

# Debt Recovery and Financial Hardship Policy

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## 1. Policy Objectives

To provide a framework for actively managing the level of outstanding debt to the Council, giving due regard to the following:

- Sensitivity to the financial affairs of customers
- Work with customers to achieve flexible alternatives to legal action
- Minimise additional costs incurred by customers
- Prudent assessment of financial hardship applications
- Compliance with legislative requirements, including the Local Government Act and privacy laws
- Industry best practice for debt management

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## 2. Scope

This policy extends to all debts to council and includes rates and all other accounts receivable amounts.

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## 3. Notification of Monies Due

All payment notifications will clearly communicate:

- the person responsible for payment
- details of the amount due
- when payment is due
- payment options
- how to contact council with any questions in relation to the amount due

### **Rates**

Rate Notices and rate instalment reminder notices are issued one month ahead of the respective due dates.

If a rates instalment is overdue, an overdue notice will be issued during the ensuing month for any balance that remains outstanding after the respective due dates.

### **Invoices**

Invoices are issued at the time they are raised (date of invoice). Monthly statements are issued for any accounts that have a balance outstanding at month end.

### **Electronic Billing**

Electronic billing and payments help to make sure that bills are received and payments are made on time, including for customers (ratepayers) living or travelling outside the local government area, and allow ratepayers to schedule payments and avoid going in person to Council offices during business hours.

Ratepayers are encouraged to register to receive their rates notice electronically

On –line delivery of other invoice types is being introduced as new functionality becomes available.

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## 4. Payment Due Dates

All monies owed to the Council will have a due date for payment.

### Rates and Charges

Rates and Charges have instalment due dates that are prescribed under Section 562 of the Local Government Act (1993):

- a) if payment is made in a single instalment, the instalment is payable by 31 August; and
- b) if payment is made by quarterly instalments, the instalments are payable by 31 August, 30 November, 28 February and 31 May.

### Invoices

All other accounts have a due date 14 days from the date of invoice.

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## 5. Customer Contact

It is recognised that personal contact with customers to discuss any outstanding accounts is a more amicable approach to debt recovery than legal action.

All customer contact will be made in accordance with the Office of Local Government, Best Practice procedures for contacting ratepayers (Appendix C)

The Council will make every reasonable effort to contact a customer with an overdue account before instigating any legal recovery action. Contact efforts will include:

- using known address, telephone and email details as recorded in billing system
- searching other Council databases for any alternative contact details
- internet search to find contact details
- company search where appropriate

All contact attempts and search efforts to be recorded in notes against the respective account.

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## 6. Flexible Payment Arrangements

It is recognised that from time to time, customers will face difficulties, such as loss of employment or illness. Council needs to take a fair and flexible approach to debt management.

If a customer is unable to pay an amount owed by the due date, they are encouraged to make alternative payment arrangements.

Allowing customers to make small, consistent payments helps Council obtain rates and charges on time and helps customers manage their budget more easily.

Flexibility is offered by the following means:

- Extension of time to pay
- Alternative payment arrangement involving regular manageable payments.(Bill smoothing).

## 6.1. Formalising Alternative Arrangements

Any alternative payment arrangements may be negotiated over-the-phone or in writing.

If over the phone, the Council will note the arrangement on the customer's account.

Written confirmation will be provided to the customer for any agreed payment arrangements. The confirmation will include details of:

- The amount of overdue debt
- The duration of the payment plan
- The amount of each planned payment
- The due date for each planned payment
- Who to contact if the customers circumstances change
- Details of any interest charges that may be accruing during the payment arrangement

The Council may follow up with customers about missed payments in accordance with any agreement.

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## 7. Payment Options

Ongoing advances in technology are making it easier to provide a variety of payment options for customers.

Council provides a number of payment options for the convenience of customer including but not limited to:

- On-line payments
- BPAY and/or BPOINT
- Credit card payments
- Direct debit
- Payment in person by cash, cheque, or EFTPOS
- Payment by mail with cheque

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## 8. Interest Charges

Interest will be applied to any outstanding Rates and Charges in accordance with the applicable legislation at the rate adopted by the Council.

Interest may also be applied to other outstanding accounts that exceed trading terms.

Penalty interest charges may be written off or reduced if the applicant complies with their payment arrangement.

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## 9. Cessation of Service

The continuation of a service may be stopped if the respective account falls outside of normal trading terms. The Council will however provide the customer with the opportunity to rectify the overdue account before cancelling any service.

This provision does not extend to rates and charges which are a secured debt against the property.

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## 10. Pensioners

A number of concessions are available to eligible pensioners. (Refer to Pensioner Rates Policy).

Legal proceedings will not be taken against pensioners.

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## 11. Measuring Performance

A key indicator of Council financial performance is outstanding rates and charges.

The local government performance indicator for outstanding rates and charges is presented as a ratio. This ratio reflects the impact of uncollected rates and charges on liquidity and the efficiency of council's debt recovery practices by comparing outstanding amounts to the total amount of rates and charges levied by each council.

