

Exceptional Circumstances

Request for waiver of debts associated with penalties for unauthorised or unlawful use of water raised pursuant to section 88 of the *Landscape South Australia Act 2019*

This document contains information for South Australian water licence holders who have received a Notice of Liability (invoice) in relation to a penalty for unauthorised or unlawful use of water under section 88(1) of the *Landscape South Australia Act 2019* (the Act) and who believe that there are exceptional circumstances which exist for the Treasurer to waive the debt in accordance with [Treasurer's Instruction 5 – Debt Recovery and Write Offs](#) (TI 5).

When am I liable to pay a penalty under section 88 of the Act?

A person is liable to pay a penalty under section 88(1) of the Act when each of the following preconditions have been met:

- A. The Minister for Climate, Environment and Water (the Minister) **has declared a penalty** payable (section 88(1)), by notice in the State Government Gazette; and
- B. i) It has been determined that a **person has taken water in excess of their available water allocation** (section 79);
or
ii) A **person does not hold an appropriate water allocation** or authorisation to take water and it has been determined that a person has taken a quantity of water (section 79).

Where the preconditions have been met, DEW is obliged to raise a penalty charge.

What rights do I have in relation to the penalty I have received?

In the situation where each of the preconditions in A and B have been met, the Act does not provide a right of appeal (such as through a court of law) and you are liable to pay the full penalty amount. However, there are **very limited** situations, in accordance with TI 5, where you may wish for 'exceptional circumstances' to be considered for waiver of the debt owed to the state. If you believe your circumstance meets the very limited and stringent eligibility criteria in relation to your debt, you are able to make a submission to either the Department for Environment and Water (the department) or Minister for consideration.

What is an exceptional circumstance?

In accordance with TI 5, a debt to a public entity or authority can only be waived by approval from the

Treasurer under 'exceptional circumstances'. TI 5 states that a **waiver** can occur when:

- There is a moral obligation on the state to extinguish the debt (e.g. a direct act or omission of a public authority or impact of a state law has caused a person or entity to incur an unintended debt, the recovery of which would result in an overall loss to the person or entity concerned); or
- The debt is irrecoverable.

Conversely, the following do not constitute eligible grounds for a waiver to be recommended:

- An administrative error made by or on behalf of the water account holder;
- Financial hardship; and/or
- Where the user knowingly took water in excess of their available allocation (unauthorised water) and was unable to secure the commensurate water allocation within the accounting period.

What do I need to do?

Following receipt of your Notice of Liability (invoice) for your penalty, you are responsible for initiating action if you feel you have sufficient case to make a submission to demonstrate exceptional circumstances to the department or the Minister to consider. The department can provide direction around suitable supporting evidence, prior to you making a submission to the Minister or the department requesting a waiver. The department's contact details are provided at the end of this fact sheet.

Your request for a waiver can be submitted directly to the department or the Minister's Office either via post or electronically as follows:

Water Licensing Branch
Department for Environment and Water
GPO Box 1047, Adelaide SA 5001
ecsubmissionwaterlicensing@sa.gov.au

The Minister for Climate, Environment and Water
GPO Box 1533, Adelaide SA 5001, or
Minister.Bourke@sa.gov.au

The Treasurer will not respond to any submissions made directly to their office and will only consider submissions that have been recommended by the Minister.

How can I demonstrate an exceptional circumstance?

In support of your request, you should provide the Minister with relevant documents or other evidence which demonstrates one or more of the following:

- The exceptional circumstance that has occurred, noting the ineligible circumstances outlined above;
- Whether the state has a moral obligation to expunge the debt;
- Whether the debt is irrecoverable; and
- Any other relevant factors.

The type of evidence required by the Minister is tangible documentation that clearly demonstrates the above points. There may be situations that make it difficult or not possible for you to provide tangible evidence.

In these circumstances you should advise the department of this and the department will work with you to find alternative ways to address this requirement (e.g. a statutory declaration made by you or a relevant third party).

What happens after I make a submission requesting a waiver?

As stated above, you can request a waiver by making a submission to the department or the Minister. Any submissions made to the Minister will be referred to the department for thorough review before making a recommendation to the Minister.

The Minister does not have the authority to waive a debt, but is responsible for making a recommendation to the Treasurer seeking the approval of a full or partial waiver of the debt due to exceptional circumstances, where the limited and stringent eligibility criteria have been satisfied.

Waiver of debts owed to the state can only be approved by the Treasurer.

The assessment process is thorough and it is acknowledged that this process can take a considerable amount of time to ensure that all claims are fully and individually considered. The recovery of any related penalty charge(s) is placed on hold to allow for this process to occur. This means that the recovery of any charge will not be pursued until the requestor is notified in writing by the Minister of the outcome of their submission.

Disclaimer

The purpose of this fact sheet is to provide a consistent framework and interpretation of the legislation administered by the Minister regarding unauthorised or unlawful water use. While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The department accepts no liability for any external decisions or actions taken on the basis of this document. You may wish to consider seeking independent professional advice external to the department on any proposed course of action.

More information

If you require further information prior to submitting a request for a waiver, please contact the Department's Water Licensing Branch:

Email: ecsubmissionwaterlicensing@sa.gov.au
Phone: (08) 8372 7561

This fact sheet is available at:
www.environment.sa.gov.au/topics/water/water-licences-permits/water-compliance