

NELR casenotes

of groundwater within the relevant groundwater management area. The serious, and potentially irreversible, environmental damage that depletion of this resource may cause means that the long term sustainability of the resource needs to be established with more certainty before additional licenses are granted.

The transfer of unused, existing allocations is to be encouraged to make more efficient and strategic use of the available resource in light of the uncertainty surrounding the possible impacts from new allocations.

If the outcome of additional work justifies further allocations being made, some consideration needs to be given as to how a limited and scarce resource should be allocated amongst competing interests. This should be based on a more strategic, holistic approach to the requirement under the Water Act 1989 to take account of the purpose for which the water will be used.”

Asher v Department of Sustainability and Environment [2010] VCAT 601 (6 May 2010)

The applicant Louise Asher is Deputy Leader of the Opposition, Shadow Minister for Urban Water, Shadow Minister for Small Business, Tourism and Major Events and Member of the Victorian Parliament for Brighton. She requested access “to all correspondence, briefing notes, letters, reports and emails in relation to the cost of the desalination plant, including documents in relation to both the lower and higher estimate costs of the (Victorian) desalination plant”, pursuant to the Freedom of Information Act 1982 in a letter to the respondent dated 21 May 2008.

The respondent identified eleven documents as relating to the request and agreed to grant access to two edited documents but refused access to another 9 documents, claiming various exemptions under the Act:

s 28(1)(b) - a document that has been prepared by a Minister or on his or her behalf or by an agency for the purpose of submission for consideration by the Cabinet;

s 28(1)(ba) - a document prepared for the purpose of briefing a Minister in relation to issues to be considered by the Cabinet;

s 28(1)(d) - a document the disclosure of which would involve the disclosure of any deliberation or decision of the Cabinet, other than a document by which a decision of the Cabinet was officially published.

s 34(4)(a)(ii) - in the case of an agency engaged in trade or commerce-information of a business, commercial or financial nature- that would if disclosed under this Act be likely to expose the agency unreasonably to disadvantage;

s 30(1) Subject to this section, a document is an exempt document if it is a document the disclosure of which under this Act-

- (a) would disclose matter in the nature of opinion, advice or recommendation prepared by an officer or Minister, or consultation or deliberation that has taken place between officers, Ministers, or an officer and a Minister, in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency or Minister or of the government; and
- (b) would be contrary to the public interest.

The Tribunal decided that the respondent was not required to provide access to these documents based upon these exemptions.