

## Policy – Circumstances when a section 51 licence fee is not charged.

---

### Policy

Annual fees and charges for section 51 licences will only be waived when it is in the public interest to do so.

Assessments of public interest will be consistent with DELWP’s model policy for Board Meetings and Decisions (2015), which states:

The board will also ensure that each of its decisions is in the public interest, including that it is:

- ethically sound and fair (e.g., consistent with the Directors’ Code of Conduct); and
- consistent with government policy; the organisation’s strategic and business plans; and any directions, guidelines, and/or statements of obligation or expectation issued by the Minister.

Current exemptions for the waiving of fees for a licence issued under section 51 of the Water Act are:

- a Traditional Owner, or their representative corporate body, for licences issued for cultural purposes; or
- a government agency or statutory authority taking groundwater in a manner to abate a public nuisance which does not contribute to the proponent’s core business activities or commercial return.

Specific detail of the exemptions for water held Traditional Owners for cultural purposes and the avoidance of public nuisance by can be found in Schedule 1 and 2 of this policy, respectively.

Any additional scenario that provides for the waiving of fees and aligns with this policy would need to be approved by the Board prior to any waiving of fees, and the schedules to this policy updated to reflect the circumstances.

A register of section 51 licences that have had licence fees waived will also be provided to the board on an annual basis as part of the approval of tariffs.

---

### Definitions

Government agency includes Federal, State and Local Government entities and contractors acting on their behalf.

Public nuisance includes salinity mitigation, and dewatering to protect foundations, structures, and public assets.

Cultural purpose includes any activity that is linked to cultural values and practices, including where there is an economic activity that is not easily discernible distinction between commercial and cultural use.

---

### Effective date and review date

This policy takes effect on 1 June 2021.

It is due for review by September 2023.

---

### Rationale

The basis of licenced access to unregulated resources is that the use of the water generally represents a private benefit from a public resource.

These benefits can also accrue to public bodies, where the use of the water enables an economic or broader social benefit.

Licence fees are charged for the management of these resources to provide resources to ensure benefits of the use the resource is balanced by the need for sustainable and equitable sharing of the resource.

The schedules to this policy outline existing circumstances where fees are waived due to the use of the resource either:

- enabling Traditional Owner to have greater self-determination to support of cultural practices through the use of water; or
- accruing benefits only through the avoidance of a public nuisance from groundwater levels and/or quality.

Any other proposal for the waiving of fees would need to comply with the intent of this policy, specifically with reference to the need for the use of water to be in the public interest, with no beneficial use of the water associated with the activity.

The exemption from licence fees would be unlikely to be considered for a private entity, beyond Traditional Owner corporations as a corporate entity representing Traditional Owners, given the requirement for the use of the water to be purely for the purpose of avoiding public, third party impacts.

To remove any doubt, if water extracted under this policy is used for commercial applications, normal licence fees shall apply.

---

**Contact**

For more information on this policy, contact the Manager Groundwater & Rivers.

---

**Related documents**

SRW Traditional Owner Policy

---

**Communications**

This policy will be made available on SRW's website.

---

## Circumstances when a fee is not charged for cultural water.

---

### Policy

Fees will not be charged for s51 licences issued to Traditional Owners for cultural purposes where:

- The use of the water is consistent with the intent of Water for Victoria, that being, the primary purpose of the water is for cultural use. and
- There is not an easily discernible distinction between commercial and cultural use.

The waiving of fees will be subject to approval by the relevant SRW delegate in accordance with the Ministerial delegations under the Water Act.

Trading of the water to a third party is viewed as a commercial activity regardless of the intended purpose of the income generated.

---

### Rationale

In support of implementing the intent of Water for Victoria, Traditional Owners have requested fee relief on the basis that the intent of self-determination is to support Traditional Owners right to decide what happens to their water, including use for cultural purposes, without requiring an economic benefit be realised to offset licence fees.

Balancing these requests is also the need to ensure that the creation of cultural water allocations also does not economically impact on existing licence holders, either directly or indirectly.

Where the allocation of water is from unallocated volumes, and the use of the water does not have an easily discernible distinction between commercial and cultural use, this is seen to be achieved as:

- The fee waiver does not create a disproportionate commercial advantage over other customers (compared to a purely economic venture that would be competing with similar businesses).
- The entitlement comes from previously unallocated water and is therefore not already attracting fees.

Use of the water purely to generate economic returns for the benefit of the Traditional Owners would be seen as an example of an easily discernable distinction between commercial and cultural use.

---

## Circumstances when a fee is not charged for dewatering.

---

Policy

A groundwater licence fee shall not be imposed if:

- the proponent is a government agency or statutory authority; and
- the purpose of the licence is to abate a public nuisance and does not contribute to the proponent's core business activities or commercial return.

The determination that a proposal is eligible for the implementation of this policy is at the discretion of the relevant SRW delegate in accordance with the Ministerial delegations under the Water Act.

---

Rationale

Dewatering under schedule 2 of this policy is for the purpose of protecting infrastructure, environment, and public safety and not for the commercial benefit of the government agency or statutory authority.

To remove any doubt, if water extracted under this policy is used for commercial applications, normal licence fees shall apply.

These provisions also do not apply to private enterprises or individuals who dewater in order to minimise the impact of high water tables or salinity on their business.