



# DIVERSION MANAGEMENT POLICY

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## 1. Purpose

Melbourne Water seeks to manage waterway diversions, in accordance with legislative and environmental requirements, and accounting for the interests of all stakeholders, including agricultural, commercial, domestic and industrial uses, the environment and the community.

The purpose of this document is to describe the policy and principles that will be applied in the administration of the Diversions Management function.

## 2. Scope

This policy shall apply to the administration and management of the Diversions Management role within Melbourne Water's area of responsibility.

It is only applicable to those waterways and dams under Melbourne Water's control for diversions management, being all waterways within the Yarra River catchment, the Maribyrnong River catchment downstream of the confluence with Deep Creek, and the catchments of Stony Creek, Kororoit Creek, Laverton Creek, and Skeleton Creek.

## 3. Definitions

*Act* – Water Act 1989

*Allocation* – Volume of water issued to a person per annum as specified on a licence.

*Diversion Licence* - A licence to take and use water from a waterway or a dam.

*Environmental Flow* – A minimum flow to be maintained in a stream or river, below which presents significant risk to the waterway environment including flora and fauna. This flow also protects remnant pool habitat in ephemeral streams.

*Regulated system* - A river system or waterway in which flows can be controlled or regulated, usually through the release of water held in reservoirs or large water bodies upstream.

*Unregulated system* – A river system or waterway where flows are uncontrolled and are subject to natural conditions and variability.

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## 4. Risk Considerations

Effective management of the environment and water resources is an identified priority within Melbourne Water's strategic framework. Licensing and management of diversion activities is one component of water resource management. Failure to effectively manage access to our limited water resources could lead to adverse environmental impacts on waterway health as well as disputes between users over access rights. Regulatory framework along with defined policy and procedures will be used by Melbourne Water to deliver outcomes and manage associated risks.

## 5. Background

In accordance with powers delegated by the Minister for Water under the *Water Act 1989*, Melbourne Water is responsible for managing approximately 1300 licensed water users who divert approximately 36,000 Mega Litres (ML) from the waterways and major drainage systems of the Yarra catchment and unregulated waterways of the lower Maribyrnong River, Stony, Kororoit, Laverton and Skeleton Creek catchments. In addition, Melbourne Water also administers approximately 500 farm dam registrations and licences.

Diversion licences in the Yarra catchment, Stony Creek, Kororoit Creek, Laverton Creek, and Skeleton Creek are for supply of water from unregulated systems, while diversion licences from the Maribyrnong River are supplied from a semi-regulated river system via releases made to the river from Rosslynne Reservoir at Gisborne.

In October 2006 a licensing cap was placed on the taking of additional water for commercial and irrigation use within the Yarra basin. Accordingly, no increase in allocations can occur within the Yarra catchment; a recognition that water is a precious and limited resource and that the Yarra basin is under some stress from existing water demands. This was an initiative of the Department of Sustainability and Environment (DSE) in the government's white paper action plan *Our Water Our Future* (White Paper).

Another initiative of DSE under the White Paper was to set state-wide policies for the licensing and administration of irrigation licences on unregulated rivers. Irrigation licences were traditionally issued as a bundled licence, Take and Use (s51) and Works (s67) licences, will now be issued as two licences. These licences will be administered in the Water Register, a state-wide accounting system which all Rural Water Corporations are required to use as to better improve the access, quality and transparency of water use.

In managing diversion licences, Melbourne Water will have regard to:

- Water Act 1989
- Heritage Rivers Act 1992

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- Flora & Fauna Guarantee Act 1988
- Native Title Act 1993 (Commonwealth)
- State Environment Protection Policy (Waters of Victoria);
- Environment Protection Act 1970
- Environment Protection and Biodiversity Conservation Act 1999
- Appropriate Ministerial Guidelines

In so far as they bear on its functions and responsibilities.

## 6. Community and External Stakeholder Consultation

Melbourne Water has communicated with its diversions advisory groups and other stakeholders, including the Dept. Sustainability and Environment in determining its Diversion Management objectives which form the basis of this policy.

## 7. Policy

Melbourne Water will administer the diversion function in accordance with the procedures below. In doing so, Melbourne Water will recognise existing guidelines and develop further provisions to generally provide consistency with State Government policies and accepted statewide diversion management practices.

Any departure from these policy provisions must be referred to the Diversions Manager for approval and will only be approved where circumstances warrant.