The Office of Local Government has set councils a performance benchmark of:

- less than 5% for councils in city and coastal areas, and
- less than 10% for other regional and rural areas.

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## 12. Legal Recovery

Legal proceedings for recovery of overdue amounts will only be used as a last resort and are subject to the following criteria:

- Rates and charges must have at least two full instalments outstanding
- Other debts must be overdue for greater than 90 days
- The amount of the debt must be more than double the legal costs that would be incurred (in other words, the legal costs must not represent more than 50% of the debt amount)

Legal proceedings will commence with the issue of a Letter of Demand and continue with the issue and service of a Statement of Claim (Summons).

The Council will make best efforts to contact the owner prior to issuing and servicing a Statement of Claim at the Court, in order to minimise any legal costs that the customer may incur.

Contact efforts to be attempted may include:

- Contact by telephone
- Email
- Letter

- Internet search
- Attend the property in person

If the debt remains unpaid after the date stated on the Statement of Claim, then one or more of the following recovery actions may ensue:

- Judgement
- Writ
- Examination Summons
- Rent for Rates (Section 569 of the Local Government Act)
- Garnishee
- Wind up proceedings
- Bankruptcy
- Sale of Land (Section 713 of the Local Government Act)
- Any other action available through the legal system deemed appropriate in the circumstances.

The Council may engage a mercantile agent or law firm to conduct all or part of any legal proceedings on behalf of the Council.

Any costs incurred by the Council in connection with legal proceedings will be added to the outstanding account.

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## 13. Financial Hardship

The Council recognises that there may be exceptional circumstances when a customer may at times experience difficulty in paying the monies owed to the Council. A customer may be eligible for assistance in the form of:

- Extension of due date
- Alternative payment arrangements
- Write off or reduce accrued interest
- Waive, reduce or defer whole or part of the debt

### 13.1. Payment Arrangements

Section 564 of the Act provides for the Council to accept payment or rates and charges due and payable by a person in accordance with an agreement made with the person and also to write off or reduce interest accrued on rates and charges. Details of payment arrangements are outlined in section 6 of this policy.

### 13.2. Interest Waiver

Section 567 of the Act provides for the Council to write off accrued interest on rates or charges payable by a person if, in Council's opinion the reasons that the person was unable to pay rates or charges when they became due and payable were beyond the person's control, or that the person is unable to pay accrued interest for reasons beyond their control, or that the payment of the accrued interest would cause the person hardship.

### 13.3. Change in Land Value

Section 601 of the Act provides for ratepayers who incur a rate increase in the first year following a revaluation of land values, to apply to Council for the rate relief, if the increase in the amount of rates payable would cause them substantial hardship.

In such circumstances, the Council has the discretion to waive reduce or defer payment of the whole or any part of the increase in the amount of the rate payable for such period and subject to such conditions that the Council deems appropriate.

### 13.4. Financial Hardship Assessment Criteria

A customer seeking consideration of financial hardship must make written application to the Council with supporting evidence. The application should contain but is not limited to the following information:

- The address and contact details of the customer
- The reason for the financial hardship

In instances where the customer is seeking consideration of waiving all or part of the actual debt, the following additional financial information is required:

- Details of all income including wages, benefits and any other sources of income
- Details of all expenditure
- Details of all bank accounts and balance of same
- Details of all credit cards and balance of same
- Details of any other investments
- Details of last Tax Assessment Notice

It is also generally requested that any request for financial hardship consideration be supported by a statement from a financial advisor or accountant.

A determination under this policy will be assessed by a delegated officer of the Council.

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## 14. Applicable Legislation

The administration of debt recovery and financial hardship is governed by the following:

- Local Government Act 1993
- Local Government General Regulations 2005 (NSW)
- Civil Procedure Act 2005 (NSW)
- Office of Local Government, Debt Management and Hardship Guidelines (November 2018)
- NSW Government Revenue Raising Manual (2007)
- ACCC – Debt Collection Guidelines 2016
- Other relevant legislation and regulation

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## A. Definitions

### **Act**

Local Government Act, 1993 (NSW)

### **Agent**

A person who has the express or implied authority to undertake collection activity on behalf of a council in circumstances where a debt has not been sold or assigned

### **Authorised representative**

A person such as a financial counsellor, solicitor, financial advisor, carer, trustee or guardian who has been authorised by a ratepayer to act on their behalf

### **Capacity to pay**

A payment amount or plan that takes account a ratepayer's personal circumstances including, but not limited to: a) total disposable income and current financial commitments b) number of children and/or other dependents of the ratepayer, or c) advice from an accredited financial counsellor

### **Costs**

Amounts incurred by a council in recovering overdue debts (e.g. Court, interest and professional costs) which can be legally recovered from the ratepayer

### **The Council**

The elected representatives, or councillors, who form the governing body of a local council.

