

## ***Issue***

Basic Landholder Rights to stock and domestic Water.

## ***Background***

This document is structured as follows:

- An explanation of the basic landholder right to stock and domestic water
- The Association's Policy on stock and domestic
- The Association's verbal agreement with Victoria on reasonable use for stock and domestic
- Legislation of relevance to stock and domestic under the Water Act 2007
- Legislation of relevance to stock and domestic under the Water Management Act 2000 and the Water Act 1912
- A section discussing "Reasonable Use Guidelines".
- Current Situation

NSW is currently operating under two pieces of legislation. The most current is The Water Management Act 2000, which is applicable to areas where water sharing plans have commenced. All remaining areas are governed under the provisions of the *Water Act 1912*.

The Water Act 2007 gives effect to a number of key elements of the Commonwealth Government's \$10.5 billion National Plan. The Commonwealth and the Basin States have signed a Memorandum of Understanding regarding reform in the Murray Darling Basin. This MoU provides a platform for the States to consult with water stakeholders, upon which, they will act to sign an Inter-Governmental Agreement in July 2008. This will form the foundation for the new Murray Darling Basin Authority to develop and implement a new Basin Plan (major component of the Water Act 2007), due to be implemented by 2011.

## ***What are the Basic Landholder Rights?***

Although NSW operates under two different pieces of water legislation, the same "basic landholder rights" exist whether you are in an area where the provisions of the Water Management Act 2000 apply, or where the Water Act 1912 licencing provisions still apply. The Water Act 1912 used to be governed under the riparian right (Part 2, section 7 of the Act), however, this riparian right was repealed from the Act and replaced with the "basic landholder rights" of the Water Management Act 2000.

- Rural Landholders in NSW have rights to access water for some basic purposes. You do not require a licence to obtain water under any of the three types of basic landholder rights.
  - Domestic and stock rights
  - Harvestable rights in farm dams
  - Native title rights
- For the purposes of this document we will only be focussing on the stock and domestic rights. There are many different types of stock and domestic, so to avoid confusion we need to differentiate the basic right to stock and domestic from other forms of stock and domestic.

## ***Different types of Stock and Domestic***

Stock and domestic can generally can be split into two different categories.

1. The Basic Landholder Right to stock and domestic water; and
2. Stock and Domestic access licences, which include a range of different scenario's, however all include having a physical licence.

*Note: The basic landholder right to stock and domestic is not to be confused with the basic landholder's harvestable right. The harvestable right is the right to capture 10% of water run-off on a property. This particular right is a separate issue and is not being discussed in this document.*

***The Basic landholder Rights to Stock and Domestic***

- Rural landholders who own or occupy land on a riverbank, lakefront or overlying an aquifer can take water (without a licence) from the river, lake or aquifer:
  - For domestic purposes (eg cooking, washing, watering house gardens), and
  - To water stock on the property (but not intensively housed animals).
- The water cannot be used for irrigating crops or garden produce that will be sold or bartered; for washing down machinery sheds; or for intensive livestock operations.
- Landscape and recreational dams are not considered to be domestic uses of water. These dams may be part of your harvestable rights.

Further information on the basic right to stock and domestic can be found at [http://www.dnr.nsw.gov.au/water/pdf/rural\\_landholder\\_basic\\_rights-f.pdf](http://www.dnr.nsw.gov.au/water/pdf/rural_landholder_basic_rights-f.pdf)

***The Following is Association policy relating to Stock and Domestic***

- 04 Feb EC That in respect to stock and domestic water rights:
  - That no further rural residential or urban subdivision be consented to in sensitive areas until an adequate water supply for stock and domestic purposes has been secured.
  - Water for stock as required, with no requirements that this water will be pumped.
- 99 Oct GC That the Association
  - not support licensing and metering of farm dams
- AC 98 That the Association oppose any government tax or compulsory charge associated with farm stock and domestic water supplies.
- 96 Feb GC That the Association demand that in relation to groundwater management fees:
  - (b) there be no charge whatsoever for stock and domestic bores

***The following is a verbal agreement of NSW and Victoria during the National Water Initiative Inter-governmental agreements of the National Plan for Water Security***

- 10 megalitres is the acceptable deeming limit. Anything above 10 megalitres should be monitored.
- Pumping pipes should be limited to 50 ml (2 inch) and Stock and Domestic bores should be limited to a maximum size of 6 inches.

