design, construction, installation, replacement, repair, alteration and maintenance of any part of a roof drainage system.</p>	Alternative water source projects	?	?	The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects involving stormwater from roofs. However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		D01	<p>Objectives</p> <p>The Objective of this Part is to-</p> <p>(a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of a roof drainage installation; and</p> <p>(b) ensure that a roof drainage installation is adequate; and</p> <p>(c) conserve water and energy; and</p> <p>(d) safeguard the environment; and</p> <p>(e) safeguard public and private infrastructure; and</p> <p>(f) ensure that a roof drainage installation is designed and is capable of being maintained so that throughout its serviceable life it will continue to satisfy Objectives (a) to (e).</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p>	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water source projects.
		DP1.1	<p>Performance requirement for roof drainage systems</p> <p>Roof drainage systems must dispose of stormwater flows from rainfall events having an average recurrence interval appropriate to the importance of the building and the severity of potential damage to property, loss of amenity, illness or injury that would result from the failure of such a system.</p>	Alternative water source projects	?	?	This aspect of the Plumbing Code emphasises removal of the stormwater to prevent loss and injury. There is no reference to the resource potential of stormwater. Therefore, it is unclear whether or not this provision could be relied upon to support alternative water source projects, particularly those involving harvesting and re-use of stormwater from roofs.
		D1.2	<p>Deemed-to-Satisfy Provisions</p> <p>The design, construction, installation, replacement, repair, alteration and maintenance of a roof drainage system must be in accordance with AS/NZS 3500.3 or Section 5 of AS/NZS 3500.5 as appropriate.</p>	Alternative water source projects	?	?	The deemed-to-satisfy requirements require non-drinking water installations to comply with AS/NZS 3500.3 or Section 5 of AS/NZS 3500.5. Reference to these documents may be necessary to assess whether or not the relevant standards may also hinder WSC.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
PART D2 – SURFACE AND SUBSURFACE DRAINAGE SYSTEMS							
		D2.0	<p>Scope</p> <p>This Part sets out the requirements for the design, construction, installation, replacement, repair, alteration and maintenance of any part of a surface drainage system and subsurface drainage system to the point of connection.</p>	Alternative water source projects	?	?	The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects involving stormwater in drains. However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		D02	<p>Objectives</p> <p>The Objective of this Part is to-</p> <p>(a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of a stormwater drainage installation;</p> <p>(b) ensure that a stormwater drainage installation is adequate; and</p> <p>(c) conserve water and energy; and</p> <p>(d) safeguard the environment; and</p> <p>(e) safeguard public and private infrastructure; and</p> <p>(f) ensure that a stormwater drainage installation is designed and is capable of being maintained so that throughout its serviceable life it will continue to satisfy Objectives (a) to (e).</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p>	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water source projects.
		DP2.1	<p>Performance requirement for surface drainage systems</p> <p>Surface drainage systems must dispose of stormwater flows from rainfall events having an average recurrence interval appropriate to the importance of the site and the severity of potential damage to property, loss of amenity, illness or injury that would result from the failure of such a system.</p>	Alternative water source projects	?	?	This aspect of the Plumbing Code emphasises removal of the stormwater to prevent loss and injury. There is no reference to the resource potential of stormwater. Therefore, it is unclear whether or not this provision could be relied upon to support alternative water source projects, particularly those involving harvesting and re-use of stormwater from drains.
		D2.2	<p>Deemed-to-Satisfy Provisions</p> <p>The design, construction, installation, replacement, repair, alteration and maintenance of a stormwater drainage system must be in accordance with AS/NZS 3500.3.</p>	Alternative water source projects	?	?	The deemed-to-satisfy requirements require non-drinking water installations to comply with AS/NZS 3500.5. Reference to this document may be necessary to assess whether or not the relevant standards may also hinder WSC.

ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
SECTION F – ON-SITE WASTEWATER SYSTEMS							
PART F1 – ON-SITE WASTEWATER MANAGEMENT SYSTEMS							
		F1.0	<p>Scope</p> <p>This Part sets out the requirements for the design, construction, installation, replacement, repair, alteration and maintenance of any part of an on-site wastewater management system.</p>	Alternative water source projects	?	?	The Plumbing Code is clearly relevant to WSC initiatives, particularly alternative water source projects involving onsite wastewater treatment and re-use facilities. However, because the Plumbing Code is performance-based, it is unclear how it will be applied in practice.
		FO1	<p>Objectives</p> <p>The Objective of this Part is to-</p> <p>(a) safeguard people from illness, injury or loss (including loss of amenity) due to the failure of an on-site wastewater management system installation; and</p> <p>(b) ensure that an on-site wastewater management system installation (including an installation provided for use by people with a disability) is suitable; and</p> <p>(c) conserve water and energy; and</p> <p>(d) safeguard the environment; and</p> <p>(e) safeguard public and private infrastructure; and</p> <p>(f) ensure that an on-site wastewater management system installation is designed and is capable of being maintained so that throughout its serviceable life it will continue to satisfy Objectives (a) to (e).</p>	<p>Conservation and sustainable use of water resources</p> <p>Environmental protection</p> <p>Risks to health</p>	?	?	A number of the objectives underlying this aspect of the Plumbing Code are consistent with WSC objectives – particularly, conservation and sustainable use of water and environmental protection. However, the reference to risks to health could deter uptake of alternative water source projects.



ITEM	LEGISLATIVE INSTRUMENT	PROVISION	RELEVANT REQUIREMENT/OBLIGATION/RESTRICTION	WSC TOPIC/ISSUE	IMPLICATIONS FOR WSC		
					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		FP1.1	<p>Performance requirements</p> <p>On-site wastewater management systems must be designed, constructed, installed and maintained in such a manner as to-</p> <p>(a) protect public health by ensuring that-</p> <p>(i) all discharges comply with the requirements of the authority having jurisdiction; and</p> <p>(ii) risks associated with the discharge of treated wastewater and or the end product from a composting toilet to the environment are minimised; and</p> <p>(b) protect the environment by ensuring that-</p> <p>(i) environmental quality objectives set by the authority having jurisdiction are attained; and</p> <p>(ii) surface and ground water are not polluted; and</p> <p>(iii) soil productivity is maintained or enhanced; and</p> <p>(iv) adverse cumulative environmental effects comply with the relevant environmental requirements; and</p> <p>(c) minimise the impacts on and maintain and enhance community amenity by ensuring that-</p> <p>(i) on-site wastewater management systems are managed so as to achieve sustainable long term performance; and</p> <p>(ii) the on-site wastewater management system design and its implementation contribute to improving and sustaining aesthetic values within individual properties and groups of properties; and</p> <p>(iii) the requirements of any community resource utilisation programme for the reuse of resources within wastewater are met; and</p> <p>(d) meet the requirements of the receiving Network Utility Operator for the acceptance of wastewater to sewers, as appropriate.</p>	<p>Alternative water source projects</p> <p>Environmental protection</p> <p>Risks to health</p>	?	?	<p>This aspect of the Plumbing Code emphasises risks to health, the environment and public amenity regarding onsite wastewater management systems. Therefore, it is unclear whether or not this provision could be relied upon to support alternative water source projects, particularly those involving wastewater treatment and re-use. However, FP1.4 does refer to the re-use of wastewater when referring to technical design, construction and installation requirements.</p>

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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
		F1.2	Deemed-to-Satisfy Provisions The management of domestic on-site wastewater management systems and domestic land application systems must be in accordance with AS/NZS 1547.	Alternative water source projects	?	?	The deemed-to-satisfy requirements require non-drinking water installations to comply with AS/NZS 1547. Reference to this document may be necessary to assess whether or not the relevant standards may also hinder WSC.
	Public Works Act 1902	<i>This Act regulates “public works”. Public works are defined broadly to include “ any works for or in connection with the supply of water to, or for or in connection with the sewerage of, any city, town, or district, including all reticulations”, “works for the conservation of water”, and the “improvement of rivers, watercourses, lakes, or inlets, including deepening, widening”.</i>					
		PART V – ROADS, RIVERS AND BRIDGES					
		s. 93	Improvement of rivers and other watercourses The Minister and also the local authority may deepen, widen, straighten, and otherwise improve, any river, and may, without limiting the generality of the foregoing power remove from any river, stream, or watercourse, or from the bed thereof, any earth or stone, and all weeds, refuse, and other growth, and all driftwood, logs, trees, branches, and other timber which may be lodged in the bed or against the banks thereof and be calculated to impede the free flow of water therein in its natural or deepened, widened, straightened, or otherwise improved, channel, and may dispose of the same respectively towards recouping the cost of such removal: And for the purpose aforesaid the Minister and every such local authority shall, by its servants, have the free right of ingress or egress, and regress on any land on the banks of any such river, stream, or watercourse.	Environmental protection	✓		This provision authorises the Minister and the relevant local authority to undertake public works to protect watercourses.