### **Council policy**

Policy created and approved by the General Manager of a council and/or the elected body

### **Credit listing**

The listing of an unpaid debt on a person's credit report

### **Credit report**

Any record or information that:

- is being or has been prepared by a credit reporting agency
- has any bearing on an individual's
  - – eligibility to be provided with credit
  - – history in relation to credit, or
  - – capacity to repay credit, or
- is used or has the capacity to be used as a factor in establishing an individual's eligibility for credit.
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**Debt collector**

A person collecting a debt in the course of a business, including councils, agencies collecting a debt on a council's behalf and independent collection agencies

**Debt Recovery Procedure**

A council procedure that defines the processes to implement to meet the objectives of a council's debt recovery policy

**Default Judgment**

In cases where the ratepayer does not respond to a Summons issued to them, the Court may make a default judgment whereby it will make a decision without having the matter heard in Court

**Financial counsellor**

A person who provides information, support and advocacy to assist people in financial difficulty

**Garnishee**

Legal document issued by the court ordering third parties who hold funds on behalf of the defendant (eg. an employer) to pay funds to a council. Garnishees can be issued against a defendant's wages, bank accounts or other third party holding funds on behalf of the defendant.

**Hardship**

Hardship is any situation where an individual is having difficulty paying legally owed debt. This can result from life changes (for example, because of illness, unemployment or changed financial circumstances) restricting the short-term capacity to pay

**Judgment debt**

A debt confirmed by an order or judgment of a court

**Notice of Demand**

Demand letter from a council or a council's legal recovery representative issued in accordance with the Australian Competition and Consumer Commission and the Australian Securities and Investments Commission guidelines

**Penalty interest**

Interest raised in accordance with the Local Government Act and as adopted by a council in its Revenue Policy

**Pensioner**

An eligible pensioner as defined in clause 134 of the Local Government (General) Regulations 2005

**Rateable valuation**

Land value used for rating purposes i.e. net of allowances allowed by the Valuation of Land Act 1916 and s.585 Local Government Act

**Reasonableness**

Assessed according to an objective standard, taking into account all relevant circumstances

**Regulation**

Local Government (General) Regulation (2005)

**Rent for rates**

Section 569 of the Local Government Act allows a council to order tenants of properties with overdue rates to pay rent to a council in lieu of unpaid rates, under specific circumstances

**Sale of Land**

In accordance with s713 of the Local Government Act, a council has the authority to sell land which has any unpaid rates or charges for more than 5 years, or 1 year for vacant land, where the owing debt exceeds the land valuation

**Write off**

The accounting procedure for cancelling a debt that is no longer collectable resulting in its removal from the ratepayer's balance sheet account

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## B. Local Government Act and regulations - excerpts

The *Local Government Act 1993* (the Act) provides the legal framework for how councils in NSW may set and levy rates and charges and recover debt from overdue rates and charges. This is supported in provisions in the *Local Government (General) Regulation 2005*. Some relevant excerpts are set out in the tables below.

Councils must take a range of other laws into account when undertaking these activities. This Guideline does not capture all other legislation, in relation to which councils should take their own advice.

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### Local Government Act 1993

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#### Section 546 How is a rate or charge levied?

- (1) A rate or charge is levied on the land specified in a rates and charges notice by the service of the notice.
- (2) The notice may be served at any time after 1 July in the year for which the rate or charge is made or in a subsequent year.
- (3) A notice that is required to effect an adjustment of rates or charges may be served in the year for which the rate or charge is made or a subsequent year.
- (4) The notice may include more than one rate, more than one charge and more than one parcel of land.
- (5) It is not necessary to specify the name of the rateable person or the person liable to pay the charge in the notice if the council does not know the person's name.

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#### Section 562 Payment of rates and annual charges

- (1) Annual rates and charges may be paid in a single instalment or by quarterly instalments.
- (2) If payment is made by quarterly instalments, each instalment is to be a quarter of the rates or charges, disregarding any remainder, together, in the case of the first instalment, with the remainder. However, if the amount of an instalment, other than the first instalment, is not a multiple of 10 cents, the amount of each instalment in excess of a multiple of 10 cents is to be subtracted from that instalment and added to the first instalment.
- (3) Except as provided by subsection (4):
  - (a) if payment is made in a single instalment, the instalment is payable by 31 August, and
  - (b) if payment is made by quarterly instalments, the instalments are payable by 31 August, 30 November, 28 February and 31 May.
- (4) If the rates and charges notice is not served by 1 August:
  - (a) the single instalment (if payment is made in a single instalment), or
  - (b) the first 2 instalments (if payment is made by quarterly instalments), is or are payable by 30 November, or by the day that is 30 days after service of the notice, whichever is the later.
- (5) On or before 31 October, 31 January and 30 April, a council must send reminder notices (to be sent separately from the rates and charges notice) to each person whose rates and charges are being paid by quarterly instalments.