## 8. Procedures

### 8.1 Yarra Basin Cap

The Yarra River catchment is considered under some degree of stress from existing demands, both rural and urban. An allocation cap has been placed on the catchment by government order in October 2006. As a result no increase in water allocations can occur within the Yarra catchment and new demand for water must be met through an application to Melbourne Water for assessment and trading of the necessary volume with an existing licence holder.

### 8.2 Licensing

#### 8.2.1 Water Register

The Water Register is a public register of all water-related entitlements in Victoria. It has been designed and built to record water entitlements with integrity and provide crucial information for managing Victoria's water resources.

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As of Mid 2009 the Register contained all of Melbourne Waters licences and from then all licence administration, including approving, renewing and issuing new or existing licences was conducted in the Water Register.

The Water Register:

- tracks and reconciles volumes of water entitlements by water system and trading zone
- holds Works and Take and Use licences that are managed by Melbourne Water
- includes workflows to process water dealings, and keeps audit trails
- generates statistics and reports on levels of use, directions of trade, and prices paid

## 8.2.2 Issue of New Licence – Consumptive use

The taking and use of water for consumptive purposes from waterways or catchment runoff can result in the reduced availability of water resources for both the environment and other users. Melbourne Water encourages the provision of appropriate storages by all new water users in order to facilitate the taking and storage of water during the winter-fill or high flow periods and the utilisation of such stored water as required during low flow periods. This provides greater access and security to water users while reducing the impacts on waterways and the environment.

In accordance with the allocation cap on the Yarra Basin, new consumptive use licences in the Yarra catchment can only be obtained through water trading and will be subject to the conditions and limitations applied through the trade process. Refer section 8.4 below.

New consumptive use licences may therefore only be considered in the Maribyrnong River, Stony, Kororoit, Laverton and Skeleton Creek catchments as these systems are considered outside of the Yarra basin cap.

## 8.2.3 Categories of Consumptive Use Licence:

### (a) “Winterfill” Licence

Melbourne Water will only issue new licences for consumptive uses, other than for reissue, transfer or annual renewal of existing entitlements, where:

- storage is provided (New dams on watercourses, or dams proposed on other waterways with high ecological values, will only be considered for approval if there are no suitable sites off-stream and only if stringent environmental requirements are met.), and
- diversion occurs over the winter-fill period, as specified in the licence, and
- a meter is provided to measure all water taken at the applicant’s cost, when deemed necessary by Melbourne Water, and

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- a water allocation is available, as defined in any Streamflow Management Plan, or
- a water allocation is available, as defined in any Bulk Entitlement Order, or
- a water allocation is available, as determined using the Sustainable Diversions Limit methodology or other suitably appropriate methodology that considers the same principles, and
- in accordance with terms and conditions specified by Melbourne Water.

(b) *“All Year” Licence*

Other than for reissue, transfer or annual renewal of existing entitlements, the issue of new “all year” diversion licences for any consumptive use for diversion from July to June inclusive with no requirement for a storage, will only be considered upon the recommendations of a Streamflow Management Plan.

(c) *“Temporary Authority” Licence*

A Temporary Authority is a once only permit and is a special short-term authorisation, issued at the discretion of Melbourne Water. Temporary Authorities will be subject to there being sufficient stream flow and may be cancelled at any time if in Melbourne Water’s opinion, stream conditions deteriorate or for any other reason. Melbourne Water’s preference is that water required for temporary use be obtained under the temporary water trading regime where possible. Therefore Temporary Authorities will only be issued in exceptional circumstances.

Domestic and stock dams filled from surface runoff remain exempt from take and use licensing requirements. Dams filled from roof runoff or reuse dams that satisfy the criteria specified by the Minister are also exempted. Aesthetic dams may require a licence for annual evaporation components.

(d) *“Storm Water” Licences*

With the increasing concern around water availability due to the drought, there has been a shift to using alternative water resources to potable water. One of those is stormwater. Historically, Melbourne Water has issued licences to diverters in the rural areas of Melbourne for irrigation and other such uses. However due to concerns of over-allocation and environmental flow conditions, a cap (limit) placed on the allocation of water in the Yarra River catchment for the purposes of protecting environmental flows and the entitlements of existing licence holders which have potential to be reduced in drought conditions.

