

COUNCIL POLICY

Council Policy Title:	Debtor Management and Debt Recovery
Council Policy ref. no:	16.5
Responsible Department:	Corporate & Community Services
Date of adoption/review:	22 May 2019

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1. PURPOSE

To define Council's Policy for the management and recovery of outstanding debts.

2 SCOPE

This policy covers:

- All debts;
- Some aspects of invoicing;
- The initial establishment of a debt;
- Follow up actions to collect outstanding debts;
- Creation of a provision for doubtful debts;
- Write off of bad debts

2.1 EXCLUSIONS

This Policy does not override any government legislation or regulation in relation to specific types of debtors. In particular, the Local Government Act clearly establishes the law that applies to the declaration of rates, payment of rates, interest on outstanding rates and the collection of overdue rates.

2.2 INCLUSIONS

This Policy includes but is not limited to:

- Rates (as defined in section 5)
- Facility Hire Fees
- Lease Fees
- Unpaid Grants
- Fire Hazard Clearance Charges
- Local Laws
- Service Fees
- Fines and Infringements
- Permits and Notices
- Saleyards Fees
- Blue Water Fitness Centre Fees
- Port of Apollo Bay Fees
- Special Charge Schemes
- Waste Management
- Private Works

3 OBJECTIVES

The Policy Objectives are:

- To ensure that the collection of debts is undertaken equitably (that is, fairly and impartially), consistently, efficiently, effectively and in accordance with good governance);
- To encourage any person, organisation or company having difficulty in paying an outstanding debt to contact Council and make arrangements for a payment plan to pay the debt in a reasonable and manageable timeframe; and

- To ensure that the collection of debt is consistent with the *Local Government Act* and Regulations, Accounting Standards and recognised financial practices.

4 GENERAL PRINCIPLES APPLICABLE TO ALL DEBTS

The general principles described in Section 4 of the Policy are applicable to all debts and debtors but they also need to be considered in conjunction with Section 5 which outlines specific requirements in relation to debt types.

Council acknowledges the high administration costs of managing debtors and will only consider invoicing customers when more efficient receipting options are not practical. i.e. point of sale, payment in advance, etc.

4.1 PAYMENT TERMS

Council's payment terms are 30 days unless specific regulations apply or unless Section 5 of this Policy applies.

4.2 INVOICING

A debt is created when the service is provided or when the invoice is created; whichever occurs first. (Note: Income is recognised in Council's financial accounts when the service has been provided, generally when the invoice has been raised, or when cash is receipted).

4.3 REQUEST FOR CREDIT

The prospective 'Debt Owner' (refer Section 6.1) is able to request credit to be extended only after having determined that other, more efficient, receipting methods are not practical and that the customer is worthy of credit.

Council's Policy is to allow all Council Officers the opportunity to refuse offering credit where a poor credit history exists.

4.4 REMINDER NOTICES

If payment of the invoice has not been received within 14 days after the payment due by date, a reminder notice shall be sent out by Finance (except as described in Section 5).

The reminder notice shall request payment within 14 days and advise of any penalties that may apply to non-payment. The reminder notice shall encourage the debtor to contact Council to discuss any concerns with the debt or reasons why the invoice has not been paid.

Reminder phone call, and other debt follow up procedures may be employed by the debt owner or Finance.

If payment has not been received within 14 days of the reminder notice, a final notice shall be sent. The final notice shall request payment within 7 days. The final notice may include any interest penalties that may apply.

A final notice shall not be sent to Aged & Disability Debtors and in relation to unpaid Grants. However, further reminder notices should continue to be sent. A record shall be kept of all attempts to contact the debtor, whether successful or unsuccessful.

If payment is not received in the required timeframe after the final notice the debtor may be referred to debt collection agency (see Section 4.9).

4.5 PAYMENT ARRANGEMENTS

Any person, organisation or company who is having difficulty in paying the debt is encouraged to contact Council and make a personal payment arrangement to pay off the debt in a reasonable and manageable timeframe.

Finance will consider requests for a Personal Payment Arrangement and may agree upon a plan (for example, a personal payment arrangement to make a weekly payment of an agreed amount until the debt is paid in full).

Only Finance can authorise payment arrangements with the exception of Local Laws fines. In some instances, Customer Service may make payment arrangements in relation to Rates but only in accordance with guidelines provided by the Revenue Co-Ordinator.

Details of the payment arrangement must be recorded and payments monitored. Any defaults (that is, payment not made by the agreed date) shall be followed up by Finance (except as described in Section 5) and a new payment arrangement may be made.

Failure to adhere to a payment arrangement shall result in Council commencing Debt Collection procedures unless the debt is governed by other regulations that prohibit debt collection.

