



## Private Water Schemes (Syndicates)

### Establishment Guidelines

10 June 2015

The following guidelines have been developed to assist GMW customers and their advisors in the establishment of private water schemes and in the preparation of the necessary documentation to facilitate the operation and management of private infrastructure operators. They apply equally whether establishing a new private infrastructure operator or restructuring an established private infrastructure operator.

They are a guide only and it is highly recommended that any persons intending to establish a private water scheme seek their own technical, legal, financial and operational advice before signing such an arrangement.

#### Background

Private water schemes (or syndicates as they are more commonly known) are a mechanism by which landowners can join together to share the costs of installing and operating private water distribution infrastructure.

Some of the existing schemes are informal joint water supplies or shared works, while others involve community water supplies, owners' corporations or co-operatives.

Goulburn-Murray Water (GMW) has worked with the Department of Environment, Land, Water and Planning to establish means for private infrastructure operators to meet the requirements of the post 2007 unbundled water entitlement regime.

For shared private works where water is taken from waterways, the Minister's policies for managing works licences require the associated works licence to be held by an incorporated body.

#### Private Water Scheme Requirements

##### 1 Legal Framework

GMW has approved the use of the following legal structures:

##### 1.1 *Community Agreements establishing a community water supply scheme that provide for the establishment of a committee in an appropriate legal structure such as an incorporated association*

The *Water Act 1989* (the Act) makes provision in section 244 for the establishment of a community agreement by which a group of landowners can voluntarily establish a community water supply scheme whose primary purpose is to supply water to farms ("Community Agreement"). The Community Agreement is registered on the members' land titles and is binding on all successors in that title.

The Act provides that a Community Agreement must provide for the establishment of a committee.

GMW requires that a committee of a Community Agreement (“Community Agreement Committee”) be underpinned by a formal legal structure. It is also a requirement of the Victorian Water Register that the holder of a water share be a legal person or a formal legal entity.

An incorporated association is the preferred legal structure for a Community Agreement Committee. Incorporated Associations are clubs or community groups, operating not for profit, whose members have decided to give their organisation a formal legal structure. When a club or community group incorporates, it becomes a ‘legal person’ – that is, a legal entity that stays the same even if its members change. It can enter into contracts in its own name; for example, to borrow money or buy equipment. This protects the individual members of the association from legal liabilities. (Source: Consumer Affairs Victoria [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au) ).

Victorian incorporated associations are registered under the *Associations Incorporation Reform Act 2012*.

While a Community Agreement Committee must be constituted by more than one person, an incorporated association on its own cannot constitute the Committee. Accordingly, the individual members of the relevant incorporated association constitute the Community Agreement Committee.

This is the model preferred by GMW but as it requires a minimum number of 5 members, it cannot be used for small scale private water schemes.

### 1.2 Owners Corporations:

Owners corporations established by virtue of the *Subdivision Act 1988* and administered under the *Owners Corporations Act 2006* and *Owners Corporations Regulations 2007*, come into existence with the registration by the Land Registry of a subdivision, which contains multiple titles to the property.

This legislation provides a legal mechanism to administer the affairs of people with a common interest in the ownership of property, which has been subdivided into multiple lots. This common interest extends to the operation of private infrastructure operators.

A lot holder automatically becomes a member of the owners corporation at the time of purchasing the lot.

An owners corporation is an ideal vehicle for the establishment of a private water scheme in a new subdivision, particularly in the case of rural residential subdivisions. They can also be used for irrigation purposes but become more complex in these cases.

Access is guaranteed via the creation of easements at the subdivision stage. Conditions of water supply or delivery are incorporated in the owners corporation model rules.

It is possible to create an owners corporation for an existing subdivision, but the process is more complex because consent of all title holders and any parties with an interest in the title (e.g. mortgagor) and consent to the model rules must be obtained.

Draft model rules for an owners corporation are referred to in the List of Documents which can be requested from GMW.

### 1.3 Co-operatives

A co-operative is a democratic organisation, owned and controlled by its members for a common benefit. Co-operatives are traditionally based on values of self-help, self-responsibility, equality and solidarity.

Members of co-operatives can benefit from economies of scale through the combined purchasing, distribution or marketing power or influence of the group. They share in the group’s investment and operational risks and losses, as well as its benefits.

Unlike private companies, co-operatives do not have a limit on membership numbers. Their ‘one member, one vote’ system also differs from public companies where voting rights are linked to share

ownership.