### **Section 563 Discount for prompt payment in full**

A council may discount the amount of a rate or charge to such extent as it determines if the whole of the discounted amount of the rate or charge is paid by a date nominated by the council

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### **Section 564 Agreement as to periodical payment of rates and charges**

- (1) A council may accept payment of rates and charges due and payable by a person in accordance with an agreement made with the person.
  - (2) The council may write off or reduce interest accrued on rates or charges if the person complies with the agreement.
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### **Section 566 Accrual of interest on overdue rates and charges**

- (1) Interest accrues on rates and charges that remain unpaid after they become due and payable.
  - (2) Interest accrues on a daily basis.
  - (3) The rate of interest is that set by the council but must not exceed the rate specified for the time being by the Minister by notice published in the Gazette.
  - (4) Accrued interest is, for the purpose of its recovery, taken to be a rate or charge which is due and payable.
  - (5) Interest continues to accrue on unpaid rates or charges even though judgment for payment of the rates or charges may have been obtained in a court. Interest is not payable on the judgment debt, despite any other Act.
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### **Section 567 Writing off of accrued interest**

The council may write off accrued interest on rates or charges payable by a person if, in its opinion:

- (a) the person was unable to pay the rates or charges when they became due and payable for reasons beyond the person's control, or
  - (b) the person is unable to pay the accrued interest for reasons beyond the person's control, or
  - (c) payment of the accrued interest would cause the person hardship.
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### **Section 570 Transfer of land in payment of rates or charges**

A council may accept a transfer of the land in respect of which rates or charges are or accrued interest is due and payable in full satisfaction of the rates, charges or accrued interest.

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### **Section 577 Extension of concession to avoid hardship**

- (1) If a council considers it proper to do so to avoid hardship, the council may, by order, direct that:
  - (a) a person specified in the order:
    - (i) who occupies a dwelling as his or her sole or principal place of living, which dwelling is the sole or principal place of living of an eligible pensioner, and
    - (ii) who is jointly liable with that eligible pensioner or with that eligible pensioner and one or more other persons in respect of the land on which that dwelling is situated, and
    - (iii) in respect of whom a reduction of rates or charges would not, if that person were solely liable in respect of that land, be required to be made under this Division, or

- (b) any person belonging to a class of persons specified in the order, being persons referred to in paragraph (a), is, on and from the effective date of the order, taken, for the purposes of this Division, to be or to have been an eligible pensioner.
- (2) If a council considers it proper to do so to avoid hardship, the council may, by order, direct that:
- (a) an eligible pensioner specified in the order who, although not liable, or although liable jointly with one or more other persons, to do so, has, for such period as, in the opinion of the council, warrants the making of an order under this section in respect of that person, paid the whole of the rates or charges for the land on which that dwelling is situated or is, in the opinion of the council, likely to pay the whole of the rates or charges in circumstances that in the opinion of the council warrant the making of an order under this subsection, or
  - (b) any person belonging to a class of persons specified in the order being persons referred to in paragraph (a), is, on and from the effective date of the order, taken, for the purposes of this Division, to be or to have been the person solely liable in respect of the land on which the dwelling is situated.
- (3) An order under this section has effect according to its tenor.
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#### **Section 578 When does an order under sec 577 take effect?**

- (1) An order under section 577 takes effect (or is taken to take effect) on such date as is specified in the order (the effective date), being a date in the year commencing on 1 July during which the order is made, whether or not that date is before or after the date on which the order is made.
  - (2) If a council makes an order under section 577 that is taken to take effect on a date that is before the date of the making of the order, the council may, in that order or in a subsequent order, give such directions as to refunding any rates or charges that have been paid and the charging of interest on overdue rates or charges and as to such other matters as the council thinks fit.
  - (3) An order under subsection (2) has effect according to its tenor.
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#### **Section 579 When and how is an application made for the purposes of this Division?**

- (1) An application under this Division is to be made within the time and in the manner prescribed by the regulations.
  - (2) If no such regulations are in force, the application is to be made within the time and in the manner fixed by resolution of the council and, if an application is made for an order referred to in section 577, as the council may require.
  - (3) If, pursuant to an application made under this Division, a reduced rate or charge applies, the council may, if the eligibility of the applicant for a reduction in a subsequent rate or charge is verified by the council as prescribed by the regulations, reduce the subsequent rate or charge without requiring a further application under this Division.
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#### **Section 580 Variation by regulation of amounts of reductions**

The amount by which a rate or charge is to be reduced in accordance with this Division may be varied from time to time by the regulations.

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#### **Section 582 Abandonment of pensioners rates and charges**

A council may waive or reduce rates, charges and interest due by any person prescribed by the regulations who is in receipt of a pension, benefit or allowance under the Social Security Act 1991 of the Commonwealth.

