

# Exceptional Circumstances

## APPLICATION 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 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 Environment and Water (*the Minister*) **has declared a penalty** payable (section 88(1)), by notice in the State Government Gazette.
- and
- B. i) A person is the **holder of a water licence** and associated water allocation (or another form of authorisation to take water) and it has been determined that the **person has taken water in excess of their 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).

### WHAT RIGHTS DO I HAVE IN RELATION TO THE PENALTY I HAVE RECEIVED?

In the situation where each of the preconditions 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 by the Minister and approved by the Treasurer for waiver of the debt owed to the State. If you believe that exceptional circumstances exist in relation to your debt, you are able to apply to the 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.

### 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 apply to the Minister to consider, and the Treasurer to approve, a full or partial waiver of the debt due to exceptional circumstances.

From the 2015-16 water use year onwards, it is requested that your application be received within six (6) months of the end of the water use year (i.e. by 31 December) in which the penalty was incurred. This will assist us in finalising your water account in a timely manner and prior to the end of the water use year, as there may be restrictions on your account whilst there is an outstanding debt. Penalties incurred prior to the 2015-16 water use year will be considered at the Minister's discretion.

Prior to applying to the Minister, the Department can provide direction around suitable supporting evidence. The Department's contact details are provided at the end of this fact sheet.

Your application can be submitted directly to the Minister's Office either via post or electronically as follows:

The Hon. David Speirs MP  
GPO Box 1047, Adelaide SA 5001, or  
[minister.speirs@sa.gov.au](mailto:minister.speirs@sa.gov.au)



## HOW CAN I DEMONSTRATE AN EXCEPTIONAL CIRCUMSTANCE?

In support of your application, 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.
- Whether the State has a moral obligation to expunge the debt.
- Whether the debt is irrecoverable.
- 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 Minister 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 APPLY?

Once you have made an application for exceptional circumstances, the Minister will consider your submission.

If the Minister is minded that exceptional circumstances exist, he will submit your application to the Treasurer for approval. Waiver of debts owed to the State can only be approved by The Treasurer.

Once considered by the Minister and/or Treasurer, the Minister will write to you to inform you of the outcome.

## 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.

## For more information

If you require further information prior to submitting your application to the Minister, please contact

P (08) 8463 6876

E [DEWwaterlicensing@sa.gov.au](mailto:DEWwaterlicensing@sa.gov.au)

[www.environment.sa.gov.au](http://www.environment.sa.gov.au)

