

Dealing with rent and instalment payments for Land Act tenures PUX/952/126

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Version History

Version	Date	Description/Comments
1	17/12/2014	New DNRM template and inclusion of content withdrawn from PUX/901/402, PUX/901/403, PUX/952/083 and PUX/952/084
1.01	24/01/2017	Minor amendment to insert text on new template

Approval

Position	Name	Date
Director, Operations Support - Land	Rod Kent	24/01/2017



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Purpose

The purpose of this document is to provide a consistent approach to dealing with rent and instalment payments for tenures, administered under the *Land Act 1994* including:

- hardship concessions
- extension of time/payment plan
- forgiveness of rent
- debt management
- debt recovery

Background

Term and perpetual leases, licences and permits to occupy under the *Land Act 1994* (Land Act) are subject to the payment of an annual rent.

Freeholding leases under the Land Act are subject to payment of an annual instalment.

Rentals/instalments for leases, licences and permits are billed pursuant Division 1 of the *Land Regulation 2009* (Land Regulation).

Annual rents are due on 1 September of the financial year for which the rent is payable. Invoices are normally issued before the end of July.

Landholders in the following rental categories are eligible to make quarterly payments when their annual rent is greater than \$2000:

- Category 11 – primary production, including aquaculture, viticulture and agriculture
- Category 12 – residential
- Category 13 – business and government core business
- Category 14.2 – large sporting or recreational clubs with more than 2000 members.

Quarterly payments are only available on individual tenures.

If eligible, you will be sent an invoice for the quarterly payment about 30 days before it is due.

Payments are due on 1 September, 1 December, 1 March and 1 June.

Due and payable

All debts become due and payable at the time shown on the TAX invoice. All tax invoices are issued 30 days prior to the account becoming due and payable.

All notices seeking payment after the debt becomes due and payable will show the account as a "**Overdue Notice**" with payment required immediately.

The landholder may request to extend the time for the payment of rent or installment.

In cases where the debt remains outstanding for more than 60 days from the issue of overdue notices debt management and debt recovery action will commence by the department.

Hardship concessions

Circumstances may arise where the lessee/licencee may be eligible for one of our hardship concessions (permittees are not eligible).

Application can be made for the following hardship concessions -

- Deferral of rent or instalment (non-residential) – for a lease or licence (not a permit to occupy)
- Residential – for a lease only (not a licence, permit to occupy or post-Wolfe freeholding lease)

Deferral of rent or instalment for hardship (non-residential)

Under section 40E of the Land Regulation, a lessee or licensee may apply for payment of the whole or part of the annual rent or instalment to be deferred, if it is considered that the lessee or licensee is suffering hardship because of –

- i. the effects of drought, flood, fire, disaster; or
- ii. economic recession; or
- iii. a severe downturn in the level of markets related to the purpose of the lease.

The reference to disaster, in keeping with the other hardship criteria listed (i.e. drought, flood, fire, cyclone) is a reference to a natural disaster.

An application may only be approved if the lessee provides -

- a. the returns and financial statements asked for to help decide the application; or
- b. evidence that the lessee is receiving, for the hardship applied for, financial assistance under a State or Commonwealth scheme.

On approval of an application on the grounds of hardship the lessee will be permitted to defer payment of the whole or part of the rent or instalment (including any arrears), or any timber instalment, for the rental/instalment period at the prescribed interest rate for deferred interest.

The commencement of such deferral is to be from the date the rent or instalment is due.

If the lessee still meets the eligibility criteria when the next payment falls due, they may request the deferral be continued for a further rental/instalment period.

If the lessee no longer meets the eligibility criteria:

- deferral is terminated for all payments with interest at the prescribed rate for deferred interest being charged to the date of termination.
- deferral is terminated but allow the outstanding amount with or without the new rent due, to be paid by instalments. Such instalments are to include interest at the prescribed penalty rate.

In cases where a lessee meets the criterion of receiving assistance from a Commonwealth or State scheme (as outlined above) that relates to the hardship for which the rent or instalment has been deferred, the deferral may be allowed to continue for the rental period which succeeds the termination date of that scheme.

On transfer of the lease, the deferral ceases and all outstanding amounts must be paid (refer to section 40F of the Land Regulation).

A lessee of a recently acquired property is not debarred from hardship assistance. Each case must be treated on its merits and a lessee must not be disqualified simply because of a recent purchase of a property.

Note: Applications from Corporations will need to be referred to the Manager, State Land Finance for assessment prior to a decision being made.