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### **Section 583 Writing off of pensioners rates and charges**

- (1) A council is to write off amounts of rates, charges and interest which are reduced or waived under this Division.
- (2) A council may not take proceedings to recover an amount so written off unless the amount has been written off because of a wilfully false statement in an application under this Division or except as provided by section 584.

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### **Section 585 Who may apply for postponement of rates?**

The rateable person for land described in any of the following paragraphs may apply to the council for a postponement of rates payable for the land in the current or following rating year (or in both years):

- (a) a parcel of land on which there is a single dwelling-house used or occupied as such and which is zoned or otherwise designated for use under an environmental planning instrument for the purposes of industry, commerce or the erection of residential flat buildings, not being land referred to in paragraph (b) or (c),
- (b) a parcel of land (which may comprise one or more lots or portions in a current plan) on which there is a single dwelling-house used or occupied as such and which is zoned or otherwise designated under an environmental planning instrument so as to permit its subdivision for residential purposes, not being land referred to in paragraph (c),
- (c) a parcel of rural land (which may comprise one or more lots or portions in a current plan) which is zoned or otherwise designated under an environmental planning instrument so as to permit its use otherwise than as rural land, or its subdivision into two or more lots or portions, one or more of which has an area of less than 40 hectares.

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### **Section 595 Rates to be written off after 5 years**

- (1) If 5 years have elapsed since the commencement of a rating year for which part of the rates levied on land have been postponed under this Division, the part postponed and any interest accrued on that part must be written off by the council.
- (2) Nothing in this section affects the right of the council to recover rates and interest, even though they have been written off under this section, if it subsequently appears to the council that they should not have been written off.

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### **Section 601 Hardship resulting from certain valuation changes**

- (1) A ratepayer who, as a consequence of the making and levying of a rate on a valuation having a later base date than any valuation previously used by a council for the making and levying of a rate, suffers substantial hardship, may apply to the council for relief under this section.
- (2) The council has a discretion to waive, reduce or defer the payment of the whole or any part of the increase in the amount of the rate payable by the ratepayer in such circumstances, for such period and subject to such conditions as it thinks fit.
- (3) An applicant who is dissatisfied with a council's decision under this section may request the council to review its decision and the council, at its discretion, may do so.

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### **Section 710 Service of notices on persons**

- (1) A notice required by or under this Act to be served on a person may be served as provided by this section.
- (2) The service may be:
  - (a) personal, or

- (b) by delivering the notice at or on the premises at which the person to be served lives or carries on business, and leaving it with any person apparently above the age of 14 years resident or employed at the premises, or
  - (c) by posting the notice by prepaid letter addressed to the last known place of residence or business or post office box of the person to be served, or
  - (d) by transmitting the notice by facsimile transmission to a number specified by the person (on correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent, or
  - (d1) by transmitting the notice by electronic mail to an email address specified by the person (on correspondence or otherwise) as an address to which electronic mail to that person may be transmitted, or
  - (e) by fixing the notice on any conspicuous part of the land, building or premises owned or occupied by the person, or
  - (f) in the case of an offence involving a vehicle, by attaching the notice to the vehicle, or
  - (g) if the person to be served maintains a box at a document exchange established in New South Wales, by depositing the notice in that box or leaving it at another such exchange for transmission to the first mentioned exchange for deposit in that box.
- (2A) Subsection (2) (d1) does not authorise a notice to be transmitted to a person by electronic mail unless the person has requested the council, in writing, that notices of that kind be transmitted to the person by electronic mail, and has not subsequently withdrawn the request.
- (2B) A person's request under subsection (2A) is taken to have been withdrawn in relation to a particular kind of notice only if the person has informed the council, in writing, that notices of that kind are no longer to be transmitted to the person by electronic mail.
- (2C) While a person's request under subsection (2A) has effect in relation to a particular kind of notice, the address to which notices of that kind are to be transmitted is:
- (a) the email address indicated in the request, or
  - (b) if the person subsequently directs the council, in writing, to transmit notices of that kind to a different email address, that different address.
- (3) If a notice is deposited in a box, or left at a document exchange, service of the notice is, until the contrary is proved, taken to be effected 2 days after the day on which the notice is so deposited or left.
- (4) In addition to the means of service prescribed by subsection (2):
- (a) in any case where the person to be served is, or after inquiry appears to be, absent from New South Wales, the service may be on the agent of that person by any of the means prescribed by subsection (2) (a), (b), (c) or (d), and
  - (b) in any case where the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the council, service by the council may be by advertisement in the approved form published in:
    - (i) a newspaper circulating in the area or part of the area in which the land, building or premises are situated that is published in print form at intervals not exceeding 26 days, or
    - (ii) a manner determined by the council having regard to the object of bringing notices to the attention of owners in cases of that kind, and
  - (c) in the case of the service of a rates and charges notice, the service may be effected by delivering the notice to the premises at which the person to be served lives or carries on business and depositing it in a box or receptacle at, on or in the proximity of those premises that is provided, used or designed for the reception of letters addressed to that person.
- (5) The notice may be addressed by the description of "rateable person" or "owner" or "occupier" of the land, building or premises (naming or otherwise sufficiently indicating the same) in respect of which the notice is served, and without further name or description.

