

Policy – Rates Assistance & Financial Hardship

CITY OF  Armadale



Objective

To have a consistent, collaborative and transparent approach to recovery and collection of debts including outstanding rates and charges, whilst recognising the need to ensure that all payments due are collected, in order to deliver City of Armadale services.

Scope

Collection of all rates, service charges and other fees or charges made under Part 6 – Division 5 & 6 of the *Local Government Act 1995*, the *Waste Avoidance and Resource Recovery Act 2007* Part 6 and the *Emergency Services Act 1998* Part 6A.

Recommendations of the “*Local Government collection of overdue rates for people in situations of vulnerability: Good Practice Guidance*” produced by the Ombudsman Western Australia.

Definitions

Default Judgment means applications for judgment in default of an appearance, which can be made 14 days from the date of service of the General Procedure Claim (GPC) or Minor Case Claim (MCC) and made within 12 months of lodgment of a MCC or GPC.

Financial hardship means a state of more than immediate financial disadvantage which results in a debtor being unable to pay an outstanding amount without affecting the ability to meet the basic living needs [of the debtor] or a dependant.

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 the limit set by the Magistrates Court of Western Australia (\$75,000 as at March 2020).

Means Enquiry means an inquiry conducted in the Magistrates Court to determine the judgment debtor’s means to pay the judgment debt.

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

Payment difficulties means a state of immediate financial disadvantage that results in a debtor being unable to pay an outstanding amount by reason of a change in personal circumstances.

Skip Trace means the process of locating a person’s whereabouts.

Smarter Way to Pay means the Special Payment Arrangement made in accordance with the City’s Policy - Payments of Rates and Service Charges - A Smarter Way to Pay

Special Payment Arrangement means an arrangement made under Section 6.49 of the *Local Government Act 1995*.

Vulnerability means a person who may have a low income or, as a result of their circumstances, be experiencing a financial shock, leading to difficulties in paying rates by the due date. This can take the form of ‘payment difficulties’ or ‘financial hardship’.

Yearly Direct Debit Arrangement - means an arrangement for the debtor to pay weekly, fortnightly or monthly amounts over a period, agreed to by the City, in order to pay the total amount outstanding. The arrangements are run on an ongoing basis for a minimum of two (2) years from the commencement date.

Policy

Any debtor payment due to the City of Armadale that has not been received by the due date shall be recovered in accordance with this Policy and any relevant legislation.

The actions taken to recover 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 Final Notice requesting full payment within fourteen (14) days unless an agreed Special Payment Arrangement has been entered into with the City.
- (b) If payment has not been made, the City will issue a Notice of Intention to commence legal action letter to the debtor, requiring immediate payment or inviting the debtor to enter into a Special Payment Arrangement with the City.
- (c) Where practicable the City will endeavor to contact the debtor by email or phone prior to taking any further action.
- (d) For payment of rates outstanding, the City may lodge a General Procedure Claim (GPC) or a Minor Case Claim (MCC), in accordance with section 6.56 of the Local Government Act 1995.
- (e) For debts outstanding the City may lodge a MCC or GPC and commence legal proceedings, in accordance with section 6.56 of the Local Government Act 1995.
- (f) If the MCC or GPC is not served and the debtor cannot be located, the City may instruct an agent to undertake a Skip Trace.
- (g) Should a MCC or GPC be lodged but there is no agreement within fourteen (14) days of issuing the claim, default judgment can be requested.
- (h) For the payment of rates, at the same time as commencing legal proceedings, the City may lodge a caveat on the title of the land as a form of notification.
- (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*.

Where the debtor has defaulted three times or more from an approved Special Payment Arrangement, the City may proceed with further legal action and not agree to enter into another Special Payment Arrangement.

The City will not proceed with further legal action if the debt has been paid in full or an approved Special Payment Arrangement has been agreed and is adhered to.

The City may take the following debt recovery actions if it is determined to be in the

City's best interest to do so, after the above action has been exhausted.

(a) Garnishing of rent from the lessee of a property

In accordance with Section 6.60 *Local Government Act*, the City will write to the owner or managing agent of a rental property and seek to make a Special Payment Arrangement. Where unsuccessful the City will require the tenant to pay their rental directly to the City to clear the outstanding rates and charges.

(b) Means Inquiry

Where a judgement has been obtained for a MCC 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.

(c) 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.

(d) Property Sale and Seizure Order PSSO

In accordance with a Magistrate Court (Civil Proceedings) for Goods & Land A Property (Sale and Seizure) Order the City may authorise a Bailiff to seize and sell as much real or personal property as necessary to pay the judgment debt. There are strict guidelines around what property cannot be taken to preserve a level of livability for the owner.

(e) 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.

The Chief Executive Officer is not authorised to initiate Sale of Land proceedings without the formal resolution of Council.

(f) Discontinuance of Legal Action

(i) The Notices of Discontinuance of Case (NOD)

The NOD is able to be issued with the Magistrates Court of WA, provided the City has not applied/been granted a Default Judgement (DJ) on the claim. The effect of a NOD is to advise credit recording agencies that the Claim has been satisfied, from the City's perspective. It does not remove the claim from the debtor/ratepayers credit record.

(ii) The Memorandum of Consent Order (MOCO)

The MOCO is only agreed to by the City where the City has made an error in the action taken or exceptional circumstances as determined by the CEO apply. Where the City instigates this action it will bear the cost. If a rate payer requires the MOCO then they are to apply directly to the court and pay all fees associated, the City is not obliged to agree to this action.