Eligibility criteria

Evaluation of applications for deferral of rent or instalment for hardship will have regard to the following principles:

- **Non-rural industries** (for example: leases issued for commercial, industrial, tourism, telecommunication or community related purposes).

The assistance for deferral of rent or instalment is available to maintain the viability of a lessee who is the victim of hardship circumstances outside the lessee's control and in respect of which insurance is not usual.

If, for a considerable time, the lessee is unable to use the land for the purpose for which the lease was issued, or derive income from it for reasons outside the lessee's control, then the State as responsible landlord may also postpone its income accordingly.

Implementation of the policy should be cost effective, therefore the degree of investigation necessary by the department should reflect the amount of rent or instalment involved.

The problem has to be external, not caused by internal (mismanagement or other) problems.

The hardship assistance is to be administered on a case by case basis.

The following is to be considered -

- The "hardship" should have a major economic impact lasting more than one year.
- The lessee should be able to show sound prospects of commercial viability in the short to medium term (2-5 years). A longer time is acceptable providing it can be justified.
- The lease or enterprise involved should be the major source of income.
- The lessee should have taken all reasonable precautions to minimise or prevent the effects of the disaster, etc.
- The lessee may have sustained substantial damage to buildings and plant.
- The lessee's financial liquidity has been severely affected.

AND

- The lessee must be unable to borrow from their financier. One letter will be required from the lessee's main financier. The letter must confirm that finance is not available. This will apply to deferral of both rent and freeholding instalment payments.

- **Rural Industries** - in addition to the principles for non-rural industries the following principles apply for rural industries:
 - Rural enterprises are generally more vulnerable to variations in climate (i.e. drought and floods) and markets.
 - The hardship assistance is available to individual lessees who are suffering financial difficulties because of a downturn in industry fortunes, or disaster including drought, flood and fire and who are unable to borrow finance to pay rent or instalments. It is not an across the board welfare or finance scheme.
 - In the case of drought, it is recognised that rent or instalment deferral should continue to be available past the official revocation of drought conditions. Financial pressures will continue to cause hardship for up to 12 months or more depending on the nature of the farming enterprise.

The lessee provides evidence that the lessee is receiving financial assistance from a Commonwealth or State scheme that relates to the hardship for which the deferral application is made, but only where financial hardship was assessed as part of qualifying for that assistance (to be confirmed by the lessee by supplying a letter to the department from the relevant authority providing the assistance).

OR

The lessee must be unable to borrow from their financier. One letter will be required from the lessee's main financier. The letter must confirm that finance is not available. This will apply to deferral of both rent and freeholding instalment payments; and

The lessee is to reside on the property or in the district. (The latter is to cover situations where the lessee lives in a nearby town for family and other reasons). The measure is not to assist absentee land holders.

In addition the Governor in Council may declare an area or particular tenure as a hardship area if the Governor in Council is satisfied that the area or tenure has been severely affected by:-

- (a) Natural Disaster or
- (b) Adverse economic conditions

Note: Each application for deferral is to be dealt with on its own merits.

Residential hardship

Sections 40B of the Land Regulation and 459(1) of the Land Act states that the Minister may reduce a rent to less than the rent normally applying to a lease or the instalment normally applying to a **pre-Wolfe freeholding lease**, if—

- a. the lease is used exclusively for the lessee's own residential use; and
- b. the lessee is suffering hardship and meets the criteria prescribed under the regulations.

Note - holders of road licences, permits to occupy and post-Wolfe freeholding leases are not eligible to apply for the residential hardship concession.

A residential hardship concession does not apply to a lease that is:

- held for associated residential uses for example a lease for a garden, or shed associated with the lessee's adjoining freehold residential land; or
- for pastoral or similar purposes where a dwelling house is part of the operation of the property. Other provisions of the Land Regulation regarding deferral of rent/instalment apply to these types of leases.

The Land Regulation states that to be eligible for the residential hardship concession —

- the lease land has to be the lessee's principal place of residence;
- the lessee is suffering hardship; and either—
 - i. the lessee holds, or is entitled to hold, a Commonwealth concession card; or
 - ii. the annual rent instalment payable under the lease is a significant proportion of the lessee's taxable income.

The Department of Communities when assessing rents for its tenants uses 25% of all household income.

However, that is for renting a house, where the tenant has no other expenses associated with the property ownership such as rates and maintenance costs.

