

POLICY LOCATION	Finance	POLICY TITLE	Debtor Management
POLICY NUMBER	OP05	DATE ADOPTED	29/06/2022
REVISION NUMBER	1	REVISION DATE	29/06/2024

Purpose

This Policy defines the framework for the management of outstanding debts. The Policy aims to:

- Ensure the collection of debts is undertaken fairly, impartially, consistently, efficiently, effectively and in accordance with good governance
- Encourage any person, organisation or company having difficulty in paying an outstanding debt to contact the Council and make arrangements for a payment plan to pay the debt in a reasonable and manageable timeframe, and
- Ensure the collection of debt is consistent with the *Local Government Act 1989*, *Local Government Act 2020* and associated Regulations, Accounting Standards and recognised financial practices.

Scope

This Policy is subordinate to any Regulations in relation to debts and debtors.

The *Local Government Act 2020* establishes the law that applies to the declaration of rates, and the *Local Government Act 1989* provides for the payments of interest, interest on outstanding rates and the collection of overdue rates.

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, and
- Write-off of bad debts

This Policy does not cover:

- Fees and charges where no debt is created (for example, application fees which should be paid at the time of application and for which an invoice is not raised)
- Non-monetary debts and obligations (for example, outstanding conditions on permits)
- Fines and infringements raised under Council's Local Laws as governed by the *Infringements Act 2006*.
- State and federal grant income

This Policy includes but is not limited to:

- Rates
- Service fees (including Independence Support)
- Registration and application fees not paid at time of application.

Definitions

In this Policy –

“Bad Debts and Bad Debt Write-Off” – bad debts are debts which have been assessed as being uncollectable. When this assessment has been made, approval is sought to write off the debt which results in the debt being taken out of the Council’s Balance Sheet and the write-off is recorded as an expense.

“Debts and Sundry Debts” – includes all debts (other than rates) in relation to Council services and other charges.

“Debt Owner” – refers to the Department or Unit within Council with responsibility for the income stream associated with the debt. The Debt Owner has overall responsibility for the management of the related debt.

“Doubtful Debts” – is an accounting term used to describe debts which have been assessed as likely to become a bad debt. Under Accounting Standards an assessment must be made as to the collectability of debts, and a provision for doubtful debts must be created for debts which are unlikely to be collectable.

“Penalty Interest on Unpaid Debts” – refers to interest which may be charged on unpaid rates and charges in accordance with section 172 of the *Local Government Act 1989*.

“Rates” – includes any and/or all rates and charges on rateable land as described under Part 8 of the *Local Government Act 1989*. Rates also includes any government-imposed charge or levy which Council is required to collect on behalf of the Government.

“Waiving of Debt” – Council may waive (forgive) debt which is collectable in extraordinary circumstances.

Roles and Responsibilities

Debt Owner

The Debt Owner is responsible for:

- Ensuring invoiced amounts are correct
- Providing assistance to the Finance Department in the follow up of overdue debts (in some cases all debts are to be followed up by the debt owner)
- Liaising with the Finance Department in terms of the status of the debts (for example, likelihood of recovery)
- Documenting any discussions with debtors in relation to outstanding monies and providing the documentation to the Finance Department
- Ensuring further credit is not given to the debtor with overdue debts unless there is a specific regulation (for example, Independence Support)
- Gaining approval from the relevant Director for any debt write-off and advising the Finance Department accordingly.

Finance Department

In relation to debt collection the Finance Department is responsible for:

- Sending out invoices
- Recording debts in the financial systems
- Recording payments in the financial systems
- Sending reminder letters on overdue debts (other than those debts related to fines and infringement notices)
- Follow up on overdue debts (with assistance from the Debt Owner)
- Determining the 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 and/or debt write-off
- Calculating the provision for doubtful debts
- Writing-off debts in the financial systems after written approval is received from the Debt Owner.

General Principles – Applicable to All Debts

The general principles described in this section are applicable to all debts and debtors, but they also need to be considered in conjunction with specific requirements in relation to debtor types.

1. Payment Terms

Council's payment terms are 30 days of the invoice being issues unless specific regulations apply.

2. Invoicing

A debt is created when the service is provided or when the invoice is created (whichever occurs first).

Unless there is a regulation or accepted practice to the contrary, an invoice should be produced and payment requested at the time, or in advance, of the service being provided. This practice reduces the risk of non-payment. However, it is recognised there will be some instances where invoicing and payment in advance is not practicable.

The Finance Department is the only Department with the authority to generate a Council invoice. Debtor invoice requests should be made by email to the Senior Finance Officer.

3. Reminder Notices

Except as specified in the specific debtor requirement section, if payment of an invoice has not been received within 30 days after the payment due-by date, a reminder notice will be sent out by the Finance Department.

The reminder notice will request payment within 30 days and advise of any penalties that may apply to non-payment. The reminder notice will encourage the debtor to contact the Council to discuss any concerns with debt or reasons why the invoice has not been paid.

