

Collection of Overdue Debts

POL-FCM 08



Objective

To maintain a high-quality customer service experience by having a consistent and transparent approach to recovery and collection of debts including outstanding rates whilst recognising the need to ensure that all payments due are collected in order to deliver essential City of Mandurah services.

Applicability

This policy is binding on City Staff

Statement

Definitions

Minor Case Claim means a claim lodged with the Magistrates Court where the value of the debt or damages claimed does not exceed \$10,000.

General Procedure Claim (GPC) means a claim lodged with the Magistrates Court where the value of the claim or the relief claimed does not exceed \$75,000.

Means Enquiry is an inquiry conducted in the Magistrates Court to determine the judgement debtor's means to pay the judgement debt.

Skip Trace is the process of locating a person's whereabouts.

Special Payment Arrangement means an arrangement for the debtor to pay amounts over a period, agreed to by the City, in order to pay the total amount outstanding. This arrangement is outside of the formal instalment options stated on the annual rates notice or invoice sent by the City. All debts are to be paid in full by 30 June in the financial year the debt is raised. Any Special Payment Arrangements that will extend past the end of the financial year that the debt is raised can be agreed to by the Chief Executive Officer or their delegate. These arrangements are for exceptional circumstances and include when a debtor is experiencing financial hardship in line with this Policy.

Policy Statement

1. Any debtor payments due to the City of Mandurah that has not been received by the due date shall be recovered in accordance with this Policy and any relevant legislation.
2. The actions taken against outstanding amounts due to the City will be as follows:
 - a. Amounts outstanding after the due date for payment will be followed up within 30 days with a reminder letter requesting full payment within fourteen (14) days unless an agreed Special Payment Arrangement has been entered into with the City. If contact details are not provided City Officers will contact utilities and potential other leads (such as settlement agents, financial institutions, State Government departments).
 - b. The City will commence a contact call campaign – which includes multiple attempts to contact the debtor by telephone, SMS or email in order to seek payment or enter into a Special Payment Arrangement. Contact may be extended to the financial institution, who is the mortgagee, to advise of the outstanding amount.

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- c. If payment has not been made the City will issue a Notice of Intended Legal Action letter to the debtor, demanding immediate payment.
 - d. For payment of rates outstanding between \$3,000 to \$10,000, the City may lodge a Minor Case Claim, in accordance with section 6.56 of the *Local Government Act 1995*.
 - e. For payment of rates, at the same time as commencing legal proceedings, the City may lodge a caveat on the title of the land.
 - f. If the Minor Case Claim is not served and the debtor cannot be located, the City may instruct an agent to undertake a Skip Trace.
 - g. Should a Minor Case Claim be lodged but there is no response within fourteen (14) days of issuing the claim, default judgment can be requested.
 - h. For debts outstanding over \$10,000 the City may lodge a GPC and commence legal proceedings, in accordance with section 6.56 of the *Local Government Act 1995*.
 - i. Costs incurred as a result of proceedings on rating debts are to be charged to the property's rates account as per section 6.56 of the *Local Government Act 1995*.
3. Other debt recovery actions that the City can undertake if it is in the City's interest to do so includes:
- a. **Means Inquiry**
Where a judgement has been obtained for a Minor Case Claim or GPC and no payment has been received or the payment amount is insufficient to pay the outstanding amount within a reasonable time, the City may lodge a Means Inquiry with the Magistrates Court.
 - b. **Lodging a Caveat on the Title of land**
In accordance with section 6.64(3) of the *Local Government Act 1995*, where payment of rates or service charges is in arrears, the City can lodge a caveat, and this will be registered on the title for the land that has unpaid rates and service charges. The cost of lodging a caveat cannot be charged to the property. This option will be at the discretion of the authorised officer in accordance with the Authority to Execute Documents Council Policy.
 - c. **Sale of Land**
In accordance with section 6.64 of the *Local Government Act 1995*, if any rates or service charges which is due to the City in respect of any rateable land, has been unpaid for at least three years and the City has attempted to commence legal proceedings at least once within the period of three years prior to the exercise of the power of sale, the Council if it resolves, may take possession of the land and sell the land to recover the outstanding payment amounts.
4. Discontinuance of Legal Action
- a. A Notice of Discontinuance or Memorandum of Consent, whichever is appropriate, may be lodged by the City for whole or part of the claim, if the payment has been made in full or no further legal action will be undertaken due to other circumstances.
 - b. An administration fee will apply, in accordance with the Fees and Charges schedule, which is to be paid by the debtor before the City lodges the Notice of Discontinuance or Memorandum of Consent.

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5. The City will not proceed with further legal action if the debt has been paid in full or an approved Special Payment Arrangement is being adhered to.
6. Where the debtor has defaulted three times or more from a Special Payment Arrangement, the City may proceed with further legal action and not agree to enter into another Special Payment Arrangement.

