

Planning-related disputes under the *Gambling Regulation Act 2003*

Planning and Environment Division FACT SHEET

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This fact sheet contains general information and should not be considered as legal advice. Seek professional advice if you are unsure about your rights, and be aware that the law may change.

Gambling Regulation cases that VCAT can hear as a ‘planning dispute’

The Planning and Environment Division at VCAT deals with a range of planning disputes relating to the development and use of land.

The ‘planning disputes’ that VCAT can hear under the *Gambling Regulation Act 2003* relate mainly to the installation and use of electronic gaming machines (EGMs) in gaming premises. All references to section numbers in this fact sheet are to sections of this Act.

VCAT may review a decision of the Victorian Commission for Gambling and Liquor Regulation (the Commission) about:

- the grant or refusal of the approval of premises as suitable for gaming, including the permitted number of EGMs (section 3.3.14).
- the grant or refusal of an amendment to a gaming venue operator’s licence to increase the permitted number of EGMs (section 3.4.21).

VCAT also deals with some other disputes related to gambling. These include a review of a Commission decision relating to wagering services (section 4.2.3D), sports betting events (section 4.5.20) and gaming that is interactive, community or charitable (section 7.8.1). This fact sheet does not deal with these disputes, although the same application form and time limits apply.

Be aware that not all decisions under the *Gambling Regulation Act 2003* are reviewable by VCAT.

Note: A proposal for gaming premises may also require a planning permit. If the permit application is also reviewed at VCAT, the two cases may be heard together.

Who can apply?

An applicant for approval of a premises may apply to VCAT to review a decision by the Commission to refuse the approval of premises as suitable for gaming, or to impose conditions on that approval (section 3.3.14(1)). Note: The applicant must own premises to which a pub licence, club licence or racing club licence applies.

If the responsible authority administering the planning scheme in the area (usually the council) made a submission to the Commission on the application, it may apply to VCAT to review a decision by the Commission to grant the approval of premises as suitable for gaming (section 3.3.14(2)).

A venue operator who requested an amendment to a venue operator’s licence to increase the number of EGMs permitted in an approved venue may apply to VCAT to review the Commission’s decision about the amendment (section 3.4.21(1)).

If a municipal council made a submission to the Commission on an application, it may apply to VCAT to review a decision by the Commission to increase the permitted number of EGMs (section 3.4.21(2)).

Can an objector get involved in a case?

An objector (other than a council) cannot seek a review at VCAT in a case under the *Gambling Regulation Act 2003*.

If the council is involved in the case, it will often reflect community views about a proposal and may allow objectors to assist with its case. In limited circumstances, VCAT may allow an objector to be joined as a separate party in a case.

An objector may be able to get involved in any planning permit process related to the proposal for gaming premises.

Reasons for applying

The *Gambling Regulation Act 2003* does not specify or limit the grounds for reviewing the decision of the Commission. An application for review should generally only be made on relevant grounds that relate to that decision.

The Commission is required to consider specified matters under the *Gambling Regulation Act 2003* before making a decision about whether premises are suitable for gaming or about the number of permitted EGMs. VCAT will consider similar issues when it decides the matter. A person applying for a review of the decision at VCAT should therefore carefully read the sections in the *Gambling Regulation Act 2003* that relate to that decision, as these will provide guidance about relevant issues.

The Commission must be satisfied, that '*the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located*'. This is often referred to as the 'no net detriment test'. It is different to the test applied in a case about a planning permit.

How this 'no net detriment' test applies in the context of a particular application, and the consideration of evidence relating to social and economic impact, will often be central to the hearing and determination of the case.

Are there time limits?

An application for review must be made within 28 days after the date the Commission made its decision. However, if an applicant or responsible authority requests a statement of reasons from the Commission under the *Victorian Civil and Administrative Tribunal Act 1998*, the application must be made within 28 days after the statement is given or after being told a statement will not be given.

What is the form of application?

To make an application, you must use the Planning and Environment Division 'General form of application'. A copy of the application form is available on VCAT's website.

Be aware that fees may apply. Information about application fees and hearing fees is available on VCAT's website.

What can VCAT decide?

On an application for review, VCAT may affirm, vary, or set aside the decision, or set aside the decision and remit the matter for reconsideration by the decision-maker in accordance with any directions or recommendations of the Tribunal.

Further information

Cases about gambling regulation are often complex, and there are several decisions of the Supreme Court and VCAT where the 'no net detriment test' has been considered.

For further information:

- carefully read the decision letter and other documents sent to you by the Commission and/or visit the Commission's website.
- check with the council if a planning permit is also required for the gaming premises.
- look at the decisions in other similar cases. These can be found on the Austlii website. You may need to enter a search term and/or the name and section of the Act to find the most relevant cases.