



## **WATER LICENSING AND EWOV**

Information for water licensees and those affected by licences

Water licences are important and valuable. Disputes about them can be dealt with by either the Victorian Civil and Administrative Tribunal (VCAT) or EWOV. This fact sheet will help you make that decision.

**Be aware that you have only 28 days after a water licensing decision is made by a water corporation to ask VCAT to review it. We can help you decide whether to go to VCAT or come to EWOV.**

### **Water licences**

Water licences are governed by the [Water Act 1989](#) (the Act). The Act sets out the things a decision-maker—usually a rural water corporation, as delegate of the Minister for Water—must consider before granting or refusing a licence.

There are many factors. Some are matters for judgment, such as, *'any adverse effect that the allocation or use of water under the entitlement is likely to have on existing authorised users of water, a waterway or an aquifer or the drainage regime.'* (section 40)

Other factors are more clear-cut, e.g. if an area is subject to a Water Supply Protection Area Plan which states no more licences are to be granted, then no licence will be issued.

Similarly, if a licence is applied for in the Victorian section of the Murray-Darling basin catchment, it will be refused because of the cap on diversions.

### **Decision-makers**

The rural water corporations, which make decisions about water licences on behalf of the Minister, are:

- Gippsland and Southern Rural Water (usually called Southern Rural Water)
- Goulburn-Murray Water
- Lower Murray Water
- Grampians-Wimmera Mallee Water

Melbourne Water and Coliban Water also hold delegations to make water licensing decisions.

### **Licensing process**

As there are so many factors to be considered before a licence is granted or refused, the process is set down in the Act. It follows prescribed stages:

- An applicant may be required to advertise that they're applying for a licence. This may generate submissions from third parties which the rural water corporation must consider.
- The Act specifies that if somebody—who may be an affected third party—wishes to seek a review of a licensing decision, they must go to VCAT. They need to do this within 28 days of the water corporation making the decision.
- A licence applicant who has received a decision from a rural water corporation may ask for a statement of reasons. This statement is likely to be helpful in deciding whether to take the matter further.
- If an applicant does seek a statement of reasons, the 28 days for going to VCAT starts again when the statement is sent.

### **Various disputes can arise**

- An applicant may think the process is taking too long.
- An applicant may feel they've been put to too much expense e.g. the requirement for a hydro geological assessment.
- An unsuccessful applicant may dispute the reason given for refusing their application. For example, they may disagree that their application was incomplete, or that it would adversely affect water availability.
- A third party may believe that granting someone else a licence will have an adverse impact on them.



## What can EWOV deal with?

EWOV is most likely to be able to help if there's been a flaw in the **process** of receiving and considering a licence application. If that's the case, it may or may not change the outcome of the application.

EWOV can't help if the issue relates to the legislation and there's been no error in applying the legislation.

EWOV also considers whether an option for resolving a complaint would be unfair on a third party who is not involved in the EWOV process.

## What can VCAT deal with?

VCAT can review nearly **all decisions** made under the [Water Act 1989](#), including decisions by water corporations about licensing.

For more information about VCAT, see [vcat.vic.gov.au](http://vcat.vic.gov.au) or phone **1800 133 055**.

## Deciding where to go

### EWOV?

EWOV offers an informal, independent and free service for consumers.

If the dispute is about how the decision-maker treated you—or what they did, when they had the power to do something different—EWOV may be the appropriate forum.

EWOV takes details of the customer's issues, usually by phone, then contacts the water corporation and asks it to respond within 14 days. In licensing issues, all 14 days will usually be used. We assess the response and check with the customer to see if it resolves the matter.

### VCAT?

VCAT is designed to be low cost and informal. Generally, somebody taking a case to VCAT on a water matter would have legal representation, but that isn't compulsory.

There are application fees for taking a dispute to VCAT. However, the major expense is likely to be legal representation and, if applicable, expert witnesses.

If the dispute is about the decision which was made, it's worth considering taking it to VCAT.

## Decide as soon as possible

If you wait for EWOV's investigation to be finalised, you'll very probably lose the option of going to VCAT because it's most likely that the 28 days will have passed.

Conversely, if you go to VCAT first, you'll probably lose the option of going to EWOV. This is because EWOV's Charter prevents EWOV from investigating a complaint which is, or has been, before VCAT.

You should consider getting independent legal advice before making your decision.