

Debt Recovery Procedure

Procedure Author	General Manager – Strategy & Corporate
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1. Purpose

This procedure supports the Hardship Policy to provide a clear process for the management of collection and debt recovery for both Council rates and sundry debtor charges. There is a need to ensure a consistent approach to the recovery of outstanding debts for all ratepayers and debtors, and to ensure processes for recovery of such debts comply with legislated and legal requirements.

2. References and Supporting Documentation

This procedure is to be read in conjunction with:

- Hardship Policy
- Hardship Procedure
- Magistrates Court – Minor Civil Division.
- ASIC Debt Collection Guidelines for Collectors and Creditors
- Rates and Legal Writes-offs Journal Register
- Rates Fine Waivers Journal Register
- Sundry Debtor Write offs and Credit Notes Register
- City of Playford Delegation's Register
- Complaints Handling Policy
- Fees and Charges Policy

3. Application

Manager Rates	Oversee the consistent application of the Debt Recovery Policy and Procedure.
Rates Officer	Apply the consistent delivery of the Debt Recovery Policy and Procedure.
Customer Contact Officer	Refer ratepayers and debtors to the Rates team where applicable.
Managers	Request debt waivers and debt write-offs.

4. Procedure

4.1 Rates

4.1.1 Rates charges

- 4.1.1.1 The first quarterly rates notices are issued in July each year, with 30 day terms of payment. Where ratepayers choose not to pay in full, three further rates notices are issued in October, January and April of each year.
- 4.1.1.2 Quarterly rates are due in September, December, March and June and fall overdue immediately after the due date for the relevant instalment.
- 4.1.1.3 Fines are charged on overdue accounts at a rate of 2%, and subsequently each month thereafter a further prescribed interest penalty, as outlined in Section 181 (8) of the *Local Government Act 1999*.

4.1.2 Rates recovery process

- 4.1.2.1 Overdue and reminder notice letters or SMS are issued each quarter, after the due date.
- 4.1.2.2 The rates team will undertake best endeavors to advise ratepayers, where contact information is available, of overdue rates greater than 60 days, prior to referral to the collection agency.
- 4.1.2.3 Ratepayers that have overdue balances older than six months may have their accounts referred to the collection agency, contracted by Council, to pursue recovery of the debt through legislated legal channels.

4.1.3 Rates payment arrangements

- 4.1.3.1 Ratepayers that are overdue less than three months, can negotiate an arrangement to pay the outstanding balance by contacting the Customer Contact Centre.
- 4.1.3.2 Ratepayers that are overdue more than three months, can negotiate a suitable arrangement to pay the outstanding balance by contacting a rates officer.
- 4.1.3.3 Rates officers will endeavor to ensure that payment arrangements are mutually agreed, takes into account the capacity to pay, and that any debts will be paid within an acceptable timeframe.
- 4.1.3.4 Defaulted payment arrangements may be cancelled if the ratepayer fails to catch up the missed payment, or respond to Council employees to renegotiate their payment arrangement.

4.1.4 Hardship

- 4.1.4.1 Ratepayers experiencing financial hardship should be offered appropriate support in line with the Hardship Policy and Hardship Procedure.

4.1.5 Debt recovery legal process

- 4.1.5.1 Ratepayer accounts overdue greater than six months are referred to an external contracted collection agency to commence recovery action through the Magistrates Court Minor Civil Division including:
 - Issuing a demand letter giving seven days for the ratepayer to make payment.

- Negotiating a suitable arrangement to pay within an acceptable timeframe.
- Issuing and serving a claim/summons on the property owner/ratepayer if customer fails to pay, or make arrangement to pay.
- Seeking a judgment debt through the Magistrates Court and an order for payment.
- Issuing an investigation summons requiring the ratepayer appear in court.
- Issuing an examination summons requiring the ratepayer re-appear in court and have the court examine their financial circumstances.
- Issuing warrant if failing to attend the court hearing.

4.1.5.2 Ratepayer accounts may continue to be charged overdue fines each month, as outlined in the *Local Government Act 1999*.