The harvesting of stormwater falls outside of the cap on taking water because it only allows harvesting of water during peak urban flow conditions. A draft framework and policy for stormwater licensing has been developed and in the process of been finalised. The key principles to note (but are not limited to) are:

- 1 “Urban stormwater” is only available within the urban growth boundary. Run off from urban areas outside this boundary are a component of the rural hydrological cycle and are subject to normal diversion licensing.
- 2 Licences require a resource assessment to determine whether sufficient water is available to satisfy the licence volume without impacting on existing users or the environment. The licence proponent may be required to provide supporting evidence to demonstrate this.
- 3 Base flow in drains and waterways is not considered urban stormwater. Urban stormwater is the increase in storm runoff resulting from an increase in imperviousness of an urban catchment.
- 4 Because no access to base flow will be permitted, harvesting will be episodic. As such, licencees must have the ability to store their licence volume in off stream dams, tanks or similar.
- 5 Urban stormwater licences will contain minimum flow conditions to protect baseflows. This condition may not be applicable to harvesting from drains or wetlands. The default threshold shall be three times (300%) the relevant flow in MW’s Drought Response Plan for private diverters unless otherwise agreed by Melbourne Water

### **8.2.3 Issue of New Licence – Non Consumptive Use**

Melbourne Water will only issue new licences for non-consumptive purposes (e.g. cooling water, fish farms, power generation), other than for reissue, transfer or annual renewal of existing entitlements, where:

- it is considered that a licence holder will have no detrimental environmental impacts on the waterway
- it is considered that there will be no detrimental effects on existing licensees
- a discharge licence, where required, has been approved by the Environment Protection Authority or is likely to be approved.
- a meter is provided to measure all water taken at the applicant’s cost, when deemed necessary by Melbourne Water,
- a Works licence is issued by Melbourne Water, and
- in accordance with any other terms and conditions specified by Melbourne Water.

### **8.2.4 Transfer of Licence**

Melbourne Water will transfer licences in accordance with its Water Trading Policy and in accordance with any trading rules established under a relevant Streamflow Management Plan. Trading of water will be generally supported where the transfer of water occurs locally or downstream of where the original entitlement was held. Transfers upstream or across catchments will generally only be permitted where it can be determined that there will be no adverse impact to the receiving waters or other water users and may be subject to conversion to winter-fill conditions.

## 8.2.5 New or Transferred Licence – Environment Impact Assessment

Melbourne Water may require an applicant to complete an environment impact assessment, including an environmental flow study, at the applicant's cost, where it is considered by Melbourne Water that the application will impact on the waterway, flora or fauna, existing water users, cultural or aboriginal heritage. Such assessments should address impacts as referred to previously as well as other possible cumulative impacts or other impacts as identified by Melbourne Water or the assessor.

## 8.2.6 Issue of Licence – Standard Conditions

All licences will be issued with the *Standard Conditions* determined by Melbourne Water and DSE including but not limited to the rules that may be set as part of a catchment specific Stream Flow Management Plan, Policies for Managing Take and Use Licences or Policies for Managing Works Licences. Further terms and special conditions may be specified in accordance with the procedures set out within these policies or as specified in Section 56 of the *Water Act 1989*.

## 8.7 Restrictions and Bans

At times of water shortage, Melbourne Water will manage diversion of water in accordance with:

- a *Drought Response Plan* for all diverters from unregulated streams
- the requirements of the Maribyrnong Bulk Water Entitlement and Water Resource Management Plan for diverters from the Maribyrnong catchment
- the restriction policy of any Streamflow Management Plan
- applicable individual licence conditions.

## 8.8 Drought Response Plan for Licensed Water Users

Water is a scarce resource and Melbourne Water has developed a Drought Response Plan (DRP) for Licensed Water Users. During drought, diverters' access to water is restricted or closed off depending on the levels of our waterways to avoid adverse environmental impacts.

Melbourne Water has an obligation under the State Environment Protection Policy, Schedule F7, Waters of the Yarra Catchment 1999, to protect the health of the Yarra River by attempting to maintain minimum environmental flow rates. Minimum flow rates have similarly been determined for the smaller sub-catchment waterways feeding into the Yarra River main stem and are detailed in the DRP.

The DRP will be used by Melbourne Water to qualify rights to water in conjunction with licence conditions. The DRP provides a mechanism to:

- Manage access to water by all users and the environment
- Define the conditions under which restrictions or bans on use will be required for drought and the process by which these will be implemented
- Outline obligations of both Melbourne Water and water users
- Enable Melbourne Water to meet statutory obligations.