Financial Hardship

The general principle of rates collection is that, in all circumstances, rates must be paid. This ensures fairness in the community that all property owners accept and carry out their obligations to contribute to the cost of the provision of essential community infrastructure and services.

However, the ability to pay overdue rates by individual ratepayers varies and, in some instances, ratepayers can be experiencing financial stress caused by a wide range of factors such as unemployment, marital difficulties, and illness.

The City's overall approach in these circumstances is that the City will act in a sympathetic manner and work with each individual to tailor a payment plan considering their individual circumstances. This will be based on the following principles:

- a) The City regards proceedings such as legal action and sale of the property as a last resort and tries to avoid this avenue as much as possible.
- b) The City aims to achieve the payment of outstanding rates and in some circumstances where necessary, payment plans will not recoup outstanding rates in one financial year.
- c) The maximum length of time that is considered reasonable is three years and the payment plan includes an estimate of future rates and interest, which are expected to be paid through the payment options made available to ratepayers for the respective rate year.
- d) The objective is to help those in genuine difficulties work through their issues, even if it takes time.

There are many circumstances that cause difficulties for people to pay their rates, ranging from temporary cash flow issues to genuine financial hardship which requires the implementation of plans and possible decisions about such actions as the charging of interest and the commencement of legal proceedings.

While payment difficulties tend to be short term, financial hardship tends to be more entrenched. It is difficult to be precise but those who are undergoing financial hardship are generally unable to provide for the costs of one or more of the following items:

- Accommodation costs – arrears of rent, mortgage and/or utility costs.
- Food
- Clothing
- Medical treatment
- Education
- Other basic necessities

In these circumstances, sometimes a ratepayer's actions include poor decision-making, withdrawing and avoiding the issue by not responding to attempts to contact, or they become aggressive. The City's attempts to contact ratepayers occurs throughout the debt recovery process.

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Regardless of when the first contact is made with the person, the City needs to assess financial hardship in accordance with this Policy and that the ratepayer is willing to follow the requirements of the Policy.

Evidence of hardship

Evidence of hardship is required, and the information provided to the City will be treated with strict confidentiality. The ratepayer can provide evidence by attending the City's Administration Building or via electronic means.

Evidence required is:

- a) Financial Counsellor report detailing all debts due, income and proposed payment arrangement.
- b) The ratepayer should ensure that the following documents are supplied to the Financial Counsellor to ensure a full assessment can be undertaken:
 - Bank notice, for example, for mortgage arrears
 - Disconnection notice for utilities
 - Notice of impending legal action
 - Repossession notice of essential items such as a car or motorcycle
 - Evidence of loss of employment/registration for Newstart allowance
 - Final notice from school regarding payment of mandatory fees
 - Medical certificate confirming inability to work

Authorisations

- a) *Writing off debts*

A fundamental rule is that the City never writes off rates. However, in some cases the City may write off court fees incurred or outstanding interest. Write-off of debt is authorised under delegated authority.
- b) *Suspending charging of interest*

This is a useful way of providing immediate help. Authorisation of interest suspension authorised under the write-off of debt delegated authority.

Deferring interest and write off of charges

- a) A suspension of interest for three months will occur immediately from the date of receiving the completed application form and confirmation of the appointment made with a Financial Counsellor. The City recognises that there may be a waiting period to see a Financial Counsellor, and so long as there has been a booking made and the City receives confirmation of this, the interest will be suspended. Once the Financial Counsellor has sent the City the report and recommended payment amount, the maximum length of time interest can be suspended is 12 months.
- b) Any action such as writing off debts or interest suspension is in accordance with the delegated authority of Council and the sub delegated authority by the CEO.

Debt recovery action and legal proceedings

While the City is awaiting the ratepayer to meet with a Financial Counsellor to commence a payment plan, all legal proceedings are put on hold.

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Financial counselling

It is a requirement for the ratepayer to meet with a Financial Counsellor, who will provide advice to the ratepayer in relation to managing their debts. There are not-for-profit organisations in Mandurah who provide these services free of charge.

Legislative Context

Section 6.56 of the *Local Government Act 1995*.

Review

At a minimum this Council Policy will be reviewed every two years.

Related Documents

These documents are mandatory and required to give effect to this policy:

- DA-FCM 07 Payment Arrangements for Unpaid Rates and Service Charges
- DA-FCM 06 Defer, Grant Concession, Waive or Write off debts
- DA-LWE 01 Prosecutions/Legal Proceedings

Responsible Directorate: Business Services

Responsible Department: Financial Services

Reviewer: Manager Financial Services

Creation date and reference: 25 February 2020, G.14/2/20

Last Review: 28 February 2023

Amendments			
Version #	Council Approval Date, Reference	Date Document In force	Date Document Ceased
1	25 February 2020, G.14/2/20, Original Adoption	26/2/2020	28/2/2023
2	G.10/2/23, 28 February 2023, Minor amendments made	1/3/2023	-