In a co-operative:

- All members have equal status and voting rights
- No member can hold more than 20 per cent of shares
- All active members can nominate as directors and elect directors
- Capital is used as the group's common interest

Co-operatives are administered under the *Corporations Act 2001* (which applies throughout Australia) and, in Victoria, the *Co-operatives Act 1996*. (Source: Consumer Affairs Victoria [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au) ).

A trading co-operative must have share capital and at least five active members. It can distribute part of its surplus to members by way of bonus shares, dividends or rebates. When a trading co-operative is formed, each member must buy the minimum number of shares stated in the co-operative's rules. Members receive a return on the capital they invest if the co-operative is wound up.

A non-trading co-operative must also have at least five active members, but must not distribute surpluses to members. It can have share capital, but does not have to. Members can only get back, at most, the original value of their shares in the co-operative's capital if the co-operative is wound up.

**Note: Co-operatives may be suitable for large scale irrigation schemes where members propose to put money aside for future replacement and renewals. They are more complex and have substantially higher compliance than incorporated associations. Customers contemplating the use of the Co-operative Model should examine this option carefully in conjunction with their legal and financial advisors.**

## 2. Access

In order to protect members of a private water scheme and their successors in title, GMW requires that the water supply route to all properties be legally protected. This can be achieved in two different ways:

### 2.1 *Registered Easement*

An easement provides a person or an Authority with legal permission to access specific areas of land for installing and maintaining water supply works e.g. a pipeline. The easement is registered on the land title and remains on the title when the property transfers to another person (unless removed with the consent of the person/s in whose favour the easement is created).

Easements are a highly secure way of creating and preserving access. However, they can be quite costly to establish, requiring detailed survey, survey plans and legal documents as well as lodgement fees.

### 2.2 *Access Agreement*

As an alternative to a registered easement, the parties to a private water scheme may seek to arrange access by agreement under section 234 of the Act. A section 234 agreement specifies each parcel of land over, or in favour of, which the right of access is created. As with a registered easement, an access agreement is registered on the land title and remains on the title when the property transfers to another person (unless removed with the consent of the person/s in whose favour the access agreement is made).

Access agreements have substantially lower establishment costs when compared to registered easements.

### 3. Private Water Scheme Models<sup>1</sup>

GMW has developed three models for private water schemes that can be used for either existing syndicates or new private infrastructure operators.

Each of these models is suitable to unbundle water entitlements in current syndicate operated private water schemes that are situated in regulated water systems.

Under these models, entitlements are transformed from supply agreements, where GMW is the entitlement holder to water share, water use licence or water use registration and delivery share (if supply is from an irrigation district).

The following descriptions of each model are focused on community agreements establishing a community water supply scheme as the legal framework. **The term Community Agreement Committee is used below in the context of the establishment of a Community Agreement. It is noted that an Owners Corporation or Co-operative may be the legal structure used to operate and manage a private water scheme arrangement. Accordingly, the reference to 'Community Agreement Committee' should be read as a reference to 'Owners Corporation' or 'Co-operative' as applicable and the reference to 'Community Agreement' should be read as a reference to a 'Private Water Scheme Arrangement' as applicable.**

#### **Common features of all models:**

- (a) The Community Agreement Committee must be a legal entity (options described above).
- (b) The Community Agreement Committee is responsible for all aspects of the common works.
- (c) The relevant member of a Community Agreement is responsible for their own private works,
- (d) All water is ultimately accounted for at the master (parent) meter which is to be located at the source of supply.
- (e) Where supply is from a declared waterway (ex-diversion licence), the Community Agreement Committee must hold a section 67 licence to operate works and the extraction share on behalf of the members.

#### **3.1 Model 1 – Supply Model**

Under this model, the Community Agreement Committee holds and manages the water entitlement and seasonal allocation on behalf of members. The Community Agreement Committee also provides services relating to the common works and delivery of water supply. A single water use registration and delivery share is held to cover supply to all members' lands.

Domestic and stock supplies are defined as watering a kitchen garden not bigger than 0.1 hectares and for watering of stock.

GMW is seeking an amendment of the Act to extend the use of this model to allow Community Agreements to be used for rural residential private water schemes. Until the Act is amended; use of the supply model is limited to situations where members are limited to watering gardens of 0.1 hectares.

#### **Features of the Supply Model**

- a) Metering
  - (i) The parent meter that records total usage will be owned, installed (exceptions may be permitted by arrangement that allow self-installation providing it is done to GMW)

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<sup>1</sup> Note: The Water Market Rules 2009 made under the *Water Act 2007* (Cth) classify Private Water Scheme operators as irrigation infrastructure operators. This has implications for transformation of individual water entitlements. (An explanation of transformation of individual water entitlements and associated procedures can be obtained from GMW).

specifications) and maintained by GMW with the Community Agreement Committee or developer meeting the cost of purchasing and installing the meter.