Land Act leases are just for the land and lessees are also responsible for paying rates, as well as insurance and maintenance on their dwelling. Lessees may also have taken out a mortgage to purchase the lease or to build or renovate the dwelling on the lease.

Taking into account the additional costs a lessee of a residential lease issued under the Land Act is liable to pay (and, by implication, that means evidence of such liability must exist), generally 10% to 15% of the lessee's annual income would be a fair and reasonable amount to pay for land rental/instalment.

Eligibility Criteria

In all circumstances, a reference to lessee of a lease under the Land Act is generally a collective reference to all persons registered as lessee and the income of all persons registered as lessee is to be taken into account.

If the lessee's total taxable **annual income is less** than or equal to the Queensland minimum weekly wages determined from time to time by the Queensland Industrial Relations Commission, then they are considered to be suffering hardship if their annual rent/instalment is more than 10% of the total annual income of all lessees. The total annual income would include wages, dividends from shares, income from investments, superannuation, etc.

The application for hardship must be accompanied by:

- evidence of hardship (circumstances and reasons for hardship)
- proof of the annual income of all lessees, e.g. Centrelink Payment Statement, Income Tax Assessment
- copy of the most recent bank statement/s showing balance of accounts
- copy (both front & back) of current Commonwealth concession card/s (if applicable)

The action officer may request other documentation to help with their assessment. For example:

- evidence that they are unable to obtain finance from their financial institution in order to pay the rent/instalment
- evidence from an accredited financial planner that they are suffering financial hardship eg Lifeline
- evidence that they are unable to generate an income due to a medical condition.

If the lessee does not hold, or is not entitled to hold, a Commonwealth concession card, and their income is less than the Queensland minimum weekly wage, then it is considered that if the annual rent/instalment is more than 10% of the lessee's taxable annual income, then the annual rent/instalment payable under the lease is a significant proportion of the lessee's taxable income.

The application does not need to be further assessed, and consideration may be given for approval of the rent/instalment to be reduced to 10% of the total annual income of all lessees of the lease. If the rent/instalment is already less than 10% of the combined annual income of all lessees, no concession would apply.

If a lessee's total taxable **annual income is more** than the Queensland minimum weekly wage, and/or or the lessee has substantial funds/non-personal; assets, then residential hardship would need more detailed assessment, and applications will need to be referred to the Manager, State Land Finance for assessment prior to a decision being made. The amount of any concession is not to be less than 10% of the Queensland minimum weekly wage. If the rent/instalment is already less than 10% of the combined annual income of all lessees, no concession would apply.

An amount of up to 15% or higher in some instances, of the Queensland minimum weekly wage may be appropriate as the approved concessional rent/instalment. This will depend on the:

- rent/instalment payable
- lessee's income
- type of and estimated length of time the lessee may be suffering hardship.

Although the rental/instalment period may be annual, and a lessee's circumstances could change in that period, for administrative efficiency, a concessional rent/instalment may be applied for that period. This approach may also provide additional support for a lessee to recover from a hardship situation. However, in some instances, particularly if the rent is paid quarterly (does not apply to instalments), it may be appropriate to provide a concession for only part of a year, e.g. for a quarterly rental period.

If a concession has been approved for a rental/instalment period, the lessee will be required to apply at the end of each rental/instalment period for a residential concession i.e. the concession only applies for the approved rental/instalment period.

Extension of time/payment plan

The Land Regulation provides for a possible extension of time to pay rents/instalments in cases where lessees, licensees and permittees are ineligible for a deferral of rent under Subdivision 2 of the Land Regulation.

Under section 43D (2) of the Land Regulation “The designated officer may extend the time for the payment of rent or instalment.”

A designated officer, for a provision about a lease, licence or permit to occupy, means
(a) to the extent the provision is about a lease or licence - the Minister; or
(b) to the extent the provision is about a permit to occupy - the chief executive.

Under section 43D (3) of the Land Regulation though “Penalty interest still runs from the time payment was owing under the regulations”.

Criteria for extension for payment

Consideration of all applications for extensions should include:

Reasons and requirements justifying an extension which must be provided

Any extension should be for a period no greater than twelve months commencing from the date the debt became due and payable and should be encouraged to be as short as possible.

A payment plan to be provided.

The payment plan must be reasonable and ensure the debt will be paid off.

All extensions/payment plans granted must be reviewed each six months commencing from the date the debt became due and payable.

Any non-compliance with the terms and conditions of the extension/repayment plan will result in the debt becoming immediately payable with debt management and debt recovery to be progressed.

