



Guide to Private Water Schemes

This guide provides a summary of the background to private water schemes (syndicates), options for legal structures, types of schemes, and an overview about establishing a private water scheme.

GMW recommends that if you are part of an existing or proposed private water scheme you seek independent professional advice and assistance from an appropriately experienced and qualified provider.

For further information contact us on 1800 013 357 or visit www.g-mwater.com.au

What is a Private Water Scheme?

A private water scheme (previously known as a syndicate) is a private arrangement between a group of landowners to share the costs and obligations of installing and operating a private water scheme, comprising pumps, pipelines, channels, etc.

Private water schemes have been operating for many years in GMW's irrigation districts, and from rivers, streams and bores. Water is used by scheme members for purposes including irrigation and domestic and stock.

Some of the existing arrangements are informal and essentially involve handshake agreements between landowners; others are set up using legal frameworks such as community water supply agreements or owners corporations.

What has changed?

In 2007 the Victorian Government introduced a new 'unbundled' water entitlement framework for rural water entitlements taken from regulated rivers. These water entitlements (water shares, ABAs, delivery shares, water use licences) must be owned by legal bodies such as individuals, companies, and incorporated associations or owners corporations.

In the same year, the Commonwealth Water Act made it a requirement that syndicate members with irrigation rights must be able to "transform" their water entitlements and hold them in their individual names

In their current form, many private water schemes are not compatible with the ownership requirements, unbundling or transformation.

GMW has worked with the Department of Environment Land Water & Planning to establish guidelines to enable the existing water supply schemes to meet the new requirements.

Landholders in GMW's region who are members of existing private water schemes or who wish to establish new schemes are now able to do so by using one of two recommended legal structures.

How do the changes impact on new and existing schemes?

The changes aim to protect the rights and obligations of all parties by requiring private water schemes to operate under a legal framework and formalising administrative and operational arrangements under Community Water Supply Agreements or Owners Corporation.

The private water schemes arrangements are tailored to meet the needs of the members. Generally, schemes fall into two types: those where none of the members irrigate (supply) and those where some or all of the members irrigate (delivery).

What is an Incorporated Association?

An incorporated association is generally a group, operating not for profit, whose members have decided to give their organisation a formal legal structure. You can recognise an incorporated association by the word 'Incorporated' or the abbreviation 'Inc.' after its name.

When a 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 operate water infrastructure. This protects the individual members of the association from legal liabilities.

Victorian incorporated associations must have at least 5 members so this option may not be suitable for smaller groups.

What is an Owners Corporation?

An owner's corporation is generally created when a plan of subdivision containing common property is registered at Land Victoria.

The owner's corporation is registered on all of the subdivided land titles and each landowner automatically becomes a member of the owner's corporation.

Owner's corporations must establish a Committee to administer areas of common interest which make them useful in terms of private water scheme arrangements.

Owners corporations operate under established rules. They use Additional Rules under the owner's corporation to set out the arrangements for their private water scheme.

How do I know which agreement to use?

The type of scheme for you will depend on your particular circumstances. GMW has developed template agreements to cover a range of scenarios and which you can tailor to your situation. Once you fully understand your situation and needs, you then can proceed to formally set up your private water scheme. The following steps provide general information about doing this.

STEP 1: Establish a legal structure for the group

To operate as a private water scheme, the group must establish itself as a formal legal entity. This means that the group of landowners who will operate under the scheme must either register as an Incorporated Association or an Owners Corporation.

If an Incorporated Association legal structure is selected, then a Community Water Supply Agreement is used. If an Owners Corporation structure is selected, then Additional Rules are used. Both alternatives cover the rights and obligations of private water scheme members.

More information about the two legal structures is available at www.consumer.vic.gov.au

STEP 2: Ensure all landowners have legal access to water supply or delivery infrastructure

To ensure the rights of all members of a private water scheme and their successors in title are protected, it is a requirement that the water supply or delivery routes to all properties within the scheme are legally protected.

This means that the right of access must be registered on the land titles for all landowners. This can be achieved by either registering an Easement or Access by Agreement on land titles covered by the scheme. Note: where an Owners Corporation is being used, the access requirement might be satisfied via common property with no further action required.

Registration of Easement

Registering an easement on title is a secure way to ensure your access to water supply or delivery infrastructure is protected. The easement provides a person with legal permission to access specific areas of land for installing and maintaining water supply or delivery infrastructure such as a pipeline.

The easement is registered on the land title and remains on the title if the property transfers to another person.