- (6) The notice may be wholly printed, wholly written or partly printed and partly written.
- (7) If a notice has been served by any of the means prescribed by this section, all inquiries required under this section are taken to have been made, and the service is conclusive evidence of them.
- (8) Proof by affidavit or orally that a notice has been posted, or its transmission by electronic mail has been initiated, in accordance with this section is conclusive evidence of service.
- (9) For the purposes of this section, a justice of the peace is authorised to take and receive an affidavit, whether any matter to which the affidavit relates is or is not pending in any court.

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### **Section 713 Sale of land for unpaid rates and charges**

- (1) For the purposes of this Division, a rate or charge is overdue if:
  - (a) in the case of vacant land, it has remained unpaid for more than one year, or
  - (b) in the case of any other land, it has remained unpaid for more than 5 years, from the date on which it became payable.
- (2) A council may, in accordance with this Division:
  - (a) sell any land (including vacant land) on which any rate or charge has remained unpaid for more than 5 years from the date on which it became payable, and
  - (b) sell any vacant land on which any rate or charge has remained unpaid for more than one year but not more than 5 years from the date on which it became payable, but only if:
    - (i) the council obtains a valuation of the land from the Valuer-General, and
    - (ii) the total amount of unpaid rates or charges on the land exceeds the valuation, and
    - (iii) the council sells the land within 6 months after the date when the council received the valuation.
- (3) The council must not sell any such land unless the general manager or the public officer certifies in writing:
  - (a) what rates and charges (including overdue rates and charges) are payable on the land, and
  - (b) when each of those rates and charges was made and how it was levied, and
  - (c) when each of those rates and charges became payable, and
  - (d) what amounts are payable by way of overdue rates and charges on the land, and
  - (e) what amounts are payable by way of rates and charges (other than overdue rates and charges) on the land.
- (4) The council may, in the case of adjoining parcels of land (whether in the same or different ownerships) each of which may be sold under this Division:
  - (a) sell them separately or as a single parcel and under whatever conditions of sale it considers proper, and
  - (b) do such things as it considers appropriate for the purpose of selling the land at its full value.

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## **Local Government (General) Regulation 2005**

### **cl.127 Rates and charges notices**

- (1) A rates and charges notice must contain the following information:
  - (a) the land to which it relates,
  - (b) the land value of the land to which it relates and the base date of the general valuation from which the land value is derived,

- (c) particulars of each rate or charge levied on the land by the notice,
- (d) if the rate consists of a base amount to which an ad valorem amount is added, particulars of the base amount,
- (e) the date the notice is taken to have effect,
- (f) particulars of any outstanding arrears of rates and charges levied on the land and of any interest payable on those amounts,
- (g) the total amount due and the dates for payment of the rates or charges concerned,
- (h) the amounts payable for, and the due dates for payment of, instalments of rates or charges,
- (i) particulars of any waiver of an amount of special rate in consideration of payment of a lump sum,
- (j) a statement that concessions are available to eligible pensioners for any quarter in which they are eligible pensioners,
- (k) particulars of any concession extended in respect of payment of the rates,
- (l) particulars of any discount for prompt payment in full of a rate or charge,
- (m) particulars of any postponement of rates or postponed rates,
- (n) particulars of any option to pay a lump sum towards the capital cost of any works, services or facilities instead of a special rate in the notice,
- (o) a statement that if payment is not made on or before the due date or dates interest accrues on the overdue amount,
- (p) a statement as to how to make inquiries about the notice,
- (q) the text, or a summary, of the following provisions of the Act (if applicable):
  - (i) section 524 (Notice of change of category),
  - (ii) section 525 (Application for change of category),
  - (iii) section 526 (Appeal against declaration of category),
  - (iv) section 555 (What land is exempt from all rates?),
  - (v) section 556 (What land is exempt from all rates, other than water supply special rates and sewerage special rates?),
  - (vi) section 557 (What land is exempt from water supply special rates and sewerage special rates?),
  - (vii) section 562 (Payment of rates and annual charges),
  - (viii) section 563 (Discount for prompt payment in full),
  - (ix) section 564 (Agreement as to periodical payment of rates and charges),
  - (x) section 566 (Accrual of interest on overdue rates and charges)
  - (xi) section 567 (Writing off of accrued interest),
  - (xii) section 574 (Appeal on question of whether land is rateable or subject to a charge),

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## C. Best practice procedures for contacting ratepayers (Office of Local Government – November 2018)

Councils should contact ratepayers if they have not paid their rates after a reminder notice is issued, and potentially in other circumstances in which rates and charges are owed.

Council officers can contact local residents and ratepayers without breaching their obligation to protect their privacy.