Reminder phone calls and other debt follow up procedures may be employed by the Debt Owner or the Finance Department.

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

If payment is not received in the required timeframe after the final notice the debtor may be referred to a debt collection agency.

Sufficient records are to be maintained for any contact or follow up throughout the process.

4. Payment Arrangements

Any person, organisation or company who is having difficulty in paying a debt can make an application under Council's Rates and Charges Financial Hardship Policy.

The Finance Department will consider requests for a personal payment arrangement and may agree upon a payment plan.

Details of the payment plan must be recorded, and payments monitored. Any defaults will be followed up by the Finance Department and a new payment plan may be made.

Payment plans will be negotiated to repay debt over a maximum of 2 years, and wherever possible within the current financial year. Any new rates, fees or charges incurred by the debtor are not subject to the payment plan and are to be treated separately.

If a debtor defaults on the payment plan by missing 2 or more consecutive payments, debt recovery processes may be commenced unless the debt is governed by regulations which prohibit debt collection.

5. Interest Penalties

The Council will charge interest on unpaid rates and charges in accordance with section 172 of the *Local Government Act 1989*.

The penalty interest rate is fixed under section 2 of the *Penalty Interest Rates Act 1983* as applied on the 1 July.

The Council will charge penalty interest on sundry debtors which are overdue by more than 60 days unless the charging of interest is prohibited by legislation or is excluded under the 'Requirements in Relation to Specific Types of Debtors' section of this Policy.

6. Continuation of Provision of Services where Debt is Overdue

In some cases, specific regulations, or funding agreements (for example, Independence Support), require the Council to supply services regardless of outstanding debts.

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 60 days old, and no payment arrangement has been agreed.

In these circumstances approval from the relevant Director is required to continue the provision of services.

7. Financial Hardship

Under section 170 and 171A of the *Local Government Act 1989*, the Victorian Parliament has given 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's Rates and Charges Financial Hardship Policy is available on its website:
www.buloke.vic.gov.au

8. Debt Recovery

Unless there is a specific regulation or other requirement set out under the 'Requirements in Relation to Specific Types of Debtors' section of this Policy or a payment plan has been agreed in accordance with the Payment Arrangements section of this Policy, Council will refer a debt which is overdue by 90 days or more to a debt collection agency.

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

The Finance Department will advise the Debtor Owner of the intention to refer the debt to a debt collection agency.

Generally, only debts over \$100 will be referred to a debt collection agency. In the case of debts under \$100, the debt will be written off in accordance with clause 10 and clause 11, and the debtor will be advised they are no longer eligible to receive the service until such time as the debt is paid.

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

If the initial action by a debt collection agency does not result in payment of the debt, the Finance Department will determine if it is financially beneficial to pursue legal recovery.

9. Provision for Doubtful Debts

This clause does not apply to rates debtors.

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

The Finance Department will maintain a provision for doubtful debts based on the following factors:

- Debtor balances exceeding 90 days
- Historical loss rate based on contracted debt collection data over the last 5 financial years

10. Bad Debts

This clause does not apply to rates debtors.

If debts are over 1 year old with no payment plans in place, they will be considered to be bad debts.

After all avenues to collect the debt have been exhausted, approval may be sought to write-off a bad debt.

The Finance Department will refer all bad debts over 1 year old to the relevant Debt Owner's Director for approval.

All approved write-offs will be recorded in the nominated accounts by the Finance Department.

If a debt is written off, and a client seeks to have further service provided at a future date, the written off debt will be reinstated and the client will be required to pay the debt before the service is reinstated.

11. Approval to Write-off Bad Debts and/or Penalty Interest

Following Debt Owner Director approval, a bad debt of up to \$500 may be written off by the Manager Finance.

A bad debt greater than \$500 and less than \$5,000 may be written off by the Director Corporate Services and one other Director.

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

Penalty interest associated with sundry debtors and rates debtors may be written off or waived by the Manager Finance or the relevant Director in accordance with the above-mentioned limits.

12. Correction of Invoicing and Rating Errors and Issuing of Credit Notes

In the event it is discovered that an error has been made and a rate payer or debtor has been incorrectly undercharged, the Council will correct the error immediately for future billing periods and invoices and will not attempt to apply the correct fee or charge retrospectively. This includes supplementary valuations.

In the event it is discovered that an error has been made and a ratepayer or debtor has been incorrectly overcharged, the Council will correct the error immediately for current and future billing periods and invoices and will apply the correct fee or charge retrospectively to 1 July of the financial year in which the error was discovered.

Upon written application from the ratepayer or debtor who has been incorrectly overcharged, the Director Corporate Services will consider the merits of the matter and may apply the correct fee or charge retrospectively (for example, in the case where an error which had previously been brought to the Council's attention and not corrected).

Any credit notices or other adjustments to amounts owed due to a correct of amounts invoiced or rates levied must be approved by an appropriate delegate in accordance with the Council's financial delegations.