Forgiveness of rent

Forgiveness is an elevation of the level of assistance, where deferral has been granted but even greater assistance is believed warranted by the lessee. Therefore, in determining forgiveness, the rationale behind the assessment of deferral is important.

Note: there is no provision for the forgiveness of deferred instalments.

Applications for forgiveness of rent should be considered against the following criteria:

1. Without the deferred rent and any applicable deferred interest debt, is the business viable on a long term basis (economic and environmental viability should be taken into account)? In assessing viability, factors such as income from the lease, the level of equity, the proportion of income directed to debt refinancing and the current condition of the land, should be considered.
2. Is the circumstance one which is both externally imposed and exceptional, and which specifically relates to the property for which forgiveness is requested? Consideration of

the condition of neighbouring properties will assist in separating external from management factors.

3. If successful, would this be the first time the lessee will have received forgiveness of deferred rent and deferred interest? A second request for forgiveness when it has been granted once already would suggest that the circumstances that caused the situation are less than exceptional.
4. Have measures been undertaken, since the hardship rent deferral was initially approved, to address viability (eg. preparation of a business plan, farm financial counselling)?
5. How long has the lessee been on deferred rent and, if for a long time, is the problem one which it is unlikely that time will enable the lessee to address without the need for forgiveness?
6. With forgiveness of deferred rent and any applicable deferred interest, will the lessee be in a position to be able to pay the following year's annual rent? Assessment of this criterion will utilise information from 1 above.

If the lessee fulfils these criteria, then forgiveness of rent should be recommended to the Queensland Treasury.

Note - previously the Governor in Council had the power to forgive rent and any deferred interest payable on deferred rent. This power has now been devolved to Queensland Treasury.


For non-rural industries, the main principles are that assistance is available to maintain the viability of a lessee who is the victim of hardship circumstances outside the lessee's control and in respect of which insurance is not usual.

For example: If, for a considerable time and for reasons outside the control of the lessee, the lessee is unable to use the land for the purpose for which the lease was issued, or derive income from it, then the State as responsible landlord may also postpone its income accordingly.

In general the same principles apply for rural as for non-rural industries; however, there are some fundamental differences between rural and non-rural industries, which warrant a slightly different treatment.

These are mainly that rural enterprises are more vulnerable to variations in climate (i.e. drought and floods) and markets. Hence, for rural industries, the deferral criteria are directed at lessees who are suffering financial difficulties because of the downturn in industry fortunes, or disaster including drought, flood and fire, and who are unable to borrow finance to pay rent or instalments.

However, it should be recognised that "external factors" such as drought or downturns in industry fortunes (e.g. through market forces) are increasingly acknowledged as an integral part of the normal rural business enterprise. Governments at both the Commonwealth and State level are encouraging greater levels of self-reliance through policies that assist in the uptake of risk management approaches.



So for the further step of forgiveness, there needs to be a situation over and above the criteria for deferral, and principles that recognise this exceptional circumstance. In considering appropriate criteria, the principles of the Act provide useful guidance, in particular that the land will be "managed for the benefit of the people of Queensland".

Therefore the principles behind forgiveness should be that the forgiveness of rent must benefit the people of Queensland rather than simply the individual - thus providing assistance where the land is being managed in a sustainable manner. Where land is not being managed in a sustainable manner, it would not be in the interests of Queensland to further support such businesses.

If a lessee is going out of business perhaps for a number of reasons and there is little or no chance of recovery of deferred rent through continued trading, then forgiveness would not be appropriate, and the debt should be followed through in the normal manner and, if necessary, written off once other normal avenues for recovery had failed.

If, however, a lessee has an ongoing viable business but due to exceptional externally imposed circumstances cannot foresee being able to pay the deferred rent and deferred interest debt, and that debt will cause the downfall of an otherwise viable business, then forgiveness should be considered.

In such a circumstance there would be benefit to the people of Queensland through the sustaining of a viable business and the avoidance of welfare and other social costs of a business collapse. On the other hand, it should also be recognised that benefits to the people of Queensland will also eventuate through properties changing hands in situations where they are unviable.

Debt management

Debt Management is the initial stage of the debt collection process where SLAM provides assistance to lessees, licensees and permittees to ensure they are aware of the outstanding debt and provide strategies to assist the client to effectively manage the debt to ensure the outstanding monies are paid.

All debts become due and payable at the time shown on the TAX invoice and LTL automatically issues a 30-day "**Overdue Notice**" for all accounts, which have been outstanding for a period greater than 30 days.