Registering an easement can be costly to establish as it requires detailed land surveys to be carried out and legal documents to be drawn up by qualified professionals.

Registration of Access by Agreement

As an alternative to registering an easement, landowners can enter into an Access by Agreement, which is administered under the Water Act (Vic). This agreement specifies the land over which access is granted. The Access by Agreement is also registered on the land title and remains on the title if the property transfers to another person.

Accesses by Agreements have substantially lower establishment costs when compared to easements.

STEP 3: Select Private Water Schemes types

Two Private Water Scheme models have been developed by GMW which are designed to suit the needs of private water schemes.

Each of the agreement models requires that any existing legacy water entitlements (such as supply agreements) are transformed into the current legal framework – *see more information to the left*.

The Supply Model – For Domestic and Stock supply only

A supply model can only be used if water is not used for irrigation. It is limited to landowners who use water for household use and watering domestic gardens

Under this model water entitlements (water shares) and seasonal allocations are held and managed by the scheme on behalf of the members. The legal entity holds a water use registration as the occupier over all the land incorporated in the scheme which authorises the use of water for domestic and stock purposes.

Irrigation district customers

GMW prefers that each scheme holds delivery share that is held pro rata on each parcel of land but the scheme may elect not to hold delivery share and pay casual use fees for water use.

Regulated diversion customers

Where extraction works (pump) are located on a waterway a single works licence is to be held by the legal entity. The extraction share associated with the works licence can be held by the legal entity or apportioned to members in the scheme.

All

The scheme is responsible for providing services to the members including administering the shared water entitlements, maintaining the delivery infrastructure and operating the supply system. Tasks carried out by the group would include things such as water ordering, water trading, administering shared costs and co-ordinating payment for water consumption and fixed water charges on behalf of the scheme to GMW.

What is Transformation of a water entitlement?

Transformation is the process by which an entitlement to water under an irrigation right held by a water corporation (such as a Supply Agreement with GMW or a share of private water) is converted into individually owned water entitlements.

Transformation effectively separates an irrigator's share of GMW's water entitlement and establishes it as a separate entitlement

In Victoria most rural water entitlements were recognised as individual and separate property rights in 2007 when water was unbundled.

However, entitlements held on behalf of irrigators under supply agreements, such as those held by GMW on behalf of private water delivery schemes, could not be recognised or transformed.

Under both the supply and delivery models, any existing legacy supply agreements held by private water supply schemes must be transformed in order to comply with the rules.

A range of information, application procedures and forms relating to transformation are available from GMW at www.gmwater.com.au

*In some cases garden areas of up to 1.2ha can be watered depending on when the land was alienated from the Crown. G-MW can provide more information if required.