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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
	Food Act 2008	<i>One of the main objectives underlying the Food Act 2008 is to ensure that food for sale is safe and suitable for human consumption. Notably, the definition of 'food' in the Act is broad enough to cover water because the definition in section 4A includes: "Any substance or thing of a kind used or represented as being for use, for human consumption (whether it is live, raw, prepared or partly prepared)". The Act potentially applies to retailers of water for potable use, including recycled/treated water.</i>					
		PART II – OFFENCES RELATING TO FOOD					
		s. 14	Handling of food in an unsafe manner (1) A person must not handle food intended for sale in a manner that the person knows will render, or is likely to render, the food unsafe. (2) A person must not handle food intended for sale in a manner that the person ought reasonably to know is likely to render the food unsafe.	Alternative water source projects Risks to health		✓	s. 12(1) explains that food is unsafe at a particular time if it would be likely to cause physical harm to a person who might later consume it, assuming — (a) it was, after that particular time and before being consumed by the person, properly subjected to all processes (if any) that are relevant to its reasonable intended use; (b) nothing happened to it after that particular time and before being consumed by the person that would prevent it from being used for its reasonable intended use; and (c) it was consumed by the person according to its reasonable intended use. Section 14 could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.
		s. 15	Sale of unsafe food (1) A person must not sell food that the person knows is unsafe. (2) A person must not sell food that the person ought reasonably to know is unsafe.	Alternative water source projects Risks to health		✓	This provision could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.
		s. 17	Handling and sale of unsafe food (1) A person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsafe. (2) A person must not sell food that is unsafe.	Alternative water source projects Risks to health		✓	This provision could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.

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		s. 18	<p>Handling and sale of unsuitable food</p> <p>(1) A person must not handle food intended for sale in a manner that will render, or is likely to render, the food unsuitable.</p> <p>(2) A person must not sell food that is unsuitable.</p> <p>(3) For the purposes of this section, it is immaterial whether the food concerned is safe.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	<p>s. 13(1) explains that food is unsuitable if it is food that—</p> <p>(a) is damaged, deteriorated or perished to an extent that affects its reasonable intended use;</p> <p>(b) contains any damaged, deteriorated or perished substance that affects its reasonable intended use;</p> <p>(c) is the product of a diseased animal, or an animal that has died otherwise than by slaughter, and has not been declared by or under another Act to be safe for human consumption; or</p> <p>(d) contains a biological or chemical agent, or other matter or substance, that is foreign to the nature of the food.</p> <p>However, food is not unsuitable for the purposes of this Act for a number of reasons, including merely because it contains any matter or substance that is permitted by the Food Standards Code.</p> <p>Section 18 could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.</p>
		s. 9A	<p>Sale of unsafe food in other circumstances</p> <p>A person must not sell food that the person ought to reasonably know is unsafe. A person who contravene this section is guilty of an indictable offence and liable to pay a penalty.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	<p>This provision could hinder WSC initiatives (particularly alternative water source projects) if the water is destined for human consumption and the risks to health are or could be relatively high.</p>



