

Caveats on The Water Register

July 2022



From 1 July 2022 caveats can be recorded on The Water Register against water licences and water access entitlements as defined within the *Landscape South Australia (Water Register) Regulations 2020*.

What is a caveat?

A caveat is a record made against a water licence or water access entitlement on The Water Register that may forbid the registration of certain dealings unless the caveat specifically allows the dealing, or the consent of the caveator is obtained.

Caveats cannot be recorded against a water allocation, a delivery capacity entitlement, a site use approval or a water resource works approval.

Caveats may forbid the registration of the following dealings relating to a relevant water licence or water access entitlement:

- A transfer;
- A variation;
- A security interest; or
- A surrender.

Unless-

- The caveator consents to the registration; or
- The dealing is expressly stated to be subject to the interest claimed by the caveator; or
- The dealing is a dealing, or is a dealing of a class specified in the caveat.

In general terms, a caveat provides a mechanism for a person with a caveatable interest in a relevant entitlement to protect that interest by preventing the registration of a conflicting interest.

Who can register a caveat?

A caveat can be registered on The Water Register against a relevant entitlement by any legal entity claiming a caveatable interest in a water management authorisation.

A caveatable interest is defined by regulation as being an interest held by:

- The holder of an interest in a relevant entitlement;
- The holder of a security interest that relates to an interest in a relevant entitlement;
- A party to a dealing, or prospective dealing, that relates to an interest in a relevant entitlement;
- A person entitled, or claiming to be entitled, to be registered as the holder of an interest in a relevant entitlement;
- A person who is the representative by virtue of an appointment or order made under statute or otherwise by the operation of any law, of the holder of-
 - An interest in a relevant entitlement; or
 - A security interest that relates to an interest in a relevant entitlement;
- A person who has an interest that is otherwise related to a relevant entitlement.

Are there different types of caveat?

Caveats are either permissive or absolute. Permissive caveats are those that provide for subsequent dealings under the terms described in the caveat. For example, they may permit certain types of dealings, may permit dealings subject to the interest claimed by the caveator, or may permit dealings subsequent to the caveator's consent. Absolute caveats are those that do not permit any dealings subsequent to the caveat.

How long do caveats last?

Caveats lapse:

- On the withdrawal of the caveat by the caveator;
- On a date of expiry, at the end of a period or on the occurrence of an event as specified in the caveat;
- If the Minister receives a copy of an order from the Environment Resources and Development Court or any other court, that provides for lapsing of the caveat; or
- Where a caveat is registered and subsequently lapses under Regulation 23 (2) of the *Landscape South Australia (Water Register) Regulations 2020*.

Does the water licence holder have to consent?

Generally, the consent of the water licence holder (or water access entitlement holder) is required to lodge a caveat. Where the water licence holder is unwilling or unable to provide their consent, the applicant may be required to submit a Statutory Declaration as to the truthfulness and accuracy of the matter specified in the application.

Where an application is received to register a caveat without the licensee's consent, the caveat can be registered, but the licensee will be notified and will have 28 days to apply to request that the caveat be lapsed. If this occurs, the caveator will be notified and will have 21 days to obtain an order from the Environment, Resources and Development Court that provides that the caveat should continue to be registered. If such an order is not obtained, the caveat will lapse.

Note that the Department for Environment and Water does not provide legal advice with respect to the claim made by the caveator. Where a caveat is registered and the caveator is found not to have held a valid caveatable interest, the affected party may seek compensation through the ERD Court. Legal advice with regard to the validity of a caveatable interest should be sought from a Legal Practitioner before lodging an application to register a caveat.

How do I register a caveat?

Applicants are required to submit a G9 Form – 'Application to register or discharge a caveat over a water licence or entitlement', along with the required application fee.

Information that must be provided on the form includes:

- Caveator details
- Water Licence details
- Details of the caveat to be recorded, including:
 - Nature of caveat (absolute or permissive)
 - Nature of the caveatable interest
 - Any reference number assigned to an instrument evidencing a caveatable interest (eg unlodged mortgage or transfer documents, contractual agreement etc)
 - Expiry terms of the caveat (ie a set date, a fixed period or at the occurrence of an event).

Where can I find more information about caveats?

For more information regarding security interests, please contact the DEW Enhanced Water Register Project team by email to DEW.WaterLicensingProjects@sa.gov.au.