This notice advises the lessee, licensee or permittee that payment is overdue and must be paid immediately or legal action, forfeiture/cancellation could occur. Advice as to hardship and other concessions are provided on the notice where relevant.

If initial contact by the Department does not result in payment and debt remains outstanding for more than 120 days then a **Letter of Demand** is forwarded by registered mail.

Generally debts get paid as a result of the issue of the '**Overdue Notice**' or the 'Letter of Demand'.

Management of debt could result in the debt being managed as:

- Hardship considerations
 - Residential hardship concession – reduction of rent or installment
 - Deferral of rent and installments for hardship
- Extension of time/payment plan.

Note – In accordance with Section 43D (4) of the Land Regulation penalty interest is not payable on the rent or installment outstanding if the lessee, licensee or permittee has a reasonable excuse for not paying the rent or installment.

At the expiry of the **Letter of Demand**, the Department will follow up the letter with contact via telephone, fax/email confirming the next step ie cancellation, forfeiture or Legal Action.

Each circumstance is different and so, if the debt remains outstanding for more than 150 days the debt recovery process commences.

Debt Recovery

Debt recovery action is based on outstanding payments 150 days overdue.

All reasonable steps are to be taken to seek recovery of amounts owing to the department and the following will be considered when determining the appropriate action –

- History of non-payment
- Improvements located on the land
- Most appropriate use an further dealing
- Recovery costs
- Alternative tenure options.

A landholder will be provided with an **Action Notice** which provides for a final 30 days to pay the outstanding debt prior to either:

- the lease being forfeited in accordance with section 240S of the Land Act; or
- the permit or licence being cancelled in accordance with section 43D of the Land Regulation; or
- legal action in accordance with section 43D of the Land Regulation; or
- the lease being sold by Chief Executive in accordance with section 240J of the Land Act.

A copy of the **Letter of Demand** will be attached to the **Action Notice** (Forfeiture/Cancellation, intention to take legal action or intention to sell by Chief Executive) and forwarded by registered mail.

Advice will also be provided that the landholder may make written application for permission to sell the lease in accordance with section 240E of the Land Act.

If Action Notice is for legal action -

- more than \$1000 and less \$25,000 then QCAT Claim
- more than \$25,000 is referred to Legal Services for consideration of litigation and possible referral to credit rating agency.

Note – Debt less than \$1000 will be progressed to QCAT where appropriate.

If non-payment continues at the end of the final 30 day period then debt recovery action is to commence within 10 days from the date as indicated in Action Notice, being

- Lodge QCAT Claim through the Queensland Civil and Administrative Tribunal, through the Magistrates Court / Refer larger debts to Legal Services; or
- Sale by Chief Executive; or
- Forfeiture/Cancellation.

Advice to registered interest holders and Local Governments

When issuing an Action Notice for forfeiture, cancellation or sale by CEO, a copy of the Action Notice (and Letter of Demand) must be forwarded to the Mortgagee and local governments as provided under Section 235 of the Land Act.

Advice only should also be forwarded to any other registered interest holders e.g. sublessee, easement grantee (details of the debt owing are not to be disclosed, only that forfeiture, cancellation or sale action is proceeding/being considered).

Improvements on Forfeited Leases/Cancelled Licences or Permits

Whether approval is given to removing improvements will depend on the circumstances of the case, the type of improvements, and debt owing.

Note though that if the department further deals with the land and receives any monies for improvements under sections 246 and 247 of the Land Act, the lessee or licensee of an occupation licence is entitled to receive that monies, less debts owing to the State under section 250 of that Act. Payment may also be made to a mortgagee under section 251 of the above Act.

Therefore, if a debt is owing, generally, approval will not be given to allowing improvements to be removed from a lease or occupation licence as the State may have an opportunity at a later date to recover some of the debt owing from any monies received from improvements when further dealing with the land.

Also note that improvements on a permit to occupy or road licence become the property of the State upon cancellation and no compensation is payable.

Action by the Department will include inspection to ensure the lessee, licensee, permittee (and any other party) has vacated the land - refer to Compliance Procedures Notification PUX/952/095.



Responsibilities

Officers of the Department dealing with debt management and recovery.

Definitions

Department – the Department of Natural Resources and Mines (DNRM) and its successors.

NTA – Commonwealth *Native Title Act 1993*

Legislation

Land Act 1994 - section 459

Land Regulation 1995 - sections 40B, 40D, 40E and 40F

Government policy now places the responsibility for granting forgiveness to Queensland Treasury.