



# **Water Resource Risks in the Maribyrnong and Moorabool Catchments**

Stakeholder Reference Group 2

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Domestic and stock water use  
Legislation, policy and operational practice



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## Scope

The focus of this paper is to provide a brief overview of the key legislative, regulatory and policy aspects that relate to the management of domestic and stock water use (section 8 rights), along with a summary of how Southern Rural Water (SRW) currently implements these requirements. This paper was requested by the Stakeholder Reference Group in meeting 1.

This paper does not discuss managing hazardous dams, nor does it contain details of broader legislative, policy or operational aspects relating to other forms of take, such as Section 51 take and use licences or Bulk Entitlements enabled under the *Water Act 1989* (the Act).

This paper does not include a review of historical approaches within SRW for determining licences or whether a waterway is present, and it is focused on the current implementation approach.

## Domestic and stock legislation

### Private rights and licence requirements

Private rights to take water for domestic and stock purposes are defined in Section 8 of the *Water Act 1989* (the Act). Section 8 of the Act enables the take of water from a groundwater bore, a waterway, from surface water flowing across a property, and rainwater harvested from a roof.

Private rights apply where access to the waterway or groundwater bore is:

- a. By a public road or reserve
- b. Because that person occupies the land water is flowing on
- c. Because that person occupies land adjacent to Crown Land covering the bed and banks of a waterway
- d. Because that person occupies the land where a groundwater bore is located

These private rights sit outside the State's entitlement framework, and there are no volumetric limits on take under these rights, only the limitation that the water is used only for domestic purposes or stock watering (and for fire prevention).

While the volume is not limited, a works licence is required in certain circumstances under State policies for the construction of groundwater bores and dams, the diversion and extraction from rivers and creeks, and the construction of small catchment dams. The following requirements relate to domestic and stock works:

- Groundwater bores greater than 3m depth require a bore construction licence under Section 67 of the Act
- Construction of a dam on a waterway (including a stock and domestic dam) requires a works licence (to construct) under Section 67 of the Act
- Works on a waterway may require a construction licence under section 67 of the Act.
- The take of water from a waterway where the land adjacent to the waterway is owned by the crown requires a Section 51 take and use licence

## Domestic and stock use definitions

Section 3 of the Act defines “**domestic and stock use**” as water that is used for:

- (a) household purposes; or*
- (b) watering of animals kept as pets; or*
- (c) watering of cattle or other stock; or*
- (ca) in the case of the curtilage of a house and any outbuilding, watering an area not exceeding 1.2 hectares for fire prevention purposes with water obtained from a spring or soak or water from a dam; or*
- (d) irrigation of a kitchen garden.*

The definition explicitly outlines domestic and stock use “*does not include use for dairies, piggeries, feed lots, poultry or any other intensive or commercial use*”

Section 3 of the Act also clearly defines the meaning of a kitchen garden as a garden:

- (a) that is used solely in connection with a dwelling; and*
- (b) no produce from which is sold.*

Section 3 of the Act also defines size limits for **kitchen gardens**. These limits are a function of the source/s of water used to irrigate the garden and when the land on which the garden is located was sold by the Crown (alienated from the Crown). These size limits as per the Act are defined below:

- **0.1 Ha** if it is irrigated only with surface water and not on an allotment that was alienated from the Crown before 15 December 1886
- **0.4 Ha** if it is irrigated by both surface water and groundwater and not on an allotment that was alienated from the Crown before 15 December 1886
- **0.4 Ha** if it is irrigated solely with groundwater
- **1.2 Ha** if it is part of an allotment that was alienated from the Crown before 15 December 1886.

## Domestic and stock policy context

### Water resources actions relating to domestic and stock uses

Contemporary policy on water accessed for domestic and stock use has evolved through the development and publication by DEECA of various Sustainable Water Strategies (SWS) since 2006, including the Central Region SWS (2006), Northern Region SWS (NRSWS), published in 2009, the Western Region SWS (2011), and Central and Gippsland Region SWS (CGRSWS) in 2022, as well as broader state water policy documents such as Water for Victoria (2016).

The focus of DEECA actions over this period has been to:

- improve data and information on water resource impacts of domestic and stock use, and
- to explore more robust guidance on 'reasonable' domestic and stock use to assist Rural Water Corporations (RWCs) in their activities

The outputs of this work have included improved methods for estimating the water resource impacts of domestic and stock use and a consideration of 'reasonable' domestic and stock use. Guidance around 'reasonable' use was found to be challenging for a number of reasons, including limited legislative powers to enforce the guidelines and significant complexities in implementing.

Action 4-13 in the CGRSWS relates to the current Water Risks in the Upper Moorabool and Maribyrnong Project, focused on reviewing resource risks from domestic and stock uses and identifying management improvements. The current project will also inform delivery of CGRSWS Action 4-17, to track and improve our understanding of interception activities including small catchment dams.

### Licensing policies and guidelines relating to domestic and stock uses

The Minister's *Policies for Managing Works Licences* (2016) provides guidance relevant to stock and domestic activities, including:

- Construction of domestic and stock bores. The policies include various aspects such as minimum construction standards and prevention of pollution.
- Construction of dams on waterway (including domestic and stock dams), noting that dams on waterways should only be allowed if no other options/locations possible. This includes guidance on the need for an environmental report by a qualified consultant, by-pass mechanisms and minimum passing flow rates.
- Construction of off-waterway dams (including domestic and stock dams). This includes guidance on the need for bypass mechanisms to be installed and maintained in good working order to ensure no run-off is harvested outside a specified take period.