The DRP will be used by Melbourne Water to make informed decisions as to when the volume of water available to satisfy rights to water is, or is likely to be, inadequate.

The DRP is active at all times in conjunction with licence conditions and requires licence holders to proactively seek and monitor information about waterway status prior to taking any water.

All licensed water users have been provided with a copy of the DRP and will also be provided with the amended DRP after any significant changes or revision of the plan. All new licence holders will be forwarded a copy of the DRP with the issuing of their licence. In addition the DRP will be available for download on the Melbourne Water website and copies will be provided to any licence holder upon request.

The DRP applies to all Melbourne Water managed private river water diversions. Where a Streamflow Management Plan has been developed for a catchment, drought response approaches will be managed in line with the Streamflow Management Plan and may differ to the requirements of the DRP.

### **8.9 Cancellation of Licence**

Melbourne Water may cancel a licence in the following circumstances:

- failure of the licensee to pay all fees within specified times, or
- breach of the licence conditions, or
- failure of the licensee to observe the requirements of any restrictions imposed under 8.6 above.

### **8.10 Penalties**

Penalties will be applied in accordance with the *Water Act 1989* and as specified in the *Schedule of Fees – Diversion Licences*.

### **8.11 Enforcement and Compliance**

Melbourne Water will investigate any real or suspected instances of customer non-compliance including overuse, breach of licence conditions and failure of the licensee to observe the requirements of any restrictions or bans imposed.

Where there has been non-compliance, Melbourne Water will follow the procedures outlined in the Enforcement and Compliance Policy, which will be available on the Melbourne Water website or will be sent to customers upon request. Actions for non-compliance may include cancellation of the licence and / or prosecution in accordance with the *Water Act 1989*.

The customer may reapply for a cancelled licence at the cost of a reissue fee. The licence will be re-issued at Melbourne Water's discretion.

### 8.12 Fees

The Essential Services Commission sets maximum charges for diversion services. The annual prices or price increases for all diversion charges are determined by Melbourne Water based on the efficient cost of the services to be provided for a defined period (currently 5 years) through a public process taking account of recommendations put forward by Melbourne Water in its Water Plan and comments made by interested parties.

Melbourne Water may only vary charges subject to legislation and any relevant determination by the Essential Services Commission. Melbourne Water will notify customers of any change to their licence charges on or with the first bill issued after the decision to vary the charges has been made.

Melbourne Water may calculate a pro-rata charge to effect a variation in charges where the variation date falls within the period during which a customer's bill is calculated.

Charges for a licence are based on total allocation and licence type. Charges are not based on actual usage, whether metered or not and a refund or reduction in fees is not available to licence holders who do not utilise their full entitlement.

A schedule of the approved fees and charges is published on the Melbourne Water website or can be obtained by contacting Melbourne Water.

### 8.13 Pump and Pipeline Infrastructure

All pumps and works used to take water from a waterway or authorised diversion location in association with a licence must be approved by Melbourne Water and appropriately listed on the Works Licence. As directed by the Policies for Managing Works Licences there will be standard conditions on any new Works Licences.

The licensee must provide Melbourne Water with the relevant details of any pump when requested and must seek and obtain approval from Melbourne Water prior to installing or using any pump not already listed on the Works Licence. Melbourne Water approval is also required to relocate an existing pump along a waterway.

Pump information required will include the make and model, pump type (diesel, electric, etc.), maximum output (kilowatt or horsepower), pumping capacity (litres per second), inlet and outlet pipe diameters (mm), locality plan defining clearly the location of the pump and a waterway cross-section showing suction pipe details and levels.

The licensee must obtain all relevant permissions or consents from the owner(s) of any land on which the pump or lines are, or will be, situated. This includes the Department of Sustainability and Environment for the crossing or occupation of any Crown land. The Works Licence does not provide any rights of access over third party property.

### 8.14 Metering

- All new irrigation and commercial use licences are required to be metered, at the licensee's cost, except where otherwise determined by Melbourne Water. Meters remain the property of Melbourne Water.
- Existing irrigation and commercial use licences greater than or equal to 5 ML are required to be metered. Other existing licences may be required to be metered, in accordance with Streamflow Management Plans or as determined by Melbourne Water. The reasonable cost of supplying and installing a meter, where required for existing licences, will initially be funded by Melbourne Water except where volumes are being altered through trade. Fees will be set to cover meter replacement and maintenance costs.
- Melbourne Water will not be liable for damage to customer pump infrastructure due to the installation of a meter.