***The following is legislation of stock and domestic water under the Water Act 2007.***

- On 26 March 2008, the Commonwealth Government signed an agreement with the Basin States with regards to Murray Darling Basin reform.
- A new Basin Plan (part of the Water Act 2007) will be developed and implemented by 2011.
- The current Basin Plan, with respect to Stock and Domestic water is as follows:

**22 Content of current Basin Plan**

(5) *The requirements specified under item 11 of the table in submission (1) may include a requirement for a water resource plan to provide for the metering of stock and domestic water use only to the extent that such metering is necessary for the effective management for Basin resources.*

*Note: Metering may, for example, be necessary for the effective management of the Basin water resources where a particular ground water resource is under stress or where there are local disputes about water sharing.*

Further information on the Water Act 2007 can be found at:

[http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/C720477DF1F4C861CA25734C008307A9/\\$file/1372007.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/C720477DF1F4C861CA25734C008307A9/$file/1372007.pdf)

***The Following section is legislation of stock and domestic under the Water Management Act 2000 (covering Basic landholder rights)***

***Note: The same legislation for basic landholder rights is applied under the Water Act 1912.***

**52 Domestic and Stock rights**

(1) An owner or occupier of a landholding is entitled, without the need for an access licence, water supply work approval or water use approval:

- (a) to take water from any river, estuary or lake to which the land has frontage or from any aquifer underlying the land, and
- (b) to construct and use a water supply work for that purpose, and
- (c) to use the water so taken for domestic consumption and stock watering, but not for any other purpose.

(2) Any entitlement under subsection (1) to take or use water is subject to the following provisions:

- (a) owners or occupiers of new land holdings that are created by the subdivision must not take or use water under the subsection contrary to any prohibition or restriction imposed on them by or under the regulations (including any prohibition or restriction that the Minister is authorised by the regulations to impose),
- (b) subsection (1) does not authorise a landholder to construct a dam or water bore without a water supply work approval.

(3) In this section:

**Domestic consumption**, in relation to land, means consumption for normal household purposes in domestic premises situated on the land.

**Stock watering**, in relation to land, means watering of stock being raised on the land, but does not include the use of water in connection with the raising of stock animals on an intensive commercial basis that are housed or kept in feedlots or buildings for all (or a substantial part) of the period during which the stock animals are being raised.

*Note: “Reasonable Use Guidelines”: There is a clause in the water management act 2000 section 52 (2)(a) that gives the Department the power to enforce reasonable use guidelines. These guidelines do not currently exist and therefore there has been little regulation to determine an exact figure which is deemed acceptable for stock and domestic use. The Department of Water and Energy has stated that they have drafted a set of “Reasonable Use Guidelines” in which they will be able to enforce under the legislation in the Water Management Act 2000. They are currently seeking to have these guidelines put up for approval by the Minister and are hoping that they will be available for public consultation in 2008. They will be seeking submissions on these guidelines.*

Further information on the Water Management Act 2000 can be found at:  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/wma2000166/](http://www.austlii.edu.au/au/legis/nsw/consol_act/wma2000166/)

### **Current situation**

There is an increasing amount of pressure from both government and industry water stakeholders to have stock and domestic water accounted for in the system.

The National Water Initiative is Australia’s blueprint for national water reform. The NWI has a number of stated aims when fully implemented, including

- The return of over allocated/ over used systems to sustainable levels of extraction.
- Implement water accounting that can meet the information needs related to planning, monitoring and trading.
- Policy settings which develop water use efficiencies and innovation in urban and rural areas.

The Commonwealth Government has recently signed an agreement with the Murray Darling Basin States in regards to Murray Darling Basin reform (\$10 billion National Plan). Part of this agreement gives the Commonwealth Minister the power to approve a new Basin Wide Plan (detail of the Water Act 2007), including a new cap on the amount of water used in the Basin.

The National Plan will focus on addressing losses in the Murray Darling system as is indicated in the NWI. It is reasonable to assume that un-licenced, un-metered and un-charged water will be targeted at some stage in the implementation of the National Plan.