The following is an overview of some issues and practical considerations when contacting ratepayers about outstanding debt. If there is any doubt, councils should seek and be guided by their own legal advice.

### When can a ratepayer be contacted?

#### 1. When you have a reasonable purpose for contacting a ratepayer

You must only contact a ratepayer for a reasonable purpose and only to the extent necessary. It may be necessary and reasonable if your purpose is to:

- make a demand for payment
- offer to work with the ratepayer to reach a flexible repayment arrangement
- accurately explain the consequences of non-payment, including any legal remedies available to the collector/creditor, and any service restrictions that may apply in the case of utilities
- make arrangements for repayment of a debt
- put a settlement proposal or alternative payment arrangement to the ratepayer
- review existing arrangements after an agreed period
- ascertain why earlier attempts to contact the ratepayer have not been responded to within a reasonable period, if this is the case
- ascertain why an agreed repayment arrangement has not been complied with, if this is the case
- investigate whether the ratepayer has changed their residential location without informing you, when there are grounds for believing this has occurred, or
- other similar purposes.

You may also contact a person at their request.

Whether or not a purpose is reasonable may depend on the personal circumstances of each ratepayer – e.g., if you know a person cannot make repayments (for example, because they are in jail) then continuing to contact them to demand payment is not reasonable or appropriate unless you know, or have good reason to think it is likely, that the ratepayer's financial situation has improved.

There may be circumstances where contact is made for a reasonable purpose, or contact is made initially for a reasonable purpose, and yet other relevant considerations mean the contact becomes unreasonable or unacceptable. Relevant considerations may include the ratepayer's mental illness or intellectual disability, or the ratepayer's incarceration.

If you make contact with a ratepayer in order to convey a demand for payment it may be contact for a reasonable purpose. However, if the ratepayer disputes liability and requests proof of a debt, and you continue to pursue that person without properly investigating the claims, then this will not be contact for a reasonable purpose.

## 2. It is necessary and reasonable to contact the ratepayer (again)

It is not acceptable to harass a ratepayer. Make a written record of all contact with ratepayers and check these records before contacting a ratepayer. For this purpose contact is interpreted widely and includes:

- telephone calls and text messages – whether or not the person receives the call if you leave a message;
- all written correspondence – for example, this includes letters, emails, text messages, faxes, social media, instant chats and other private messages; and
- face to face contact – including contact at their work, home or elsewhere

Importantly, if you phone a ratepayer and leave a message on their voice mail, and you also send the ratepayer an email, and a text message, then you will have made three separate contacts with that person.

Once you have made contact, leave a reasonable interval before next contacting the ratepayer. Give the ratepayer time to respond to your previous communications, and/or to organise payments if this has been agreed.

If you have spoken to the ratepayer and it is understood that the ratepayer requires a few days to speak to third parties or consider options, then contacting the ratepayer on the following day may be considered unreasonable, even though it is within the recommended limits.

## 3. It is a reasonable time to contact the ratepayer, given their circumstances and reasonable wishes

The following table sets out general guidance on what may be a reasonable time to contact a ratepayer.

Type of contact	Day	Reasonable contact times
Telephone contact	Monday to Friday	7.30am – 9.00pm
	Weekends	9.00am – 9.00pm
	Public Holidays	No contact recommended
Face to face contact	Monday to Friday	9.00am – 9.00pm
	Weekends	9.00am – 9.00pm
	Public Holidays	No contact recommended
All contact at the customer's workplace	Customer's normal working hours if known, or 9.00am to 5.00pm on weekdays	

There may be reasons why contact during the above times is unreasonable, or contact outside these times is reasonable. For example, a ratepayer may ask that contact be made at other or more restricted times for various reasons, such as, because he or she is a shift worker, is responsible for children, or caring for a family member. He or she may also not wish to be contacted when other family members are present. In these and other such cases, the reasonable wishes of the ratepayers should be respected, and contact limited to the times requested.

However, you may alter the time of contact if, after reasonable efforts over a reasonable period of time to contact the ratepayer during normal hours or at the times requested, you have not been able to do so.

Generally, you should not contact a ratepayer more than three times per week, or 10 times per month at most (when contact is actually made, as distinct from attempted contact) and only when it is necessary to do so. This does not apply to face-to-face contact – you should not make more than one face-to-face contact with a ratepayer per month.

Think carefully about where to contact a ratepayer. In general, face to face visits should be an option of last resort after less intrusive means have failed. Particular care should be taken in visiting a person's home or workplace.

## **Ensure the person is the correct ratepayer before discussing their debt**

Before discussing the reason for making contact or any other confidential information, make sure you are speaking to the correct ratepayer. It is important that you do not reveal directly or indirectly that the ratepayer has a debt to another person. Particular care should be taken when calling a ratepayer's workplace.

If the ratepayer has requested contact by a particular means (such as email) or specifically asked not to be contacted a certain way, adopt that preference and avoid contacting them by other channels as far as possible.