4.6 INTEREST PENALTIES

- Council shall charge interest on unpaid rates and charges in accordance with Section 172 of the Local Government Act.
- The penalty interest percentage rate is fixed under Section 2 of the Penalty Interest Rates Act as applied on the first day of July.
- The penalty interest percentage rate may be applied to sundry debtors in accordance with Section 172 of the Local Government Act.
- If interest is to be applied to a sundry debt, it is to be under instruction from the Debt Owner and the approval of the Manager Financial Services shall also be obtained.

4.7 CONTINUATION OF THE PROVISION OF SERVICES WHERE A DEBT IS OVERDUE

In the case where the service is discretionary (for example facility hire charge or service fee) and is not governed by specific regulation the relevant Department or Unit must not continue to supply service where debts are more than 90 days old and no payment arrangement has been agreed.

In these circumstances Executive approval is required to continue provision of services.

However, in a number of cases Council must continue to supply services regardless of outstanding debts, this is often dictated by specific regulations or funding agreements (for example Home and Community Care).

4.8 FINANCIAL HARDSHIP

Under Sections 180 and 171A of the Local Government Act, the Victorian Parliament has given local Councils the authority to:

- Defer payment of rates and charges due to hardship (S170); and
- Waive rates and charges and interest due to financial hardship (S171A).

Council has developed the "Rates Hardship Policy" for the purpose of defining Council's interpretation and application of Sections 170 and 171A of the Local Government Act.

This Debt Management and Recovery Policy recognises that the principles of the Rates Hardship Policy are also applicable to Sundry Debtors, in particular Home and Community Care.

4.9 DEBT RECOVERY

Unless there is specific regulation or other requirements set out in Section 5 or unless a personal payment plan has been agreed, Council shall refer a debt that is overdue by 90 days or more to a debt collection agency.

The debtor shall be liable for all legal costs incurred by Council in the debt collection process.

Finance shall advise the relevant department of the intention to refer the debt to a debt collection agency.

For debt recovery action not to be taken, the approval of the Debt Owner and the Manager Financial Services is required.

If no payment has been received after the initial treatment by the agency, then the Finance Department shall determine if it is financially beneficial to pursue legal recovery.

For Sundry Debtors Council may instruct the agency or the agency's solicitors or its own solicitors to take all or some of the following steps to collect the debt:

1. Debt Collection agency final notice shall be issued.
2. Field Call to Debtor
3. Application shall be made to the Magistrates Court for a Complaint to be issued.
4. Pre-Judgment warning letter shall be sent.
5. Application shall be made to Magistrates Court for Judgment
6. Pre-Warrant warning letter sent
7. Application shall be made to the Magistrates Court for a Warrant to be issued.
8. Matter referred to Supreme Court – if required.

Debtor accounts relating to Centrelink pension recipients will not be lodged with the Magistrates Court unless there are extreme circumstances for doing so (such as debt amount, life of debt, poor payment history, etc.).

Where a debtor is deemed to no longer have the capacity to pay their debts, the Chief Executive is able to authorise notification to the debtor of Council's intention to proceeding under the Bankruptcy Act 1986, after considering the circumstances of the case. The final decision to initiate formal bankruptcy proceedings will require a resolution by Council.

4.10 PROVISION FOR DOUBTFUL DEBTS

Section 4.10 does not apply to Rates (see 5.1).

A provision for doubtful debts is a liability recognised to reflect debt that is likely never to be collected and hence is expected to be written off in future periods.

4.11 BAD DEBTS

Section 4.11 does not apply to Rates (see 5.1)

After all avenues to collect the debt have been exhausted approval may be sought to write off a bad debt (see 4.12)

All approved write offs shall be recorded in the nominated accounts under the Finance Department.

Following this process, credit rating agencies will be notified, which will permanently impact the debtor's ability to gain credit in future.

If a debt is written off and a client seeks to have further service provided at a future date, the written off debt shall be reinstated and the client shall be required to pay the debt prior to the provision of further services (subject to provisions in Section 5).

4.12 APPROVAL DELEGATION LIMITS TO WRITE OFF BAD DEBTS AND/OR PENALTY INTEREST

A bad debt of up to \$1,000 may be written off by the Manager Financial Services, in consultation with the Debt Owner.

A bad debt greater than \$1,000 and less than \$5,000 may be written off by the relevant General Manager.

A bad debt greater than \$5,000 may be written off by Council Executive.

Penalty interest associated with Sundry Debtors and Rates Debtors may be written off or waived by the Manager Financial Services or the relevant General Manager in accordance with the above mentioned limits.

4.13 CORRECTION OF INVOICING AND RATING ERRORS

In the event that it is discovered that an error has been made and a Rate Payer or Debtor has been incorrectly undercharged, Council shall correct the error immediately for future billing periods and invoices and Council shall not attempt to apply the correct fee or charge retrospectively.