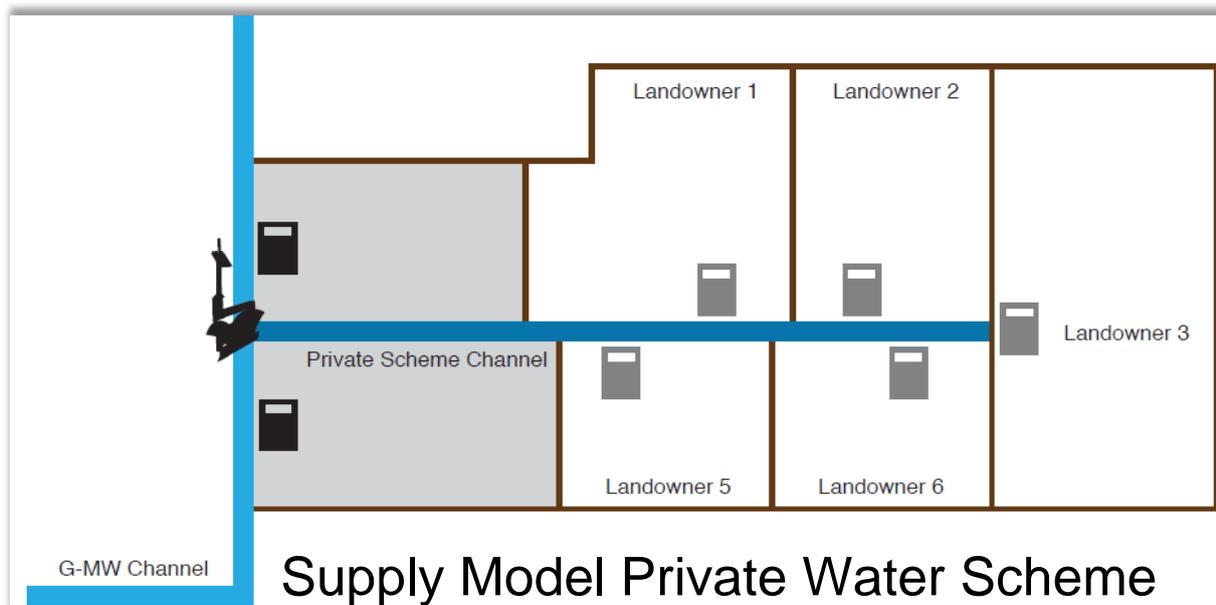
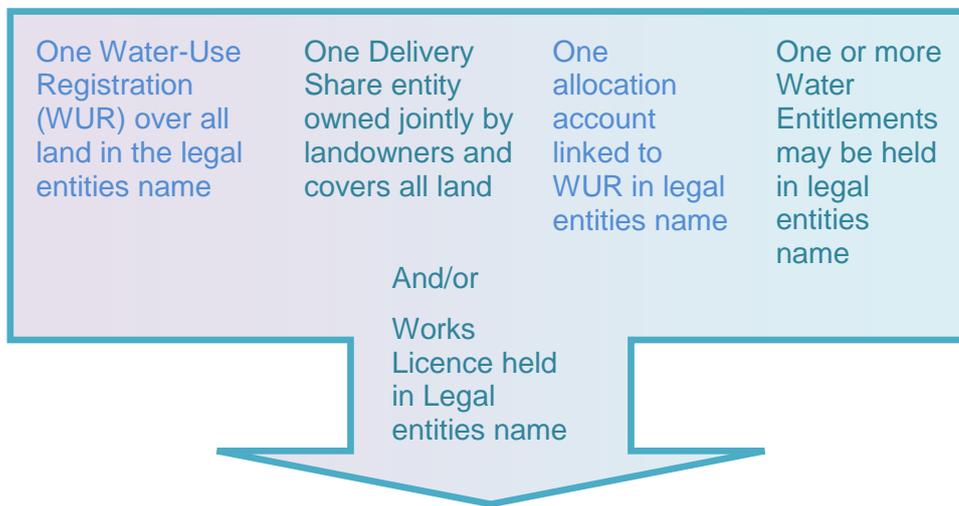
Water usage – metering and cost sharing

Under the supply model a parent meter is installed and maintained by GMW and will remain GMW's property. In the case of Diversions customers the meter will be purchased and installed by the syndicate and will then become GMW's property. The meter measures the amount of water supplied from GMW's infrastructure (or in regulated diversions customers case, water accessed from the relevant river), not the individual volumes supplied to each member of the group. The cost of supply and installation of this meter is met by the scheme members.

The scheme is responsible for supplying water from the GMW off-take to the members (or in regulated diversions customers' case, from the relevant river). This includes making allowance for any losses incurred in distributing the water.

Charges for water usage will be billed to the group, so it is important that the arrangements and obligations of all members in relation to sharing of costs are included in the Community Water Supply Agreement.

For all new supply model schemes it is compulsory for individual meters (child meters) to be installed by each member at their off-take. For existing schemes it is not compulsory but highly recommended to ensure that there is equitable sharing of costs by individual members.



The Delivery Model for Irrigation and other purposes.

The delivery model caters specifically for irrigation users, but can be used instead of the Supply Model. It is more suited to irrigation enterprises as it provides for delivery losses to be managed separately to each member's water usage, and for each member to personally manage their own entitlements and allocation.

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

What are a Community Water Supply and Access Agreement?

A Community Water Supply and Access Agreement consist of two parts.

The Community Water Supply agreement sets out the mutual objectives, benefits and obligations of the landowners in relation to the delivery of water to their land. It also specifies the operating rules for practical matters such as water usage, losses, metering and ordering and administrative issues including sharing of costs, communicating with members and dealing with disputes.

The Access Agreement grants rights of access for water delivery to each landowner and the group over the land included in the agreement. It specifies how and when access is given and what activities may be carried out on the land under the agreement. The agreement is registered on the land title

GMW has developed templates for these agreements either as standalone agreements or as a combined agreement.

If the legal structure used is an Owners Corporation then only the Additional Rules for water supply purposes are needed as access is already established.

The Community Water Supply Agreement and Additional Rules for an Owners Corporation exist 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 in supplying water to members.