4.1.5.3 The collection agency may make suitable payment arrangements, and will refer ratepayers back to Council for further discussion if the arrangement is outside prescribed parameters, or the ratepayer has indicated they are experiencing financial hardship.

4.1.6 Legal costs

4.1.6.1 All debt recovery costs and fees associated with any course of action are to be borne by the ratepayer and will subsequently remain a charge on the property, where appropriate, until paid.

4.1.6.2 Any ratepayer or debtor that wishes to appeal against the legal costs that have been added to their assessment or account must state the reasons for their appeal in writing to Council.

4.1.6.3 All requests for a review of legal costs will be investigated, assessed and the facts of the case collated by the Manager Rates with the final decision as to whether the costs will be written off to be made in line with delegation levels.

4.1.6.4 Legal cost waivers or write offs must be documented and authorised in the Legal Write Offs Journal Register for the appropriate financial year.

4.1.7 Notice of Discontinuance

4.1.7.1 If a ratepayer requests proof that the debt owed to Council has been paid a letter can be issued by Council confirming payment has been made. Such letter will only be issued if all overdue debts have been paid.

4.1.7.2 If a ratepayer requests a Notice of Discontinuance to remove the judgement, Council may request all overdue debts to be paid in full.

4.1.7.3 Council's collection agency will carry out the process for a Notice of Discontinuance at the request and approval of the rates team.

4.1.8 Sale of property to recover rates charges

- 4.1.8.1 When a ratepayer becomes overdue greater than three years, Council undertakes (via the collection agency) to recover outstanding rates through sale of the property under Chapter 10 Section 184 of the *Local Government Act 1999*.
- 4.1.8.2 A letter is issued to the ratepayer by the acting solicitors advising of Council's intention to proceed with sale of the property for unpaid rates.
- 4.1.8.3 If after one month of the date of the Chapter 10 letter no contact is received from the ratepayer, then the solicitor acting for Council will issue a Section 184 Notice to the ratepayer and the mortgagee, to seek payment in full of the outstanding rates.
- 4.1.8.4 If after one further month of the Section 184 Notice the ratepayer fails to contact Council or the solicitor, pay the outstanding rates in full, or enter a satisfactory payment arrangement, Council will appoint a real estate agent to undertake the sale process.
- 4.1.8.5 These proceedings can only be stopped, up to the commencement of the auction, by payment of the arrears and associated costs in full.

4.1.9 Write Offs and Fine Waivers

- 4.1.9.1 Fines may be requested to be written off where the ratepayer is experiencing financial hardship, did not receive their rates notice, the property has been sold, an error made by Council, or extenuating circumstances.
- 4.1.9.2 Any rates **overdue fine** waivers must be documented and authorised in the electronic Fine Waivers Journal Register for the appropriate financial year.
- 4.1.9.3 Any rates **legal costs** waivers or write offs must be documented and authorised in the electronic Legal Write Offs Journal Register for the appropriate financial year.
- 4.1.9.4 Any write offs or waivers of **rates charges** must be documented and authorised in the electronic Rates Write Offs Journal Register for the appropriate financial year.
- 4.1.9.5 Write offs and waivers must be investigated and authorised in compliance with delegations, and meet auditing standards.

4.2 Sundry Debtors

4.2.1 Sundry Debtor billing

4.2.1.1 Debtor's invoices are raised in the debtors system, at the electronic request of the relevant teams, assigned payment terms of 30 days from date of invoice and emailed to the debtor.

4.2.1.2 Statements are issued at the end of each month.

4.2.2 Sundry Debtor recovery process

4.2.2.1 Statement reminders are issued after 30 days to overdue debtors.

4.2.2.2 A demand letter is issued after 60 days overdue.

4.2.2.3 If the debtor fails to pay or contact council in response to the demand letter, the debt is referred back to the relevant team to determine if the debtor should be lodged with the collection agency to commence debt recovery.

4.2.2.4 Fines and interest are currently **not** charged on overdue sundry debtor invoices.

4.2.3 Payment arrangements

4.2.3.1 Debtors may make payment arrangements where applicable with either the relevant team or the rates team.

4.2.3.2 The collection agency can make suitable arrangements to pay, or refer the debt back to Council if outside prescribed parameters where referred.