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		s. 27	<p>Defence of due diligence</p> <p>In any proceedings for an offence under this Part, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by the person or by another person under the person's control.</p> <p>Without limiting the ways in which a person may satisfy the requirements of subsection (1), a person satisfies those requirements if it is proved—</p> <p>(a) that the commission of the offence was due to—</p> <p>(i) an act or default of another person; or</p> <p>(ii) reliance on information supplied by another person; and</p> <p>(b) that—</p> <p>(i) the person carried out all such checks of the food concerned as were reasonable in all the circumstances; or</p> <p>(ii) it was reasonable in all the circumstances to rely on checks carried out by the person who supplied the food concerned to the person; and</p> <p>(c) that the person did not import the food into the jurisdiction from another country; and</p> <p>(d) in the case of an offence involving the sale of food, that—</p> <p>(i) the person sold the food in the same condition as when the person purchased it; or</p> <p>(ii) the person sold the food in a different condition to that in which the person purchased it, but that the difference did not result in any contravention of this Act.</p>	Alternative water source projects Risks to health	✓		The limited defence available under s.27 may provide some encouragement/support for WSC initiatives, particularly alternative water source projects.

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					COULD FACILITATE WSC	COULD HINDER WSC	COMMENTS
	Health Act 1911	<i>The Health Act 1911 regulates a range of matters affecting the health of Western Australian citizens.</i>					
		PART IV- SANITARY PROVISIONS					
		s. 53(1)	<p>Sewers vested in local government</p> <p>(1) All public sewers in a district made or to be made at the cost of or acquired or to be acquired by a local government, with all the works and materials belonging thereto and the management of the same, shall vest in and belong to the local government.</p> <p>(2) The Governor may place under the control of the local government any public sewer in the district not made at the cost of the local government.</p>	<p>Access to and use of water resources</p> <p>Alternative water source projects</p>		✓	In the absence of a relevant third party access regime, the vesting of all sewers in local government could hinder access to third parties who wish to use the water resources in sewers for alternative water source projects.
		s. 87	<p>Stagnant water holes</p> <p>The local government may, and, if required by the Executive Director, Public Health, shall cause to be drained, cleansed, covered, or filled up all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, by making and serving an order upon the person causing any such nuisance, or upon the overseer, owner, or occupier of any premises whereon the same exists, requiring him within a time to be specified in such order to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	Alternative water source projects may be affected by this provision if they involve storage of water and are considered to be "prejudicial to health". This provision could deter the uptake of alternative water source projects.

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		s. 95	<p>Disposing of sewage</p> <p>For the purpose of receiving, storing, disinfecting, deodorising, purifying, distributing, or otherwise disposing of sewage, a local government may —</p> <p>(1) construct any works in the district or (subject to the provisions of this Act) beyond the district;</p> <p>(2) contract for the use of, purchase, or take on lease any land, buildings, engines, materials, or apparatus either within or beyond the district;</p> <p>(3) make contracts for the supply of sewage to any person for any period not exceeding 25 years, and as to the execution and cost of works, either in or beyond the district, for the purpose of such supply:</p> <p>Provided that no nuisance shall be created in the exercise of any of the powers conferred by this section.</p>	<p>Alternative water source projects</p> <p>Risks to health</p>		✓	This provision does not appear to recognise sewage as a possible water resource, which could deter the uptake of alternative water source projects involving sewage.
		s. 129	<p>Pollution of water supply</p> <p>Any person who —</p> <p>(a) defiles or pollutes any water supply, or the catchment area thereof; or</p> <p>(b) permits or suffers any water supply or the catchment area thereof to become defiled or polluted, commits an offence.</p> <p>Water supply in this Division includes any river, stream, watercourse, creek, swamp, water-hole, well, tank, lake, or reservoir containing water intended or available for human consumption.</p>	<p>Risks to health</p> <p>Alternative water source projects</p>		✓	This provision is clearly aimed at addressing risks to health associated with potable water sources, which could deter the uptake of alternative water source projects.
		s. 130	<p>Riparian rights</p> <p>Whenever the pollution of any water supply becomes or is likely to become injurious to health, the local government shall, for the purpose of preventing such pollution, have within its district the rights of a riparian proprietor, and may enforce such rights by proceeding in any court of competent jurisdiction against the person in default, and may generally prevent the pollution of water.</p>	<p>Risks to health</p> <p>Alternative water source projects</p>		✓	This provision is clearly aimed at addressing risks to health associated with water sources, which could deter the uptake of alternative water source projects.

