

FEDERATION COUNCIL

Title:	DEBT RECOVERY AND FINANCIAL HARDSHIP POLICY
Council Adopted:	15 November 2016
Council Resolution No:	103/16FC
Responsible Department:	Director Finance
Date to be Reviewed:	20 September 2017

1. Purpose

The purpose of this policy is to:

1. Ensure effective control over all invoiced debts owed to Council. These include Rates, Accounts Receivable, Water, Sewerage and Trade Waste charges;
2. Fulfil the statutory requirements of both the Local Government Act, 1993 and Civil Procedure Act 2005 (and associated rules), for the recovery of rates and other debts;
3. Ensure the integrity and confidentiality of all proceedings for both the Council and its customers; and
4. Ensure a fair and equitable approach is taken with those persons suffering genuine financial hardship.

2. Background

Whilst some charges are a direct cost incurred for services provided, most rates and charges are essential for Council to fund its services and facilities for our community.

3. Scope

This policy applies to all debtors of Federation Council regardless of whether the debt is in relation to ordinary rates, special rates, charges, fees or income from services provided.

This Debt Recovery Policy supports the procedures for Council staff to recover unpaid rates and charges on behalf of Council, which includes procedures for outstanding Rates and Annual Charges, Water, Sewer and Trade Waste Accounts and Accounts Receivable in relation to:

- Debt recovery
- Payment plans
- Proceeding with legal action
- Interest and other outstanding fees
- Hardship considerations; and
- Pensioners.

4. Definitions

“Reminder Notice Threshold” refers to a prima facie debt level that will trigger a particular course of action 12 days after the due date. This level is not mandatory and may be varied at Council’s discretion.

“Eligible Pensioner” In relation to a rate or charge levied on land on which a dwelling is situated means a person:

1. Who is a member of a class of persons prescribed by the Local Government Regulations; and
2. Who occupies that dwelling as his or her sole or principal place of living.

“Principal Place of Living” The property that the ratepayer occupies as their sole or dominant residence.

5. References & associated documents

a. Relevant Legislation

Local Government Act, 1993 (Section 560, 562, 566 and 713)

Civil Procedures Act 2005, No. 28

Local Government (General) Regulation 2005

Privacy & Personal Information Protection Act 1998

b. Relevant Council Policies/ Delegations / Procedures

Revenue Policy

Federation Staff Delegations

NOTE: This is a controlled document. If you are reading a printed copy please check that you have the latest version by checking it on Councils Electronic Document system. Printed or downloaded versions of this document are uncontrolled.

FEDERATION COUNCIL

Title:	DEBT RECOVERY AND HARDSHIP PROCEDURES
Council Adopted:	15 November 2016
Council Resolution No:	103/16FC
Responsible Department:	Director Finance
Date to be Reviewed:	20 October 2017

Table of Contents

1.	Debt Recovery for Rates and Charges.....	2
2.	Payment Plan	2
2.1	Part Payment.....	2
2.2	Recovery of arrears in regular intervals	2
2.3	Interest on amounts outstanding	2
2.4	Recovery Action	2
3.	Legal Action.....	2
3.1	Escalation of recovery action	2
3.2	Writ of Execution – Seizure of goods to the value of debt.....	3
3.3	Garnishee of salary and rental payments.....	3
4.	Hardship.....	4
4.1	Writing off Accrued Interest	4
4.2	Grounds for Hardship.....	4
4.3	Hardship resulting from valuation changes	4
4.4	Hardship Application Process	5
5.	Special Provisions – Eligible Pensioner/s	5
6.	Debt Recovery Procedures for Water, Sewerage and Trade Waste Charges.....	5
6.1	Restrictions on the Flow of Water to the Property	5
6.2	Disconnection of Water to the Property	5
7.	Debt Recovery Procedures for Accounts Receivable.....	6
7.1	Accounts Receivable Invoices	6
7.2	Contribution to Capital Works (kerb and gutter) Invoices.....	6
7.3	Cessation of credit	6
7.4	Legal Proceedings	6
8.	Development contributions.....	7

FEDERATION COUNCIL



1. Debt Recovery for Rates and Charges

Section 712 of the Local Government Act stipulates that proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable.