### 8.15 Registration Licences

The *Water (Irrigation Farm Dams) Act 2002* was passed by Parliament on 26 March 2002 and came into operation on 4 April 2002. It amended the *Water Act 1989* and extended licensing arrangements to cover all irrigation and commercial use in the catchment. Owners of existing catchment dams utilised historically for irrigation or commercial use had the option to apply for a standard water licence or a Registration licence.

In accordance with the *Water (Irrigation Farm Dams) Act 2002*, new Registration licences can no longer be issued.

Registration licences carry no annual charges and are granted in perpetuity. Landowners who hold registration licences cannot transfer the water off the property. If the property is sold, the registration will automatically transfer to the new owner.

A Registration licence may be converted to a standard licence at any time upon application. A Standard licence incurs annual charges but no initial application fee.

Once a Registration licence is converted to a Standard licence it is possible for the licensee to apply to transfer or trade the water off the property.

### 8.16 Dam Construction & Safety

A licence for construction and operation will be required for all dams constructed on waterways and for all other dams that meet the hazardous or potentially hazardous criteria specified under the *Water (Irrigation Farm Dams) Act 2002*. Such dams will require engineering input to the design and construction component of the dam as well as requiring the preparation of maintenance and safety plans. Operation rules will be implemented to ensure harvesting and passing of flows is undertaken without adverse environmental impacts.

Dams that are considered to be potentially hazardous are those that:

- have a wall of 5 metres or more high and a capacity of 50 ML or more, or
- have a wall of 10 metres or more high and a capacity of 20 ML or more
- have a wall of 15 metres or more high regardless of the capacity
- belong to a prescribed class of dams

Melbourne Water will consider the Ministerial Guidelines to determine which dams are considered potentially hazardous.

### 8.17 Customer Charter

Melbourne Water will develop and maintain a Customer Charter for Diversion Services. The Customer Charter outlines the customer service standards for diversion services and obligations of Melbourne Water's diversion customers. The Charter informs customers about diversions services and licensing activities performed by Melbourne Water and the respective rights and responsibilities of Melbourne Water and of customers in delivering these services.

### 8.18 Complaints and Disputes

Customers are asked to contact Melbourne Water if they have an enquiry, dispute or a complaint. Customers can contact Melbourne Water by phone, in writing, via email or in person.

Complaints and disputes will be handled in accordance with Melbourne Water's policy and Complaint Handling Procedure. If a customer asks for a written response to an enquiry or complaint, Melbourne Water will respond to the customer within 10 business days of the request. Melbourne Water's response will deal with the substance of the enquiry or complaint or tell the customer when they will receive such a response if the matter is complex. Melbourne Water will do its best to resolve all complaints to the satisfaction of all parties and will provide reasons for any decisions.

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Customers unhappy with the handling of any complaint or enquiry may escalate their complaint to the Diversions Manager or a higher level of management upon request.

If the matter is still unable to be resolved to the satisfaction of the customer then Melbourne Water will provide the customer referral information for the Energy and Water Ombudsman Victoria.

For disputes around the payment of annual fees or other monetary charges, Melbourne Water will not pursue the recovery of the amount of money, the subject of which is in dispute, or any interest until the dispute has been resolved.

## Resolution of Disputes

Melbourne Water will endeavour to resolve in good faith any dispute directly with its customers and others affected by its operations.

Melbourne Water will consider a dispute resolved if:

- it has informed the complainant of its decision on the complaint or any internal review of the complaint; and
- 10 business days have passed since the complainant was informed; and
- the complainant has not:
  - (1) sought a further review under this clause; or
  - (2) lodged a claim with the Energy and Water Ombudsman Victoria.

Melbourne Water will not consider a dispute resolved until any claim lodged with the Energy and Water Ombudsman Victoria has been finalised.

## **9. References / Related Documents**

- Enforcement & Compliance Policy
- Water Trading Policy
- Melbourne Water Customer Charter For Diversion Services
- Drought Response Plan – Licensed Water Users
- Streamflow Management plans
- Ministerial Guidelines
- Melbourne Water Guidelines

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## 10. Document Control

### 10.1 Current Document

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