

# Guideline

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## Dealing with rent and instalment payments for *Land Act 1994* tenures

### 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* (Land Act) including:

- hardship concessions – non-residential and residential extension of time/payment plan
- overpayment of rent or instalments
- debt management
- debt recovery

### Rationale

Term and perpetual leases, licences and permits to occupy (tenure) under the 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 to Part 4 of the Land Regulation 2020 (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.

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

- Category 11 – primary production
- 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 an individual (i.e. a single) tenure.

If eligible, an invoice for the quarterly payment will be sent for that tenure 30 days before the payment 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 an "Overdue Notice" with payment required immediately.

The tenure holder may request to extend the time for the payment of rent or instalment – if extended, penalty interest is payable (section 51 of the Land Regulation).

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 of Resources (the department).

## **Guideline**

### **Hardship concessions**

Circumstances may arise where the tenure holder (lessee, licensee or permittee) may be eligible for one of the department's hardship concessions.

Application can be made for the following hardship concessions:

- Deferral of rent or instalment (non-residential)
- 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 sections 60 and 61 of the Land Regulation, a tenure holder may apply for payment of the whole or part of the annual rent or instalment to be deferred, if it is considered that the tenure holder is suffering hardship because of:

- i. a natural disaster (e.g. the effects of drought, flood, fire), or adverse economic conditions related to the purpose of the tenure

An application may only be approved if the tenure holder provides:

- a) evidence that the tenure holder is receiving, for the hardship applied for, financial assistance under a state or Commonwealth scheme (must be lodged with the application) and/or information such as the returns and financial statements asked for to help decide the application.

On approval of an application on the grounds of hardship the tenure holder will be permitted to defer payment of the whole or part of the rent or instalment, or any timber instalment, for the rental/instalment period.

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

If the tenure holder still meets the eligibility criteria when the next payment falls due, they may by further application request the deferral be continued for the following rental/instalment period.

If the tenure holder no longer meets the eligibility criteria:

- Deferral is terminated for all payments with interest at the prescribed interest rate being charged from 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 tenure holder 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 or licence, the deferral cases and all outstanding amounts must be paid (refer to section 64 of the Land Regulation).

A lessee or licensee of a recently acquired property is not debarred from hardship assistance. Each case must be treated on its merits and a lessee or licensee 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, Operational 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, or community related purposes).

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

If, for a considerable time, the tenure holder is unable to use the land for the purpose for which the tenure was issued, or derive income from it for reasons outside the tenure holder'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 tenure holder 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 tenure or enterprise involved should be the major source of income.
- The tenure holder should have taken all reasonable precautions to minimise or prevent the effects of the disaster, etc.
- The tenure holder may have sustained substantial damage to buildings and plant.

- The tenure holder's financial liquidity has been severely affected.

AND

- The tenure holder must be unable to borrow from their financier. One letter will be required from the tenure holder'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 may be considered for a lessee who is an individual without reference to the Manager, Operational Finance (as mentioned above applications from a lessee that is a corporation will need to be referred to the Manager, Operational Finance for assessment prior to a decision being made) and who are suffering financial difficulties because of a natural disaster including drought, flood and fire or adverse economic conditions related to the purpose of the tenure and who are unable to borrow finance to pay rent or instalments.
  - In the case of drought, it is recognised that rent or instalment deferral could continue to be available past the official revocation of drought conditions. Financial pressures may continue to cause hardship for up to 12 months or more depending on the nature of the farming enterprise.

The tenure holder provides evidence that the tenure holder 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 tenure holder by supplying a letter to the department from the relevant authority providing the assistance with the deferral application).

**OR**

The tenure holder

- must be unable to borrow from their financier. One letter will be required from the tenure holder'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
- is to reside on the property or in the district. (The latter is to cover situations where the tenure holder lives in a nearby town for family and other reasons). The measure is not to assist absentee land holders.

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

**Note for reference only:**

In addition, the Minister may declare an area comprising or including a tenure as a hardship area if the Minister is satisfied that a tenure has been severely affected by:

- b) natural disaster or
- c) adverse economic conditions

## Residential Hardship

Sections 41 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
- c) meets the other requirements in section 41 of the Land Regulation

**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 section 41 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, Housing and Digital Economy, 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 (evidence will be needed), 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, the lessee under the Land Act is the registered person or persons and the taxable income of all persons registered 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 the lessee is considered to be suffering hardship if their annual rent/instalment is more than 10% of the

(total) taxable annual income of (all the persons registered as) the lessee. The total taxable 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. e.g. 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 taxable 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 taxable income of (all the persons registered as) the lessee of the lease. If the rent/instalment is already less than 10% of the combined annual taxable income of (all the persons registered as) the lessee, no concession would apply.

If a lessee's total taxable annual income is more than the Queensland minimum weekly wage, and/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, Operational 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 taxable income of (all the persons registered as) the lessee, 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 Part 4 of the Land Regulation.

Under section 51 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 65(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.

## **Overpayment of rent or instalments**

Overpayment of rent or instalments for a tenure is to be dealt with in the following ways:

- Overpayment of rent up to the amount of the annual rental for the tenure must be credited to the account of the tenure holder or refunded to the tenure holder.
- Overpayment of rent for the tenure, which is more the annual rent amount must be refunded to the tenure holder (the amount to be refunded is the difference between the annual rent amount and the overpayment amount).
- Overpayment of the annual instalment for a pre-Wolfe freeholding lease, a post-Wolfe freeholding lease or a grazing homestead freeholding lease must be refunded to the tenure holder.

Debt Management is the initial stage of the debt collection process where the department 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 the department 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 instalment
  - Deferral of rent and instalments for hardship
- Extension of time/payment plan.

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 i.e. 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.

**Note** – In accordance with section 65(5) of the Land Regulation penalty interest is not payable on the rent or instalment outstanding if the lessee, licensee or permittee has a reasonable excuse for not paying the rent or instalment.

## 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 and further dealing
- Recovery costs
- Alternative tenure options.

A tenure holder 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 235 of the Land Act; or
- the permit or licence being cancelled in accordance with section 67 of the Land Regulation; or



- legal action in accordance with section 67 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 tenure holder 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 than \$25,000 then QCAT claim.
- More than \$25,000 is referred to In-house Legal 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 In-house Legal; 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 the Chief Executive, 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 (unless the lessee or licensee waives their right to payment of that amount or the lessee acquired the lease by fraud or was not eligible to hold the lease), 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.

Note: The Land Act previously had provision for the Governor in Council to forgive all or part of deferred rent and any deferred penalty interest – repealed section 193.

There is now no provision to forgive deferred rent and any deferred penalty interest.

Note: There has not been any provision to forgive deferred instalments as instalments are paid to complete the purchase price of a lease converted to freehold.

## **Legislation**

*Land Act 1994*

Land Regulation 2020

## **Human Rights**

The department is committed to respecting, protecting and promoting human rights. Under *the Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

## Approval

Position	Name	Effective Date
Director, Land Operations Support	Anita Haenfler	23 May 2022

## Version history

Version	Date	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
2.00	14/07/2020	Updated content to reflect the Land Regulation 2020 and on new template. Information included on dealing with overpayments of rent and instalments
2.01	18/10/2021	Updated template and Department name to Department of Resources
3.00	23/05/2022	Full review of contents for currency
3.01	01/03/2023	Updated to include amendments due to LOLA 2023

## Further information

- Contact your nearest business centre([https://www.resources.qld.gov.au/?contact=state\\_land](https://www.resources.qld.gov.au/?contact=state_land)), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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