

PROTOCOL WHEN ASSESSING SECTION 61(1)(b) TRANSFER DISPUTES

Where there is sufficient information as to repossession of the premises

If the information provided by a premises owner as having taken repossession of the premises is sufficient for L&GNSW to be satisfied that section 61(1)(b) can be met, then the application can be determined, noting that certain L&GNSW staff have been delegated to make these determinations.

Where there is insufficient information as to the repossession of the premises

[Consideration to be given to referring the application to the Authority for consideration]

Ongoing litigation

If there is litigation on foot, then the application should not be determined.

- If it is likely that the facts can be determined or an agreement reached between the parties within a short period of time, eg a few weeks, then it may be preferable to wait until the outcome of the dispute.
- If it is unlikely for the matter to be resolved in the near future, the applicant should be advised that they are required to withdraw the application on the basis that section 61(1)(b) cannot be satisfied. If the applicant withdraws, a refund of the licence fee can be provided. If a withdrawal is not forthcoming, the applicant should be advised that the application will be refused.

A withdrawal of the application should be encouraged.

No litigation

If there is uncertainty regarding the status of the repossession, the following documents (as appropriate, and depending on the circumstances) can be obtained from the relevant parties to assist with the consideration of whether section 61(1)(b) can be met:

- A timeline of events;
- All copies of notices of default issued by the mortgagee in possession;
- Relevant loan agreements, deeds and/or mortgage documentation;
- Information obtained from the Torrens Title Register evidencing ownership or interest in the relevant land;
- Monetary transaction documents issued by a financial institution;
- Disbursement authorities and/or payment directions if appropriate;
- Copies of correspondence between the relevant parties relating to the issue of repossession; and/or
- Any other evidence that may assist the decision-maker in determining the matter.

If the information provided is sufficient for L&GNSW to be satisfied that section 61(1)(b) can be met, then the application can be determined.

If, upon receipt of the above information, it **is still unclear whether section 61(1)(b) has been met**, the following guidance should be conveyed to the parties:

- The parties should meet to consider the issues in dispute to determine whether those matters can be resolved through negotiation. If not, then the parties should take such action as they may be advised to protect their respective positions.
- The Authority does not intend to intervene in circumstances where each party is asserting legal rights arising from facts and circumstances of which the Authority has no direct knowledge, and in respect of dealings to which the Authority was not a party.
- Once the matter has been resolved commercially or through subsequent litigation, the Authority should be advised of the outcome in order to determine the next steps (if any).

In exceptional circumstances, the Authority may seek external assistance to determine a matter.