- (ii) Child meters are the meters installed to record water use by members. These are compulsory for all new Community Agreements and currently optional for existing Community Agreements. These meters establish each member's water usage and share of costs. Child meters are likely to be required to comply with the National Non-Urban Metering standards.

**b) Water Ordering**

- (i) Orders are made by the Community Agreement Committee on behalf of all members. Generally a standing order or by other arrangement can be made with the local Operations Office.

**c) Water Entitlement and Consumption**

- (i) The Community Agreement Committee's allocation account (ABA) must always have a positive balance. Allocation can be sourced from water shares held by the Community Agreement Committee or purchased on the trading market, and the balance of the account must at all times exceed current usage and orders.
- (ii) The Community Agreement Committee is responsible for all water use including the losses incurred in operating the supply and all water supplied to members.
- (iii) The Community Agreement Committee will be responsible for payment of all GMW charges. The Community Agreement should specify arrangements for charging members. GMW will not enter into disputes relating to member charges.

**d) Carryover**

- (i) Normal carryover arrangements apply to the Community Agreement. Dependant on Community Agreement rules it may be necessary to manage carryover and possible 'spillage' of allocation on an individual member basis.

### **3.2 Model 2 – Delivery Model**

The delivery model is aimed at irrigation users, but can be used in Community Agreements constituted by other users.

Under this model, each member independently holds and manages their water entitlements and seasonal allocation.

The Community Agreement exists to provide services relating to the common works and to deliver the members' water and is responsible for water losses in providing these services to members.

Under this model, a single water use registration and delivery share is held to cover losses incurred by the Community Agreement Committee in supplying water to members. (Note: a minimal rate of delivery share can be held to cover loss, but depending upon usage, this may leave the Community Agreement Committee subject to paying casual use rates for some of their usage).

#### **Features of the Delivery Model**

**a) Metering**

- (i) The parent meter that records total usage will be owned, installed (as above) and maintained by GMW with the Community Agreement Committee or developer meeting the cost of purchasing and installing the meter.
- (ii) Child meters are the meters installed to record water use by members. These are compulsory for all Community Agreements with the exception, at GMW's discretion, of some low usage existing syndicates. Child meters establish each member's water usage and share of costs. Child meters are required to comply with the National Non-Urban

Metering standards and are used by GMW to determine each member's usage for compliance, access and billing.

**b) Water Ordering**

- (i) Orders are placed in accordance with operating terms and conditions.
- (ii) Orders can be placed by a member of the Community Agreement that has the relevant authority to order on behalf of the individuals or by the secretary of the Community Agreement Committee. Orders are to be placed at each child service point and should be scheduled (pre-arranged) to ensure water supply is available and taken in a consistent manner.
- (iii) Community Agreement members are required to notify the secretary of the Community Agreement Committee of their intention to order to ensure that capacity is available for the delivery. Once approved by the secretary, the order can be placed.
- (iv) A meter reading is required prior to a new order being placed in WaterLINE unless alternative arrangements have made in accordance with a Connection Agreement.
- (v) Orders placed should include the volume required at the service point and the water loss component required to deliver the water to the service point. The loss component expressed as a percentage of the order will be agreed at the establishment of the Community Agreement and can be varied based upon actual losses.
- (vi) When an order is lodged, a pre-check will be conducted against the Community Agreement member and the Community Agreement Committee's allocation bank account (ABA) at order lodgement and the ABA must have sufficient allocation to allow the order to proceed.

**c) Water Entitlement and Consumption**

- (i) The Community Agreement Committee's ABA must always have a positive balance. Allocation can be sourced from water shares held by the Community Agreement Committee or purchased on the trading market, and the balance of the account must at all times exceed current usage and orders.
- (ii) Usage under the Community Agreement is the total of losses incurred in delivering the members' water and will be calculated as the total metered use at the parent meter less the sum of each member's use at the child meters. Charges for usage will be billed to the Community Agreement Committee.
- (iii) Each member's water usage will be recorded against their ABA and they will be charged directly for this usage
- (iv) The agreement setting up the Community Agreement should specify arrangements for charging members.
- (v) GMW will not enter into disputes relating to water use.

**d) Carryover**

- (i) Carryover arrangements apply independently to the Community Agreement and each of its members.

**3.3 Model 3 – Works (Pump) Share Model**

The works share model is limited to situations where each property supplied has separate metered supply lines to the source of supply. There is no loss to be accounted for when operating the shared infrastructure. This is generally where a group of meters are located at the source (usually adjacent to the pump outlet).