Rate payers have the right to have an authorised representative (such as a financial counsellor, financial advisor, community worker, solicitor, guardian or carer) represent them or advocate on their behalf. Where possible, it is helpful if this advice is provided formally to council, such as in writing, to ensure council does not inadvertently discuss private information with unauthorised individuals.

If you know, or should know, a ratepayer has chosen to have another person represent them, you should not contact the ratepayer directly unless:

- the ratepayer specifically requests direct communication with you
- the representative does not consent to represent the ratepayer or tells you he or she does not have instructions from the ratepayer about their debt
- the representative does not respond to your communications within a reasonable time (normally seven days) and you advise the representative in writing after the reasonable time has passed that they do not respond within the next seven days, you will make direct contact with the ratepayer; and
- you advised the ratepayer you require a written authority which states that you are only to communicate through his or her representative, and you do not receive this in a reasonable time (normally seven days).
- *Note: that this does not apply where the ratepayer's representative is a solicitor.*

Further exceptions may apply where the representative is not a qualified legal practitioner, qualified accountant or a financial counsellor.

## **Provide the ratepayer with current information about their debt**

Make sure the ratepayer is told what they owe, when it was due, any payments they have made and what the payment was for. He or she may then request further information or documents.

It is also important to make sure that the ratepayer has contact details for the person or team managing their debt for council, such as contact phone number, postal address and email address, and that this information is included in all written correspondence to them.

## **Conduct towards ratepayer must be respectful and appropriate at all times**

A ratepayer approached about an outstanding debt is entitled to respect and courtesy at all times by a council, debt collector or any of their agents or representative.

Inappropriate conduct, as outlined below, is likely to breach the law and the council's Code of Conduct. Ratepayers should never be subjected to

- **abusive, offensive, obscene, discriminatory language or disrespectful or demeaning remarks** – about character, situation in life, financial position, physical appearance, intelligence or other characteristics or circumstances
- **embarrassment or humiliation** – for example, by sending open correspondence to the ratepayer via a shared post-box, posting messages in a public online forum, making employers or co-workers aware that the ratepayer is being pursued for a debt, or creating an impression that the ratepayer is under surveillance
- **aggressive, threatening or intimidating behaviour** – for example, by shouting at or continually interrupting the ratepayer, or by refusing to listen to what they say

- use, or threat of violence or physical force, or
- **misleading information** – about the nature or extent of a debt, consequences of nonpayment, identity (for example, falsely stating you work for a solicitor, court or government agency), or action not legally permitted to take (for example, to seize goods).

### **Strategies for dealing with inappropriate behaviour by a ratepayer**

Inappropriate behaviour by a ratepayer does not justify unprofessional conduct by the collector and council staff and agents should deal with this using strategies such as:

- ensuring appropriate training of staff
- attempting to defuse inappropriate behaviour and refocus discussion on the outstanding debt and arrangements for its repayment
- escalating the matter to a senior staff member who has authority and training to manage such situations
- attempts to propose a viable and achievable repayment arrangement, and
- in the event of violence or other extreme conduct, cease contact immediately and refer the matter to the police.

### **Ensuring contact details are up to date**

Currency of contact details is a huge issue for collecting rates and charges. Many councils feel that there is little advantage in sending additional correspondence or notices requesting payment when the address is not current.

Council policies and procedures may specify what the council will do to keep contact details current. When rates and charges notices are returned to the council, some councils proactively check other business areas of the council for more recent contact details, send information to both postal and physical addresses (where known), use internet searches and databases to ascertain more recent contact details, contact real estate agencies, keep a return mail register and undertake other searches.

### **Keep accurate, up to date records and protect the ratepayer's privacy**

You should ensure you maintain accurate, complete and up-to-date records of all communication with ratepayers, including the time, date and nature of calls, records of any face to face contact, all correspondence sent and all payments made.

Councils and other organisations acting on their behalf should always treat a ratepayer's personal information with respect and ensure that they meet the requirements of the *Privacy and Personal Information Protection Act 1998* (the PPIPA) and their Privacy Management Plan prepared under the Act. Personal information means information or an opinion, whether it is true or not, about an individual that can reasonably allow the individual to be identified.

Particular care should be taken in collecting information about the ratepayer and their financial circumstances as well as disclosing that information, whether directly or inadvertently, to other people. For example, telling a ratepayer's neighbour the reason for trying to find the ratepayer would inappropriately disclose personal information about the ratepayer, as would leaving messages with inappropriate detail that may be seen or accessed by other people.

Councils use *Privacy Notification/Consent Forms* to enable the collection and use of personal information from ratepayers. The information collected cannot be used or disclosed for a purpose other than that for which it was collected, unless the ratepayer has consented or another exception applies.

Councils may consider reviewing their Privacy Notification/Consent Forms to request consent from residents and ratepayers for their personal information to be shared between internal business units of the council for purposes specified in the consent form, including for general administrative purposes including the collection rates and charges.

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