Persons in Situations of Vulnerability

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. The City recognises that a person experiencing vulnerability is particularly susceptible to experiencing harm, loss or disadvantage.

The phrase ‘people in situations of vulnerability’ reflects the fact that anyone, given a certain combination of circumstances, can find themselves in a situation of vulnerability.

The City recognises that there are certain risk factors which may not necessarily result in vulnerability, but are more prevalent in those people in our community in situations of vulnerability. This includes:

- (i) Disability;
- (ii) Illiteracy/innumeracy;
- (iii) Unemployment;
- (iv) Serious or chronic illness;
- (v) Bereavement;
- (vi) Exposure to family or domestic violence;
- (vii) Low English language proficiency; and
- (viii) Aboriginal and Torres Strait Islander people, who are over represented over multiple areas of vulnerability.

There are varying degrees of vulnerability, which can take the form of payment difficulties or financial hardship. Payment difficulties reflect short term financial constraints while financial hardship may reflect financial constraints with longer term or broader implications. 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:

- (i) Accommodation costs – arrears of rent, mortgage and/or utility costs.
- (ii) Food
- (iii) Clothing

- (iv) Medical Treatment
- (v) Education
- (vi) Other basic necessities

The City notes that in both cases, there is willingness to pay, but an inability to do so.

The City's Approach to Situations of Vulnerability

- (a) 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.
- (b) 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.
- (iii) 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.
- (iv) In arriving at a payment plan the City will consider a payment plan period that is reasonable. The City's preferred plan is the Smarter Way to pay program, which can accommodate payment of arrears.
- (v) The maximum length of time for a payment plan is five years and the payment plan includes future rates. This may be extended if the particulars of the case are warranted.
- (vi) The objective is to help those in genuine difficulties work through their issues, even if it takes time.
- (vii) 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 attempts to contact ratepayers occurs throughout the debt recovery process.
- (viii) Regardless of when the first contact is made with the person, the City will 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 by the City and is treated with strict confidentiality. The ratepayer may provide evidence by attending the City's Administration Building or via electronic means. A City of Armadale Financial Hardship application form along with the evidence of hardship may comprise:

- (a) Financial Counsellor report detailing all debts due, income and proposed payment arrangement; or
- (b) Any of the following documents but not limited to, to ensure a full assessment can be undertaken:
 - (i) Bank notice, for example, for mortgage arrears
 - (ii) Disconnection notice for utilities
 - (iii) Notice of impending legal action

- (iv) Repossession notice of essential items such as a car or motorcycle
- (v) Evidence of loss of employment/registration for Newstart allowance
- (vi) Final notice from school regarding payment of mandatory fees
- (vii) Medical certificate confirming inability to work; or
- (c) In circumstances of natural disasters, significant economic events or pandemic:
 - (i) City of Armadale completed application form 'Financial Hardship (COVID-19) – Rates Relief'
 - (ii) A letter or email from your employer advising that you have either been stood down or made redundant; or
 - (iii) If you are self-employed a letter advising how the COVID-19 has impacted your business.

Authorisations

The Council has delegated authority to the Chief Executive Officer to implement this policy which includes the ability to enter into Special Payment Arrangements under Section 6.49 and to write off small debts under section S. 6.12(1)(c) of the *Local Government Act 1995*, and in line with this policy.

- (a) Writing off debts

The City has a position that it will not write off a rates debt unless the debt is a small debt. A small debt is that amount determined by Council for the purpose of delegating to the Chief Executive Officer under section 6.12(1)(c) of the *Local Government Act 1995* (Delegation - Defer, write off, grant a concession or authorise a waiver for monies owing). However, in some cases the City may write off court fees incurred or outstanding interest. Under section 6.12(2) of the *Local Government Act 1995*, subsections (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.

- (b) Suspending the accruing of interest

This is a useful way of providing immediate help.

- (c) Deferring interest and write off of charges

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.

- (d) Debt recovery action and legal proceedings

While the City is awaiting the ratepayer to meet with a Financial Counsellor to commence a payment plan, legal proceedings may be put on hold for an agreed period.

(e) Financial counselling

The City may recommend a ratepayer 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 Armadale who provide these services free of charge.

(f) Special Payment Arrangement – payment terms

In the case of hardship the City will assess the period required to clear outstanding rates and charges when paid in conjunction with the annual years rates and charges, in exceptional circumstances this will be to a maximum term of 5 years from date of commencement.

Applicable legislation

Act	<i>Local Government Act 1995</i> sections 6.12, 6.47, 6.49, 6.51, 6.55, 6.60, 6.64 – 6.75 <i>Waste Avoidance and Resource Recovery Act 2007</i> Part 6 <i>Emergency Services Act 1998</i>
Regulation	<i>Local Government (Financial Management) Regulations 1996</i>
Local law	N/A
Related Policy	Smarter Way to Pay

Delegation of Power

Yes

Link to influencing strategies or plans

Corporate Business Plan

Strategy 4.1.2 – Make decisions that are sound, transparent and strategic

Strategy 4.3.1 – Prepare and implement short to long term financial plans

Link to procedure

Nil

Other implications

Financial/Budget Implications

As rates are the primary source of revenue for local governments, overdue rates represent a significant opportunity cost for local governments and can impact adversely on cashflow and

the City's ability to fund the service delivery priorities identified in the annual budget.*Asset Management Implications*

Nil

Environmental Implications

Nil

Occupational Safety and Health Implications

Nil

Administrative information

Adopted on	28 June 2021 - CS43/6/21
Reviewed or amended	
Responsible department	Finance