

Such a contribution would be in order where the lessee's operations contribute to an increased capital works burden upon the Department, for example in the provision or expansion of:

- sewerage facilities
- water supply and reticulation
- car parking areas
- roads
- public toilets and other related amenities and facilities.

A specific provision imposing upon lessees an obligation to pay a capital community services contribution, apart from the general power under section 140 imported into the lease is included in the Department's standard form commercial lease.

As capital community services contributions will often be substantial and can impact on the viability of a business conducted from leased premises they should be identified at the lease negotiation or tendering stage and accounted for in the lease.

When a capital community services contribution has been received from an incoming operator close attention should be given to ensuring that the contemplated works are carried out satisfactorily and within a reasonable time.

## **14.8 Annual community services charges**

Under section 140 of the National Parks and Wildlife Act the Director-General is empowered to assess from time to time the amount of the contribution to be paid by the holder of a lease or licence to occupy or use lands within a national park, historic site, state conservation area, regional park, karst conservation reserve or nature reserve towards the cost of provision of services.

First applied in Kosciuszko National Park these contributions have become known as annual community services charges or municipal service charges. They are distinct from capital community services contributions where the Department, using the same statutory power, may levy a one-off, lump sum payment to meet major establishment or expansion costs for specified services or infrastructure (see Manual 14.7).

The charges are assessed pro rata on the cost of maintaining any community services in the park, site or reserve. It is the Department's practice to assess the level of contribution, obtain the approval of the Director-General thereto and then levy the contributors in advance of the Department's actual expenditure on the community services. The Department does not normally accept payment of community service charges in instalments as is permitted by some municipal authorities in respect to their rate assessments.

The assessed charge is payable by the lessee or licensee within three months of the issue of the notice stating the amount due.

On overdue community services charges, interest is payable pursuant to section 144A of the Act which applies the inherent rate applicable to judgment debts under the Supreme Court Rules (see Manual 16.15).

Under section 140 (4) the Minister is given a discretion, exercisable only on the recommendation of the Director-General, to exempt a lessee or licensee from payment of assessed community service charges.

Community services for which charges may be assessed under section 140 would include:

- any service supplied by the Director-General within the park, etc, which might normally be supplied by a municipal authority such as water supply, sewerage, garbage collection, road maintenance
- maintenance of public facilities such as toilets, picnic areas and shelters
- maintenance of public car park facilities.

Lessees and licensees are expected to contribute to the Department's costs in providing those community services which benefit the lessee/licensee directly as in the case of provision of utility services to leased premises and indirectly as in the maintenance of roads giving access to leased premises, etc, which enhance them.

Prospective lessees sometimes request the deletion of the clause imposing such charges in the lease. This should not be agreed to even if there is no current proposal to introduce these charges at the park in question or to levy the lessee concerned. It should be explained that the clause is in the lease principally for information purposes to draw the lessee's attention to a statutory charge of which they might otherwise be unaware. As the authority for the charge is the Act, non-inclusion of the clause in a lease does not preclude a lessee from being levied.

However, the clause should not be deleted from the standard lease as it could possibly later be held that, by agreeing to the clause's deletion, the Department may have, in effect, held out to a lessee that such a charge would never be levied.

## **14.9 Rates and taxes**

### **14.9.1 General**

All standard Department leases provide that the lessee will be responsible for payment of all rates and taxes including land tax and GST and any other assessments on the demised premises whether municipal, local government, parliamentary or otherwise which are charged during the lease term.

Generally reserved lands are exempt from the payment of local government rates. This exemption, however, while it presently exists for national parks, historic sites, nature reserves and karst conservation areas (see section 555 *Local Government Act 1993*) may be lost in the future where the Department leases/licenses the land on a commercial basis.

It is not the responsibility of the Department to interpret for lessees and licensees any statutes or Regulations relating to any taxes or charges administered by other authorities. Lessees and licensees should be advised to approach the authority concerned for advice as to any current or potential liability.