

# CYCLONE DISASTER (MORATORIUM) ORDINANCE 1975

547

No. 2 of 1975

An Ordinance to provide for a moratorium on debts of persons affected by Cyclone "Tracy"

[Assented to 17 January 1975]

**B**E it ordained by the Legislative Assembly for the Northern Territory of Australia as follows:

1. This Ordinance may be cited as the *Cyclone Disaster (Moratorium) Ordinance* 1975. Short title

2. This Ordinance applies only in relation to debts arising out of contracts or agreements that were in existence immediately before 25 December 1974. Application

3.(1) The provisions of this Ordinance, other than section 6(4), shall cease as a law of the Territory on 26 June 1975 and those provisions shall, on that date, be regarded as having been repealed. Duration of Ordinance

(2) Nothing in this section shall be construed as reducing the period of a moratorium order made or extended under this Ordinance if that order was made or extended before 26 June 1975.

4. In this Ordinance, unless the contrary intention appears— Interpretation

"Court" means a Local Court of Full Jurisdiction under the *Local Courts Ordinance* constituted by a Stipendary Magistrate;

"cyclone" means cyclone Tracy that struck Darwin and environs on 25 December 1974;

"debt" means a sum of money due in respect of real or personal property from one person to another, whether principal or interest, liquidated or unliquidated or secured or un-

*Cyclone Disaster (Moratorium)*

secured, and includes rent, lease charges, rates or mortgage charges but does not include—

- (a) a liability to pay a penalty (with or without costs) imposed by any Court; or
- (b) liability in respect of a tort or breach of trust;

“creditor” means a person entitled under a debt to the payment of money by a debtor;

“debtor” means, in relation to a debt, a person having possession of property who is liable to make payments in respect of that property on instalment whether by way of hire or of repayment or money lent or by way of interest or of other charges provided for in an agreement or as rent or lease charges;

“disaster” means the loss or damage sustained by a person as a result of the cyclone;

“penalty interest” means the difference between the interest payable under a contract or mortgage (including a mortgage of real property) and the interest which that contract or mortgage provides should be payable if an instalment be not paid on or before the due date for the payment of that instalment.

Application for moratorium order

5.(1) Where property, the subject of a debt, has been lost or destroyed or damaged as a result of the cyclone, the person liable to pay an instalment in respect of the property may apply to a Court for a moratorium order.

(2) Where the Court is satisfied that it is desirable so to do, it may deal with the application *ex parte*.

Court may make moratorium order

6.(1) A Court to which an application for a moratorium order is made may, if it is satisfied—

- (a) that the applicant had property the subject of a debt;
- (b) that the applicant is liable to make a payment of an instalment or a part of the purchase price due on that debt;
- (c) that that property has been destroyed, lost or damaged as a result of the cyclone; and
- (d) that, as a result of the cyclone, the applicant is unable to make payment of the instalment or part of the purchase price due or to fall due on that debt, or it would cause the applicant hardship to make such payment or payments,

make a moratorium order.

(2) A moratorium order shall—

- (a) prohibit the institution or continuation of legal proceedings in respect of the property specified in the order;
- (b) prohibit the repossession or sale of the property the subject of the debt;
- (c) declare that no penalty be incurred or be payable by the applicant during or in respect of the period during which the order is in force; or
- (d) declare to be void during and in respect of the period during which the order is in force any clause or provision in a contract or agreement relating to the debt requiring the payment of interest or penalty interest, or requiring the principal sum to be paid upon breach of a condition of the contract or agreement.

(3) A moratorium order shall remain in force for a period of 3 months or for such longer period as the Court may order.

(4) Where a moratorium order declares to be void a provision in the contract or agreement requiring the repayment of the principal sum on the breach of a condition of that contract or agreement in accordance with sub-section (2) (d), that breach shall be deemed not to have occurred during the period of 6 months commencing on 25 December 1974.

(5) Where in a contract or agreement in respect of which a moratorium order is made, a periodical or other payment is provided for—

- (a) the time for payment of the earliest periodical or other payment that would have fallen due during the period of the moratorium, had that moratorium order not been made, shall be postponed for a period equal to the period during which the moratorium order was in force; and
- (b) the time for payment of each subsequent periodical payment shall be postponed for a period equal to the period of postponement of the first-mentioned periodical payment.

(6) On the expiration of a moratorium order, both the debtor and creditor shall, with respect to the debt, have the same rights and obligations as they respectively had immediately before the making of the moratorium order.

7.(1) An applicant for the relief of whom a moratorium order has been made may apply for an extension of the order at any time.

Moratorium order may be extended

(2) The Court may, if it is satisfied that the facts established by the applicant on the application for the moratorium order still exist, extend the order for such period as it thinks fit.

*Cyclone Disaster (Moratorium)*

Copy of order  
to be served  
on creditor

8. The Court shall cause a copy of every moratorium order and every order extending a moratorium order to be served on the respective creditor as soon as possible after the order is made.

Creditor may  
apply to have  
order set  
aside

9. A creditor may, at any time, apply to the Court for an order setting aside a moratorium order or for an order limiting the time during which the moratorium order is in force.

Certain matters  
to be established  
by creditor

10. An order under section 9 shall not be granted unless the applicant for that order establishes—

- (a) that the facts or some of the facts on which the moratorium order was obtained no longer exist;
- (b) that the moratorium order was obtained on an allegation of fact which was untrue; or
- (c) that greater hardship would accrue to the creditor than to the debtor if the moratorium order were to continue.

Court may  
discharge or vary  
moratorium  
order

11. Upon an application made under section 9, a Court may make such order discharging or varying the moratorium order as it thinks fit or may fix a date on which the moratorium order shall cease to apply.

Evidence

12. An application for a moratorium order and an application under section 9—

- (a) may be made in such form as a Court requires or accepts; and
- (b) may be supported by oral evidence, by affidavit or by statutory declaration.

Penalty  
interest not to  
apply on  
mortgages on  
land

13. Where, during the period of 6 months commencing on 25 December 1974, a person by whom an instalment of money is due under a mortgage providing for repayment of money lent for the purchase of real property or under a contract providing for payment on instalment of the purchase price of real property fails for reasons attributable to the disaster to pay that instalment, he shall, notwithstanding any provision of the mortgage or contract, not be liable to pay any penalty interest.

Provisions of  
*Small Claims Ordinance*  
to apply

14. Notwithstanding the limit on jurisdiction imposed by that Ordinance, the provisions of the *Small Claims Ordinance* apply in relation to applications under this Ordinance as if they were proceedings under that Ordinance.

Regulations

15. The Administrator in Council may make regulations not inconsistent with this Ordinance, prescribing all matters that are permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out, or giving effect to this Ordinance.