Under this model, each member independently holds and manages their water entitlements and seasonal allocation. The syndicate exists to provide services relating to the common works (this

includes all associated works on Crown land) and to deliver the members' water to the meter used to record each member's use.

Under this model there is no basis for the syndicate to hold entitlement or delivery share, the syndicate will only hold a licence to operate works. For some existing works where there is a history of meter sharing on a consecutive use basis, use of this model may be approved. Approval would be based upon recording and reporting when each member starts and finishes irrigation or dam filling.

## **Features of the Works Share Model**

### Water Ordering

- (i) Orders are placed in accordance with operating terms and conditions.
- (ii) Orders can be placed by a member of the Community Agreement that has the relevant authority to order on behalf of the individuals or by the secretary of the Community Agreement Committee. Orders are to be placed at each child service point and should be scheduled (pre-arranged) to ensure water supply is available and taken in a consistent manner.
- (iii) Community Agreement members are required to notify the secretary of the Community Agreement Committee of their intention to order to ensure that capacity is available for the delivery. Once approved by the secretary, the order can be placed.
- (iv) A meter reading is required prior to a new order being placed in WaterLINE unless alternative arrangements have been made in accordance with the Community Agreement.

## **4. Conveyance Losses**

Members of a Community Agreement using the Delivery Model will be required to cover the conveyance losses in their private works i.e. the connection between the GMW owned and operated backbone channel and their individual outlets.

This will require the Community Agreement Committee to hold a Water Use Registration for the conveyance losses. The Act has been amended to allow the Community Agreement Committee to hold the requisite Water Use Registration. The Water (Resource Management) Amendment Regulations 2012 give effect to this amendment.

## **5. Selection of a Model**

### 5.1 Supply Model

The Supply Model can only be used where water use does not include irrigation.

Water can be used by members for domestic and stock (including filling of dams for domestic and stock use), commercial (including intensive animal husbandry) and dairy washing.

The Act limits domestic use to watering of garden areas to 0.1 to 1.2 hectares depending on when the relevant crown allotment was alienated from the Crown. Watering gardens that exceed the relevant area is considered irrigation use and can only be authorised under a water use licence. The Delivery Model must be used by Community Agreements in this situation.

### 5.2 Delivery Model

The Delivery Model can be used in relation to any water use and must be used for all new irrigation supplies. It provides for delivery losses to be separated from each member's water usage and provides for each member to personally manage their entitlement and trade allocation.

### 5.3 Works Share Model

The Works Share Model can be used where all service points are located adjacent to the source of supply. The two common situations are where:

- each member of the works share has a separate delivery line from the source to their property and each member's delivery line is metered at the source of supply, or

- for established works, where the works are used on a consecutive use basis and each member's water use is recorded separately. GMW only approves this sharing arrangement where there is established incident-free sharing of the works.

## **6. GMW Delivery Arrangements**

Delivery of water by GMW to customers who are a party to a Community Agreement will be in accordance with any Conditions Determination (Determination of Terms and Conditions for the Service of Delivering Water) made from time to time by GMW.

## **7. Operating Rules**

The secretary of a Community Agreement using the Supply Model may be required to order water. If required to do so, the normal GMW water ordering procedures (an automated telephone service, WaterLINE, or an internet based service <https://waterline.g-mwater.com.au>) can be used. However, the secretary should contact the local GMW Operating Centre to establish the requirement in their circumstance.

A Community Agreement utilising the Delivery Model or Work Share model will be required to follow the water ordering procedures outlined in GMW's *Model Operating Terms and Conditions*.

A Community Agreement utilising the Works Share Model will be required to follow the water ordering procedures outlined in *GMW's Delivery Model Operating Terms and Conditions*.

## **8. Landowners' Liability**

As indicated in the opening paragraphs of these guidelines any persons intending to enter into a private water scheme should seek their own technical, legal, financial and operational advice before signing up to such an arrangement.

GMW is aware that landowners' liability is an area that has generated concern for landowners. In this regard, despite the fact that a Community Agreement Committee is incorporated, member landowners remain liable for the actions of the Community Agreement Committee as long as the Committee is acting as an agent for the member landowners.

This may create concern for member landowners in circumstances where the infrastructure required to give effect the Community Agreement could pose a risk. The level of risk that member landowners may be exposed to will need to be assessed on each project based on the factual matrix of the project. GMW recommends that private water schemes should be designed to minimise any risks associated with them.

In addition it is recommended that provision should be made in the Community Agreement for the infrastructure to be owned in the name of the incorporated association.