In the event that it is discovered that an error has been made and a Rate Payer or Debtor has been incorrectly overcharged, council shall correct the error immediately for current and future billing periods and invoices and Council shall apply the correct fee or charge retrospectively only for the financial year in which the error was discovered. Upon written application from the Rate Payer or Debtor who has been incorrectly overcharged, the General Manager Corporate Services shall consider the merits of the matter and the General Manager may apply the correct fee or charge retrospectively (for example in the case where an error which had previously been brought to Council's attention and not corrected).

5 REQUIREMENTS IN RELATION TO SPECIFIC TYPES OF DEBTORS

5.1 RATES

Section 180 and Section 181 of the Local Government Acts outlines Council's powers in relation to overdue rates and charges. A Rate Notice is sent in early – mid August each year.

Rates are payable, either:

- in full by 15 February each year ('lump sum' option) or
- in 4 separate instalments due 30 September, 30 November, 28 February and 31 May ('Instalment' option), or
- by "arrangement", where the ratepayer makes a payment arrangement that is acceptable to the Revenue Co-ordinator to pay by any number of part payments throughout the financial year. If paying by this option, the ratepayer must ensure the full amount of rates for the year is paid by 31 May.

Reminder Notices

A FINAL notice shall be sent out by the second week in March each year to all lump sum option payers who have outstanding balances. The Reminder Notice will include unpaid amounts from previous periods and the interest payable and will state that payment must be made within no less than 14 days.

" 'Lump sum' option payers with balances still outstanding in April shall be sent a further reminder to pay the rates in not less than seven days, failing which the debt will be referred to a debt collection agency.

If the ratepayer opts to pay by the 'Instalment' option, a notice for the 2nd, 3rd and 4th Instalments will be sent to the ratepayer.

A Final Notice for outstanding Instalment payments is sent out in mid-June stating the payment must be made within no less than 14 days.

Ratepayers paying by 'arrangement' need to ensure their regular payment amounts are sufficient to cover their outstanding rates by 31 May each year, as they will not receive regular statements of their account.

The reminder advice may be in the form of a letter, email or text, depending on what contact details are recorded in the rates database.

Where it seems the debtor's contact details are no longer relevant, all reasonable action will be taken to locate new contact details. This may involve referring the debt to a debt collection agency that has more advance search capabilities than Council.

Debt Recovery

Once referred to a debt collection agency, the agency will send a Letter of Demand to the debtor requiring payment in no less than seven days or the making of a payment arrangement that is acceptable to Council's Revenue Co-ordinator.

If payment or an acceptable payment arrangement is not made within the specified time, the debt collection agency may be instructed to proceed with preparing a Complaint to be lodged with the Magistrate's Court (or the Supreme Court if relevant).

Before deciding to proceed with lodging a Complaint with the Magistrates Court, Council officers will consider if the debtor is eligible for assistance under Council's 'Assistance to Rates Debtors in Financial Hardship Policy'. (refer section 4.8 of this policy)

Rates debtor accounts relating to Centrelink pension recipients will only be lodged with the Magistrates Court if assistance under Council's "Rates Debtors in Financial Hardship" policy has proven unable to result in the debt being paid.

As debt collection can result in costs in excess of \$1,000, it must be assessed if it is financially beneficial to pursue legal recovery.

Legal costs charged will be in accordance with the Magistrates Court's Schedule of Fees and Charges.

Once a Complaint has been lodged with the Magistrates Court, Council officers will seek to resolve the Complaint as expeditiously as possible, taking into consideration the history and circumstances pertaining to the debt.

The full cost of any action undertaken is passed onto the Rate Payer and becomes a charge against the property in accordance with the provisions of the Local Government Act 1989.

Under the Local Government Act unpaid rates and Fire Hazard Clearance Charges remain as a charge against the property and they must be paid first when a property is sold. Therefore, there are no doubtful debts or debt write offs in relation to Rates and Fire Hazard Clearance Charges.

Once a Magistrates Court judgement has been obtained against a debtor, Council officers will ensure the relevant credit reference authority is notified once the judgement is complied with to enable the debtors credit file to be updated accordingly.

Council will not support applications by debtors to the Magistrates Courts to have judgements set aside. Having said that, it will also not oppose such applications, thereby leaving the decision to the discretion of the Court.

Council has a Policy in relation to the Sale of Land to Recover Unpaid Rates & Charges in accordance with Section 181 of the Local Government Act.