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		s. 131	<p>Sources of water supply may be closed</p> <p>(1) The local government may, and if so required by the Executive Director, Public Health shall, direct that any water supply, which in the opinion of any medical officer of health or of any 2 legally qualified medical practitioners, is so polluted or unwholesome as to be unfit for human consumption, shall be closed, and that the contents thereof shall cease to be used for human consumption either absolutely or for such time as the local government may direct.</p> <p>(2) A person who uses or permits to be used for human consumption a water supply to which a direction made under subsection (1) relates while that direction remains in force commits an offence.</p> <p>(3) When any water supply has been directed to be closed the local government may, and shall, if the Executive Director, Public Health so directs, take all such steps, whether by filling in the water supply or otherwise, as shall be necessary to prevent the further use of such supply.</p>	Risks to health Alternative water source projects		✓	This provision is clearly aimed at addressing risks to health associated with potable water sources, which could deter the uptake of alternative water source projects.
		s. 134(3)	<p>Purposes for which local laws may be made</p> <p>Local laws may be made in accordance with Part XIV for all or any of the following purposes:</p> <p>...</p> <p>(3) Prescribing the purposes for which any drains or sewers shall be used or applied.</p>	Alternative water source projects	?	?	Depending upon the content of local laws dealing with the purposes for which any drains or sewers shall be used, they may either help to encourage or deter the uptake of alternative water source projects involving stormwater (in drains) and wastewater (in sewers).
		s. 134(13)	<p>Purposes for which local laws may be made</p> <p>Local laws may be made in accordance with Part XIV for all or any of the following purposes:</p> <p>...</p> <p>(13) Requiring that all buildings be provided with spouting, downpipes, and drains sufficient to carry off all storm or rain water.</p>	Alternative water source projects		✓	This provision does not appear to recognise stormwater as an important water resource. Local laws made pursuant to this provision could focus on removing stormwater from buildings, rather than utilising it as a water resource.

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		s. 134(14)	<p>Purposes for which local laws may be made</p> <p>Local laws may be made in accordance with Part XIV for all or any of the following purposes:</p> <p>...</p> <p>(14) The provision of water for sanitation purposes by either of the following methods, namely –</p> <p>(i) the supply of water from established water supplies and the reticulation thereof to bathrooms, kitchens and laundries; or</p> <p>(ii) the provision of wells and equipment; or</p> <p>(iii) the provision and maintenance of water storage tanks with catchment facilities and with a prescribed capacity for premises in prescribed areas;</p> <p>Provided that a water storage tank used for sanitation purposes in connection with a house or other premises shall be deemed sufficient if it has a capacity of not less than 4.5 m3.</p>	<p>Alternative water source projects</p> <p>Conservation and sustainable use of water resources</p>	✓		This provision envisages (in sub-section (iii)) use of water from water storage tanks for sanitation purposes. This may help to preserve potable water, which might otherwise be used for water sanitation.
		s. 134(41)	<p>Purposes for which local laws may be made</p> <p>Local laws may be made in accordance with Part XIV for all or any of the following purposes:</p> <p>...</p> <p>(41) For the prevention of the pollution of any water supply.</p>	<p>Risks to health</p> <p>Alternative water source projects</p>		✓	This provision is aimed at addressing risks to health associated with water supplies. When read in light of other provisions dealing with similar matters in the Act (e.g. s. 129), it is possible that the relevant local laws could deter the uptake of alternative water source projects if the focus of the local laws is on addressing risks to health.
		s. 134(48)	<p>Purposes for which local laws may be made</p> <p>Local laws may be made in accordance with Part XIV for all or any of the following purposes:</p> <p>...</p> <p>(48) For the prevention of the pollution of any water used for bathing purposes.</p>	<p>Risks to health</p> <p>Alternative water source projects</p>		✓	This provision is aimed at addressing risks to health associated with water used for bathing. When read in light of other provisions dealing with similar matters in the Act (e.g. s. 129), it is possible that the relevant local laws could deter the uptake of alternative water source projects if the focus of the local laws is on addressing risks to health.