Clause 23 of the ministerial *Policies for Managing Works Licenses* (2016) provides guidance to the delegated licensing authorities on the circumstances in which on-waterway dams might be considered and potentially licensed. Fundamental to the consideration of whether a dam is on a waterway or not are the '*Waterway Identification Guidelines*', the most recent version signed by the Minister for Water in February 2022. SRW is the delegated licencing authority for determining if works are on a waterway for the Moorabool and Maribyrnong catchments, except for the Maribyrnong downstream of the confluence of Deep Creek and Jacksons Creek (this is Melbourne Water).



## Waterway identification guidelines

Whether or not the take of water is from a waterway is a key factor in determining the licensing requirements. A waterway is defined under Section 3 of the Act and the process for identifying waterways is therefore fundamental to the ability to manage water resource impacts resulting from take and use and the construction of works on a waterway (including the construction of private dams).

The definition of a waterway in the Act could be open to interpretation. Ministerial guidance on the determination of a waterway for licensing purposes provides further guidance on the definition of a waterway. Guidance was originally developed in 2002, and these have evolved over time. The latest version of the Waterway Identification Guidelines was updated and approved by the Minister for Water in 2022.

The guidelines include:

- The definitions of a waterway in the Act and guidance on how to interpret this
- A guide on identifying a waterway, including factors to consider, and a detailed step by step decision pathway and flowchart.

## Current operational practice - Southern Rural Water

SRW has a role in various aspects of domestic and stock water use, and these can be broadly grouped into:

- Licensing
- Compliance
- Water resources management

### Licensing

Domestic and stock bore construction licences are applied for online via the Victorian Water Register website and these licences are issued automatically, with the exception of bores which may be in pressurised aquifers (which are referred to SRW for a drilling inspector review and typically require a higher class of driller to construct). Once a bore is drilled, the driller submits a bore completion report, and this is checked by SRW's drilling inspector to ensure compliance with the minimum construction standards.

A works licence (to construct) is required for domestic and stock access to a river or creek if the works include significant works such as excavations. SRW will consider the nature of the proposed works and undertake a field inspection as required as part of the application to determine any special required conditions on the works licence.

A Section 51 take and use licence is generally required if the access to the river/creek crosses crown land. In capped systems this may require a trade of entitlement from another licence holder.

To determine whether a domestic and stock dam requires a Section 67 works licence SRW undertakes a waterway determination. The onus is on the landholder to contact SRW to enquire whether a licence is required prior to a dam being constructed. Prior to assessing any potential waterway, the SRW field staff ensure that other suitable locations are considered by the proponent, as it is only permissible to build an on-stream dam if there are no other options. In some cases, this results in the domestic and stock dam being constructed well away from the potential waterway. In this instance SRW does not require a Section 67 works licence.

Where there is any doubt, SRW field staff follow the current (2022) guidelines when determining whether a waterway is present. This includes the following key steps:

- Examining whether a watercourse exists on site
- Assessing whether a natural channel is present where a regular water flow occurs
- Considering a range of other matters including (but not limited to) flows from waterways onto adjacent land, and the presence of springs, swamps, lagoons, historical information on the presence of waterways etc.

In assessing whether a waterway exists and whether regular flows occur, the area upstream of the proposed dam is examined by our field staff. This includes:

- a walkover over the catchment area to identify topography, watercourse and drainage aspects
- the identification of topographic highs with the elevations being recorded by handheld GPS
- the derivation of the catchment area to the proposed dam
- a review of current and historical satellite imagery determined using available contour maps and by taking spot elevation readings on site.

## Compliance and enforcement

The Victorian Government and SRW have a zero-tolerance approach to non-compliance (unauthorised water take).

SRW has a strong risk-based approach to compliance that is focused on working with customers so that they better understand and comply with their obligations, with clear escalation pathways from these activities up to and including formal enforcement actions where appropriate. SRW has recently appointed two senior water resources compliance investigators as part of our uplift on compliance action.

SRW has a role to ensure that domestic and stock take is not being undertaken beyond what is defined within the Act. This is challenging from a compliance perspective because private rights to take water for domestic and stock purposes do not generally require a licence, do not have a volumetric limit and are not metered. SRW will take action to investigate whether domestic and stock use is in accordance with the definitions in the Water Act (and whether it requires licensing). When SRW are notified of a potential concern, and/or where our field staff observe an activity that is of concern an investigation will take place. Further action may be required to ensure compliance is achieved. This could result in the users requiring a licence and may result in enforcement action depending upon the seriousness of any alleged breach.



Where SRW is aware of a potentially non-compliant dam (e.g. a domestic and stock dam on a waterway), we will undertake a waterway determination.

When considering use SRW staff consider a range of matters related to the Water Act definition of domestic and stock use, including the number and type of stock on a property, the area of land water is used on (gardens), and whether the use of water is for domestic purposes.

### Water resource management

There are two notable aspects of water resource management that relate to domestic and stock use, for SRW.

When developing groundwater or surface water management plans SRW will consider the overall estimated water use from domestic and stock sources when determining water licensing/trading rules and water sharing arrangements. DEECA also considers estimated domestic and stock use when setting caps on water availability.

During extended dry periods SRW can also impose restrictions on take on licensed customers in certain areas (mainly surface water customers), and it also has on occasion restricted domestic and stock use through a Declaration of Water Shortage and a Temporary Qualification of Rights under Section 33AAA of the Act. This has occurred on more than one occasion in the upper Riddles Creek system.