

WATER ACT 1989

**GUIDELINES
FOR
QUARRIES AND MINES**

July 2004

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1 INTRODUCTION

The *Water Act 1989* (the Act) was amended by the *Water (Irrigation Farm Dams) Act 2002* to require licensing of all irrigation and commercial use from waterways, springs, soaks and dams. Under these amendments some previously unlicensed water use for quarries and mines now needs to be licensed.

These guidelines have been prepared to assist licensing authorities with licensing decisions in relation to quarries and mines.

2 LICENSING OVERVIEW

Licensing the taking and use of water from waterways, springs, soaks and dams, and licensing the construction of dams, are Ministerial responsibilities under the *Water Act 1989* that have been delegated to the following Licensing Authorities:

Goulburn-Murray Water
Grampians Wimmera Mallee Water Authority
Southern Rural Water
Lower Murray Urban and Rural Water Authority
Melbourne Water Corporation

The Licensing Authorities other than Melbourne Water are also responsible for licensing the taking and use of groundwater and licensing the construction of bores.

3 HOW DOES THE WATER ACT AFFECT QUARRIES AND MINES?

Operators of quarries and mines are subject to the Act in a similar way to any other commercial users of water as follows:

3.1 Licences to construct and operate works

Under section 67 of the Act a licence is required to construct, alter, operate, remove or decommission works (including a dam) on a waterway.

"works" includes—

- (a) reservoirs, dams, bores, channels, sewers, drains, pipes, conduits, fire plugs, machinery, equipment and apparatus, whether on, above or under land; and
- (b) works for, or which may result in—
 - (i) the drainage of any land; or
 - (ii) the collection, storage, taking, use or distribution of any water; or
 - (iii) the obstruction or deflection of the flow of any water.
- (c) fencing.

Under section 67(1A) of the Act a licence is also required to construct, alter, operate, remove or decommission a private dam that is not on a waterway that:

- (a) has a wall that is 5 metres or more high above ground level at the downstream end of the dam and a capacity of 50 megalitres or more; or
- (b) has a wall that is 10 metres or more high above ground level at the downstream end of the dam and a capacity of 20 megalitres or more; or

- (c) has a wall that is 15 metres or more high above ground level at the downstream end of the dam, regardless of the capacity; or
- (d) is a dam belonging to a prescribed class of dams.

Under section 3 of the Act a dam is defined as follows:

"dam" means anything in which by means of an excavation, a bank, a barrier or other works water is collected, stored or concentrated.

A private dam (as distinct from a dam owned by a water authority) is defined under the Act as follows:

"private dam" means anything in which by means of an excavation, a bank, a barrier or other works water is collected, stored or concentrated but does not include—

- (a) anything owned or operated by a public statutory body; or
- (b) any works of an Authority or a licensee; or
- (c) a channel, drain or pipe; or
- (d) a bore;

"waterway" means:

- (a) a river, creek, stream or watercourse; or
- (b) a natural channel in which water regularly flows, whether or not the flow is continuous; or
- (c) a channel formed wholly or partly by the alteration or relocation of a waterway as described in paragraph (a) or (b); or
- (d) a lake, lagoon, swamp or marsh, being—
 - (i) a natural collection of water (other than water collected and contained in a private dam or a natural depression on private land) into or through or out of which a current that forms the whole or part of the flow of a river, creek, stream or watercourse passes, whether or not the flow is continuous; or
 - (ii) a collection of water (other than water collected and contained in a private dam or a natural depression on private land) that the Governor in Council declares under section 4(1) to be a lake, lagoon, swamp or marsh; or
- (e) land on which, as a result of works constructed on a waterway as described in paragraph (a), (b) or (c), water collects regularly, whether or not the collection is continuous; or
- (f) land which is regularly covered by water from a waterway as described in paragraph (a), (b), (c), (d) or (e) but does not include any artificial channel or work which diverts water away from such a waterway; or
- (g) if any land described in paragraph (f) forms part of a slope rising from the waterway to a definite lip, the land up to that lip;

Licensing authorities apply waterway determination guidelines to assess whether a particular site is a waterway as defined by the Act. Under these guidelines they will determine that a waterway exists at a particular site if a natural channel is present and there is a catchment above the channel of 60 hectares or more, or if a spring or absorbent soil feeds the channel.

Works licences - implications for operators of mines and quarries:

- The construction of new works on waterways require a works licence.
- New private dams constructed off waterways within the criteria specified in section 67 of the Water Act also require a works licence.

3.2 Licences to take and use water

Under section 51(1)(a) of the Act a licence is required to take and use water from a waterway. If a dam is built on a waterway, the land that is regularly covered by water is also considered to be a waterway.

Under section 51(1)(ba) of the Act a licence is required to take and use water *from a spring or soak or water from a dam (to the extent that it is not rainwater supplied to the dam from the roof of a building or water supplied to the dam from a waterway or a bore), for a use other than domestic and stock use.*

The Act allows licences and water rights to be transferred on application by the holder of the entitlement. This may occur when a property is sold or when a person sells the water entitlement to a different property owner. The whole of the Murray River basin is capped under the Murray Darling Basin Agreement, as are fourteen catchments in southern Victoria as detailed in the Victorian Government White Paper “Securing Our Water Future Together” June 2004.

In capped catchments, where the available water is fully allocated, a new user will need to purchase a water entitlement from an existing entitlement holder to ensure that the cap is not exceeded. This needs to be done before a new licence can be issued or an existing licence transferred.

3.2.1 When is a licence required to take and use water from a quarry or mine?

A take and use licence is required for a quarry or mine:

- a) where water is taken from a waterway and stored in the quarry or mine. In this instance a licence to take water from the waterway would be required, or
- b) where groundwater is taken or used from a quarry or mine. This includes long-term mine and quarry dewatering, the primary purpose of which is to lower surrounding groundwater levels or cause a cone of depression.

3.2.2 Which mining and quarry dams would not need a take and use licence?

The following mining and quarry dams would not need a take and use licence -

- (a) Tailings or slime dams;
- (b) Settling ponds; and
- (c) Process dams (in which recycled water from processing is used)

- provided that these dams are designed to exclude surface water run-off.

3.2.3 Is a quarry or mine a dam?

The intended purpose of a quarry or mine is to recover stone, metals or minerals. For the purposes of administering the Water Act, a quarry or mine will not be considered to be a dam, even though it may hold water, if the collection of water in the excavation is incidental rather than by design, is small in scale and occurs due to site specific geologic or geomorphic conditions.

Many open cut quarries or mines are in reality dry, however some may collect water that falls into them directly from rainfall. The use of this rainwater does not need to be licensed under the Act, as a quarry or mine is not considered to be a dam.

3.3 Mine/quarry rehabilitation

A take and use licence is not required for quarries or mines that are rehabilitated to become a lake or water feature, provided water is not taken and used for irrigation or commercial purposes. Water diverted from a waterway or extracted from a bore and used to fill a lake would however need to be licensed.

Take and use licences - implications for operators of mines and quarries:

- A licence is required to take and use water from a waterway.
- A take and use licence is not required for tailing, slime or process dams.
- A take and use licence is not required for quarries or mines if the water entering the open cut is from direct rainfall.
- A take and use licence is not required for quarries or mines that are used as a lake or water feature from which no water is taken or used.