Where Council has lodged a Complaint with the Magistrates Court and obtained judgement against the debtor, which has not resulted in the debt being paid or a payment arrangement that is acceptable to Council's Revenue Co-ordinator being made, Council may consider initiating one of the following actions to recover the debt:

- rates recovery sale of the property in accordance with section 181 of the Local Government Act 1989, or
- having the debtor declared bankrupt in accordance with the Bankruptcy Act 1966.

The decision as to which course of action to take will be at the discretion of the Chief Executive after considering the circumstances of the case. The final decision to initiate formal bankruptcy proceedings will require a resolution by Council.

5.2 AGED AND DISABILITY FEES

There are various regulations in place in relation to the provision of Aged & Disability Services, some of which are included in funding agreements. Penalty interest cannot be applied, final notices cannot be sent and debts cannot be referred to debt collection agencies.

5.3 INFRINGEMENT NOTICES

Local Laws are governed by Part 5 of the Local Government Act.

The Local Laws Unit is also responsible for managing a number of function for which there exists statutory requirements, such as some parking and animal control issues. All debt management relating to these areas shall be undertaken within the scope of the relevant legislation.

Reminder notices shall be sent if the debt is unpaid 28 days after the due date. An administration fee may be added to the penalty if payment has not been made.

If payment is not received within 14 days of the reminder notice, debts may be referred to a debt collection agency.

The Local Laws Unit shall manage the referral of unpaid fines to a debt collection agency but shall advise Finance of the debts that have been referred to the agency.

5.4 LEASES

There may be terms in the lease agreement that vary from the principles outlined in Section 4.

5.5 GRANTS

Final Notices, interest penalties and debt collection processes shall not be invoked for unpaid grants.

5.6 EMPLOYEE DEBTORS

An employee may become a debtor to Council in various circumstances – as a ratepayer or user of a service for example.

Employee debtors shall be subject to all credit checks and debt management processes as any other debtor would. Under no circumstances shall Council show any favouritism or leniency in any way to an employee debtor or engage in any activity where an employee debtor may gain advantageous treatment over any other debtor.

6 ROLES AND RESPONSIBILITIES

6.1 DEBT OWNER

The Manager of the Department or Unit with responsibility for the income stream is known as the Debt Owner. The Debt Owner has overall responsibility for the management of the related debt.

The Debt Owner is responsible for:

- Ensuring that invoiced amounts are correct
- Providing assistance to Finance in follow up on overdue debts
- Liaising with Finance in terms of the status of debts (e.g. whether it is likely to be recovered)
- Documenting any discussions with Debtors in relation to outstanding monies and providing the documentation to Finance
- Ensuring further credit is not given to the Debtor with overdue debts unless there is a specific regulation (such as Home and Community Care)
- Gaining approval from the relevant General Manager (and in some cases the Executive) for any debt write off and advising Finance accordingly

It is recognised that in the case of employee debtors the debt owner and employee debtor may both be placed in an uncomfortable position in regard to debt management.

The debt owner must bring any debt management issues concerning employee debtors to the attention of senior management. The debt owner will under no circumstances contact the employee debtor directly without liaising with senior management before contact is made.

6.2 FINANCE

In relation to debt collection, Finance is responsible for:

- Sending out Invoices
- Recording debts in the financial system
- Sending out reminder letters on overdue debt (except for Fines and Infringement Notices)
- Follow up on overdue debt (with assistance from the Debt Owner)
- Determining level of doubtful debts (with assistance from the Debt Owner)
- Referring Debts to a debt collection agency after advice from the Debt Owner
- Advising Departments on the status of outstanding debts and making recommendations on debt recovery/write off
- Writing off debts in the financial systems after written approval has been received from the Debt Owner.

7 DEFINITIONS

Rates	Includes any and/or rates and charges on rateable land as described under Part 8 of the Local Government Act. "Rates" also includes any government imposed charge or levy that Council is required to collect on behalf of the Government.
Debts and Sundry Debts	Includes all debts (other than rates) for Council fees and charges
Debt Owner	The Manager of the Department or Unit with overall responsibility for the debt. This is generally the Department or Unit which receives the Income.
Local Laws Unit	The Local Laws Unit is part of the Environment and Community Safety Department and is responsible for the enforcement of local laws.
Penalty interest on unpaid debts	Interest that may be charged on unpaid rates and charges in accordance with section 172 of the Local Government Act.
Special Scheme	Construction works such as roads, footpaths or drainage which increases the amenity of the area and, therefore the property value. A Special Scheme can also include Private Works such as connection to the Natural Gas Pipeline. As the property owner receives a financial benefit from the Scheme they contribute towards the cost of the Scheme, which may be paid off over a number of years in quarterly instalments.

ADOPTED/AMENDMENT OF POLICY

Policy Review Date	Reason for Amendment
28 January 2015	Adopted by Council
22 May 2019	Amendment