13. Refunds and Waiving of Debt

There may be circumstances where refunds may be due because the service was not provided, or the service was provided in an unsatisfactory manner. The refund must be approved by the relevant Manager.

There may also be special circumstances where the Council may waive a debt as a goodwill gesture. An example may be where a debtor has suffered severe personal hardship. In such a circumstance the debt may be written off as follows:

- A debt of up to \$500 may be written off by the Manager Finance
- A debt of greater than \$500 and less than \$5,000 may be written off by the relevant Director and one other Director
- A debt of greater than \$5,000 may be written off by the Chief Executive Officer.

Requirements in Relation to Specific Types of Debtors

Rates

Section 180 and section 181 of the *Local Government Act 1989* outlines the Council's powers in relation to overdue rates and charges. Annual rate notices are sent out in late August or early September which are due for payment in full by 15 February each year.

Ratepayers who elect to pay by quarterly instalments will receive a separate notice for the second, third and fourth instalments. The four instalments are due on 30 September, 30 November, 28 February, and 31 May respectively.

A reminder notice is sent 14 days after the third instalment date (28 February) and 10 days after the fourth instalment date (31 May). The reminder notice includes unpaid amounts from previous periods and interest payable.

Each reminder notice states that payment must be made within 14 days. In the case of the fourth instalment, payment must be made on or about 28 June.

A final notice is sent 14 days after the reminder notice for the fourth instalment (in first week of July). The final notice states that payment must be made in 10 days.

If the rate debt is still outstanding after this period, the debt will be referred to a debt collection agency.

Council may instruct the agency's solicitors or its own solicitors to take the following steps to collect the debt:

1. Debt collection agency urgent letter will be issued
2. Debt collection agency final notice will be issued
3. Application will be made to the Magistrates Court for a Complaint to be issued
4. Pre-judgement warning letter will be sent to the rates debtor
5. Application will be made to the Magistrates Court for final judgement
6. Pre-warrant warning letter will be sent to the rates debtor
7. Application will be made to the Magistrates Court for a warrant to be issued
8. Matter referred to the Supreme Court (if required).

Debt collection is an expensive process, and the full cost of any action is passed onto the rates debtor and becomes a charge against the property.

Under the *Local Government Act 1989* unpaid rates remain as a charge against the property and must be paid first when a property is sold. Historically the Council has not been successful in recovering rates under the allowed provisions. Consequently, a provision for doubt debts is maintained in regard to rates debtors outside of the Local Government Authority industry average.

The Finance Department will maintain a provision for doubt rates debts based on the following factors:

- Debtor balances exceeding 3 years
- Historical loss rate based on section 181 of the *Local Government Act 1989* over the last 5 financial years

Sale of Land to Recover Rates

Under section 181 of the *Local Government Act 1989*, the Council has the power to sell land to recover unpaid rates and charges if the rates and charges have been unpaid for more than 3 years.

The benefit of selling the land is that Council will be able to recover all monies owed to it, and furthermore the property becomes a revenue producing property again – that is, the new owner is a new ratepayer.

Council will not exercise the power it has under section 181 of the *Local Government Act 1989*:

- Until all other relevant requirements of this Policy (to recover the unpaid rates and charges on the land in question) have been taken
- If there is a dwelling constructed on the land which is currently being used as a residence additional 24 months grace will be provided
- If the land is land to which a payment plan is currently in place with the rate payer
- If an application has been made and granted under the Council's Rates and Charges Financial Hardship Policy.

Progress of debt collection under section 181 of the *Local Government Act 1989* must be passed by resolution of the Council.

Independence Support Fees

When an Independence Support client is not paying the required fee, then a review or reassessment of the client's ability to pay must occur. Payment arrangements or a decision to waive fees in accordance with the Home and Community Care guidelines will be introduced.

Clients who have the ability to pay would be notified that, unless payment is made, a notice to inform a withdrawal of service will occur. If no payment is received, then a decision to cease service provision will be made by Director Community Services.

References

- *Local Government Act 1989*
- *Local Government Act 2020*
- *Infringements Act 2006*
- *Penalty Interest Rates Act 1983*
- Buloke Shire Council Rates and Financial Hardship Policy

APPENDIX A: DEBTOR MANAGEMENT PROCESS CHARTS

GENERAL DEBTORS





RATES AND CHARGES

Reminder Notices

- Reminder notices to be sent 14 days after the 3rd instalment date and 10 days after the 4th instalment date.
- Reminder notice to state that payments must be made within 14 days

Final Notice

- Final notice is sent out 14 days after the reminder notice.
- Final notice states that payment must be made within 10 days

Debt Collection Referral

- If the debt is still outstanding after this period, the debt will be referred to a debt collection agency
- Ongoing monitoring to be completed by Council staff over debt collection instructions

Section 181

- If rates debt remains unpaid for more than three years, Council can proceed to complete sale of land to recover unpaid rates and charges.