



Guidelines for penalty remissions

ADVICE FOR LEVY PAYERS

VERSION 1.0

Version 1.0 Drafted by:

Noel Robson, Director– Levies Stakeholders, Legislation and Policy

Endorsed by:

Paul Byrne Director – Levies Compliance

Jessica Ng Director – Levies Finance

Date version endorsed: 29 June 2015

Endorsed by:

Matthew Ryan, Assistant Secretary – Industry Support Branch

A handwritten signature in black ink, appearing to read 'Matthew Ryan', with a long horizontal stroke extending to the right.

Date: 29/6/15



Contents

CONTENTS	2
INTRODUCTION.....	3
FUNDAMENTAL INFORMATION ABOUT PENALTY REMISSIONS	2
Authority to remit penalty.....	2
Legislative background.....	2
GUIDELINES TO DETERMINE IF PENALTY SHOULD BE REMITTED	3
Departmental officer requests penalty remission.....	3
Levy payer requests penalty remission.....	3
PROCESS FOR PENALTY REMISSIONS	4



Introduction

Under the *Primary Industries Levies and Charges Collection Act 1991* (PILCC Act), the Department of Agriculture (the department) collects Commonwealth primary industry levies and charges.

If a levy payer submits levy after the due date, late payment penalty at the rate of 2% per month, compounding monthly, will apply.

The Secretary of the department (the Secretary) and the Secretary's delegates may remit all or part of the penalties.

This document provides an indication of matters that may be considered when the department receives an application for the remission of penalty.

Fundamental information about penalty remissions

This section gives the background information needed to understand penalties and the legislation that governs penalty remissions.

Authority to remit penalty

The Secretary of the department can remit penalty under Section 16 of the PILCC Act:

16 Remission of penalty

If an amount of penalty becomes payable under section 15 because an amount of levy or charge in respect of particular collection products remains unpaid after the time when it becomes due for payment, the Secretary may remit the whole or a part of that amount of penalty.

Legislative background

If a levy payer submits their levy after the due date, section 15 of the PILCC Act provides for a late payment penalty at the rate of 2% per month, compounding monthly. This will compound on the total of the unpaid amounts, including any penalties already accrued, until the levy payer has paid the outstanding levy in full.

Under section 16 of the PILCC Act, the Secretary of the department may remit penalty.

Under section 29 of the PILCC Act, the Secretary may delegate his or her power to remit penalties, to a departmental officer.

This document is a guideline only – it does not bind the Secretary or the Secretary's delegate. Under section 16 of the PILCC Act, the Secretary and delegates have full discretion in their decision to remit or not remit penalty.

A request to remit penalty may be initiated by a levy payer or an officer of the department.

The levy payer may request that the department review its decision. This request must be made in writing.

Section 28 of the PILCC Act provides for a ministerial review process, including ultimate review by the Administrative Appeals Tribunal (AAT), on the decision to remit or not remit penalty.



A request for the Minister to review a decision must be made in writing

Guidelines to determine if penalty should be remitted

Levy payers and departmental officers may request the remission of penalty. The amount of penalty imposed on late payments for each return will be considered by the department on receiving such a request. This section outlines what the Secretary and delegates might consider when deciding if penalty should be remitted. **Although specific scenarios are outlined, this document is a guide only and the Secretary and delegates will consider each request for penalty remission on its own merit.**

Departmental officer requests penalty remission

Departmental officers can request the remission of penalty. When an officer initiates the remission of penalty, the levy payer does not need to provide a supporting request.

Reasons why a departmental officer may initiate the remission of penalty:

- natural disasters: when a natural disaster occurs: an officer may initiate penalty remission by sending correspondence to levy payers in the affected area advising them to contact the department if they will not be able to submit their levy by the due date. If a levy payer contacts the department as a result of this, the officer may initiate the remission of penalty when the levy payer eventually submits their levy
- new levy payer: if a new levy payer did not know they had levy liability for a period in the past but lodges a return and pays the levy in a reasonable timeframe after they become aware
- adjustments: when previously submitted returns are adjusted as a result of a record inspection
- departmental errors: when a penalty arises from a departmental system error.

Levy payer requests penalty remission

The department requires levy payers to put any requests for remission in writing. This may be received by letter, email or facsimile.

When the Secretary or a delegate considers remitting penalty, the following questions should be considered.

1. Did the levy payer pay their levy late due to circumstances outside of their control?

If the answer to this question is no, it is **unlikely** that penalty should be remitted.

If the answer to this question is yes, it **may** be fair to remit penalty.

The levy payer should provide sufficient evidence to satisfy the delegate of the facts claimed.



2. Does the levy payer have a history of paying levy late?
3. Will the approval of a remission create an unacceptable precedent?
4. Have there been any Departmental errors or omissions that have contributed to the accrual of penalty?
5. Should there be a full or partial remission?

The Secretary or the Secretary's delegate may consider any other information they consider relevant.

Process for requesting penalty remissions and reviews of decisions

Requests for remission of penalty

1. The department requires levy payers to put any requests for remission in writing to the department of agriculture. This may be forwarded by letter, email or facsimile to one of the department's levies offices.
2. Requests should include reasons which the agent believes justify the remission of the penalty.
3. The department will advise the levy payer, in writing, of the outcome of the delegate's decision.
4. If the request for remission of penalty is not approved the advice to the levy payer includes details of the avenues available for making a request for a review of the decision.

Requests for Reviews of decisions

- **Departmental reviews**

1. The levy payer may request that Secretary or a delegate review a decision about a request to remit penalty by writing to:

The Levies Compliance Director
Commonwealth Department of Agriculture
Locked Bag 4488
KINGSTON ACT 2604

2. Requests may be forwarded by email to Levies.Management@agriculture.gov.au.
3. This request should include any new or additional information to support the requested review.
4. The department will advise the levy payer of the outcome of the review, and the advice to the levy payer will include details of the process for making a request for a Ministerial review of the decision.



Australian Government
Department of Agriculture

- **Ministerial reviews**

5. If the levy payer is dissatisfied with the department's decision, he/she may, within 28 days after the day on which the decision first comes to the notices of the levy payer, appeal the decision by making a request in writing to the Minister for Agriculture that the minister review the decision.
6. Requests in writing should be made to:
 - The Minister for Agriculture
 - Commonwealth Department of Agriculture
 - Locked Bag 4488
 - KINGSTON ACT 2604
7. Requests may be forwarded by email to Levies.Management@agriculture.gov.au.
8. The minister must, within 45 days after receiving a request, reconsider the relevant decision and may make a decision:
 - a. in substitution for the relevant decision, or
 - b. revoking the relevant decision.
9. The department will advise the levy payer of the Minister's decision.
10. If the levy payer is not satisfied with the minister's decision the levy payer may make a request to the Administrative Appeals Tribunal for a review of the Minister's decision.