4.2.4 Debt recovery legal process

4.2.4.1 Where the relevant team have difficulty recovering a debt, they can refer to the rates team for escalated recovery process, or request referral to the contracted debt recovery agency for commencement of legal action.

4.2.4.2 Failing recovery of the debt, the collection agency will proceed with legal action through the Magistrates Court Minor Civil Division, resulting in a court order for payment.

4.2.4.3 All legal costs and expenses incurred by Council from the recovery of outstanding debts may be charged to the debtor, and against the debtor's property, where legislation is applicable.

4.2.4.4 Sundry debtors are classed as a non-secured debt, except where other legislation has prescribed it as a *rates arrears debt*. This may result in the debt becoming irrecoverable.

4.2.5 Sundry Debt Write Offs and Waivers

4.2.5.1 The team manager of the relevant area may request that the sundry debt be written off, waived, or credited, and supply appropriate documented details with their electronic request.

- 4.2.5.2 Debts will only be waived if the debtor has been determined by the relevant team manager to be experiencing financial hardship.
- 4.2.5.3 Debts will only be written off if there is justifiable reasoning provided by the relevant team manager, and the debt recovery process has been exhausted and the debt determined as irrecoverable.
- 4.2.5.4 Requests are to be reviewed and approved by the Manager Rates, or other appropriate manager, in line with Council delegations.
- 4.2.5.5 Sundry debtor write offs and waivers must be documented and authorized in the electronic Sundry Debtor Write Offs and Credit Notes Register for the appropriate financial year, to meet auditing standards.

4.3 Insolvency

- 4.3.1 In South Australia, Council rates charges are secured against the property, however sundry debtors are classed as non-secured debts.
- 4.3.2 Insolvency is a situation where the liabilities of a person, or entity, exceed their assets. Employees may encounter circumstances where debtors may be unable to meet their financial obligations, including inability to pay debts when they become due, and may become insolvent.
- 4.3.3 This may include administration, liquidation, bankruptcy and repossession of the property by the mortgagee (bank).
- 4.3.4 Where this occurs for rates debts, the balance will be paid in full on settlement of any sale of property.
- 4.3.5 Sundry debts will require submitting a proof of debt with the liquidator.
- 4.3.6 If at the end of the insolvency process a part or no dividend is paid towards the debt, then the sundry debt balance would be required to be written off as irrecoverable.

4.3.7 Part X Debt Agreements

- 4.3.7.1 Council does not participate in Part X Debt Agreements.
- 4.3.7.2 Any correspondence from credit repair agencies, seeking Council to enter into an agreement to accept a cents in the dollar debt settlement, should be responded to advise that Council does not participate in in Part X Debt Agreements.
- 4.3.7.3 In South Australia, Council rates are a legislated charge secured against the property, and all rate charges, legal costs and fines, must be paid in full.

4.4 Records Management

- 4.4.1 Council employees should ensure they maintain accurate, complete, and up-to-date records of all communication with ratepayers and debtors.

- 4.4.2 All customer contact should be recorded in the pathway system and where applicable the debt recovery contractor portal, and correspondence to be registered on ECM.
- 4.4.3 Records may be required to be produced for any future debt recovery process, court proceedings through the court system, complaints or disputes, and/or freedom of information requests (FOI).

4.5 Complaints and Appeals

- 4.5.1 Customers not satisfied with the outcome of their complaint should be directed to contact the Ombudsman SA on 08 8226 8699 or Ombudsman@ombudsman.sa.gov.au
- 4.5.2 Complaints and appeals will be considered in accordance with Council's complaints and grievance procedures and Sections 270 and 271 of the *Local Government Act 1999*. A copy of the Complaints Handling Policy can be found at www.playford.sa.gov.au

5. Feedback

Your feedback on this policy is invited and can be directed to the Manager Governance via email to governance@playford.sa.gov.au or by calling the Customer Contact Team on 8256 0333

Administration use only

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2

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