Irrigation district customers

Each landowner will hold Delivery Shares on their own properties. In addition a single Delivery Share is to be held over all lands the legal entity delivers water to and is issued in the names of all landowners. The members will be individually responsible for payment of their own delivery shares and the scheme responsible for joint delivery share charges. Under this model each member holds their own Water Share, ABA, water use licence and a Delivery Share.

Regulated diversion customers

Where works are on a waterway a single works licence is to be held. The Minister's policies for managing works licenses require the associated works licence to be held by an individual or an incorporated body.

All

The scheme provides services relating to maintaining the delivery infrastructure and operating the supply system and is responsible for accounting for water losses incurred in delivering water from GMW's infrastructure to the individual members.

Water entitlements (water shares) and seasonal allocations are owned and managed by each member independently to the group.

The group must hold a water use registration for the land where the distribution infrastructure is located. In most cases the group will require a delivery share (irrigation districts) which allows for the additional delivery rate to cover the distribution losses incurred by supplying the individual members. If the loss amount will be very low the group may choose to hold no delivery share rate and pay casual use rates instead.

Water usage – metering and cost sharing

Under the delivery model a parent meter will be installed and maintained by GMW and will remain GMW's property. The meter measures the amount of water supplied from GMW's infrastructure, not the individual volumes supplied to each member of the group. The cost of supply and installation of this meter is met by the scheme members.

Individual child meters must also be installed to record water use by the members. GMW will bill individual members for annual fixed charges and water usage. Child meters are to comply with the national Non-Urban Metering standards and are used to ensure compliance with Water Use Licence conditions and billing.

Usage by the group includes the total of losses incurred in delivering the members water and is calculated as the total metered use at the parent meter less the sum of each member's use at the child meters. Charges for this usage will be billed to the group so it is important that there is agreement as to how each member contributes to these charges.

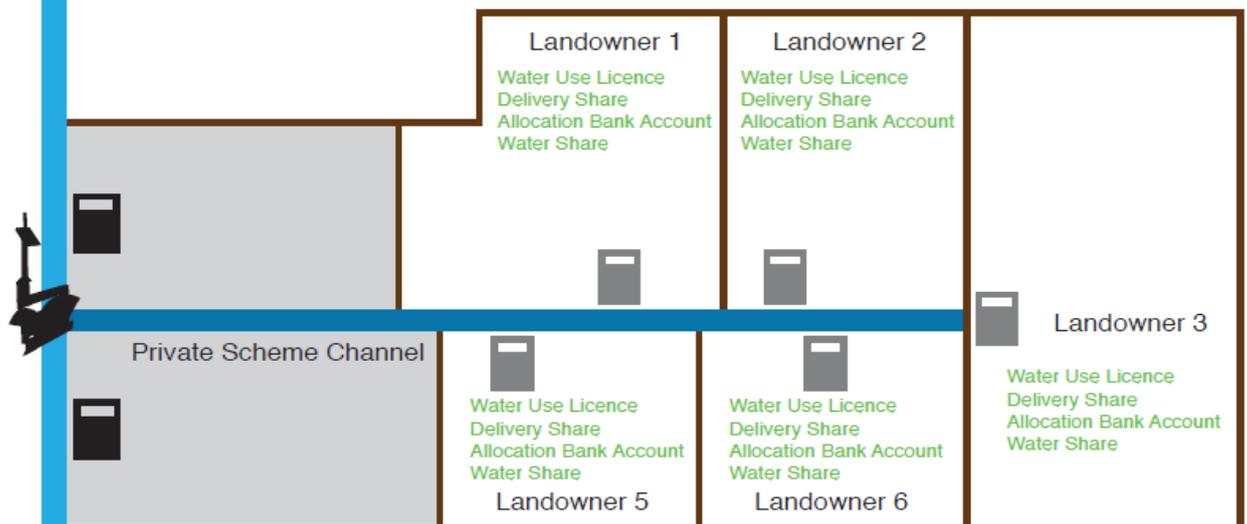
GMW Delivery Arrangements

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

What is a Delivery Determination?

A Delivery Determination is a determination made by the Board of the Goulburn–Murray Rural Water Corporation under the provisions of section 227 of the *Water Act 1989* with respect to the delivery of water from its water systems that have been declared under the section 6A of the Act.

The Delivery Determination sets out the terms and conditions for the service of delivering water from these water systems. A copy of the Delivery Determination is available on GMW's web page.



Delivery Model Private Water Scheme

G-MW Channel