2. Payment Plan

2.1 Part Payment

Council is empowered under Section 564 of the Act to enter into a payment plan agreement with a person to accept part payments of rates and charges due and payable by a person/s. Recovery action for overdue rates will be suspended while the arrangement to pay is **complied with**. All applicants under Section 564 shall be determined on the merits of each individual case.

2.2 Recovery of arrears in regular intervals

Payments under an agreement should be of regular amounts and be payable at regular intervals not exceeding one month. The payments should be scheduled so as to ensure that rates and charges together with any arrears from previous periods are paid in full by 30th June of the financial year in which the rates are levied or at the earliest possible time dependent on individual circumstances. No plan will be entered into which does not reduce the outstanding arrears and also any ongoing current charges.

2.3 Interest on amounts outstanding

Interest shall be added to amounts outstanding under an agreement as required by the Local Government Act.

2.4 Recovery Action

Where a ratepayer defaults on approved payment plan agreements, the agreement may be terminated and the full amount of the outstanding rates and charges and accrued interest shall be due and payable. Recovery action shall commence with no further notification from Council, and may result Legal Action directly by Council Staff or referral to Council's Debt Collection Agency, if utilised.

3. Legal Action

3.1 Escalation of recovery action

If Council receives no response from the debtor after the due date for the Reminder Notice or, defaults on a payment arrangement, Council may initiate legal action.

The prima facie "debt threshold" is used as a guideline for action initiation. This amount is subject to annual review and is not mandatory, that is smaller amounts may also be pursued on a discretionary basis in accordance with the delegation policy.

Legal action will be initiated by referring the account to Council's Debt Collection Agency who will send a Letter of Demand to the debtor. This letter gives the debtor at least ten days to make either payment or an agreed arrangement before further action is taken.

FEDERATION COUNCIL

If payment or an arrangement has not been received by the due date stated on the Letter of Demand then Council may authorise the Debt Collection Agency to issue and serve a Summons (known as a “Statement of Liquidated Claim”). The debtor may, within 28 days of the service of the Summons, lodge a defence to the claim made by Council. The debtor may also choose (within the 28 days) to either make an agreed arrangement with Council or apply to the Court to pay the debt by regular instalments.

3.2 Writ of Execution – Seizure of goods to the value of debt

If the debtor does not respond to the Summons within the set period, Council through the Debt Collection Agency can apply for Default Judgement.

Once judgement is obtained, Council may authorise the Debt Collection Agency to proceed with a “Writ of Execution” against the debtor. This will then enable the Sheriff to go to the debtor’s property and seize goods to the estimated value of the debt and place them for sale at public auction. If the property is rented by the owner this action may be avoided by taking action under Section 569 of the Local Government act, 1993. Council will receive payment of the debt either:

- when the goods are sold, or
- if the debtor settles payment at the Court beforehand.

The debtor, at this time, may apply for an “Instalment Order” by declaring their assets and liabilities; income and expenditure to the Court, and requesting payment be made to Council via a nominal weekly or monthly amount. If Council is not satisfied with this arrangement, it may lodge an objection to the Instalment Order and apply under the Civil Procedures Act, 2005, for the seizure of goods to be recommended by the Sheriff.

3.3 Garnishee of salary and rental payments

When proceeding with a Writ of Execution Council has the option of recovering the debt via a garnishee against the debtor’s salary.

Any legal expenses incurred by Council from the recovery of outstanding rates and charges will be charged against the debtor under the Civil Procedures Act 2005.

Under Section 569 of the Local Government Act Federation may exercise the option to garnishee rent if the rateable property is let by the debtor to a tenant. This action may be taken if the debtor:

- a. is a resident outside of New South Wales; or
- b. is unknown to Council; or
- c. has not been served in any legal proceedings for the recovery of the rate or charge after reasonable efforts have been made by or on behalf of the Council to effect service; or
- d. becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- e. dies; or
- f. has a judgement given against him or her for the amount of the rate or charge.

FEDERATION COUNCIL



A Notice must be served on the tenant under this Section before the garnishee can be attempted.

Where rates have been overdue for a minimum of five years, Council will exercise the option to sell the debtor's property under Section 713 of the Local Government Act for unpaid rates.

4. Hardship

4.1 Writing off Accrued Interest

Overdue rates shall be increased in accordance with Section 566 of the Local Government Act, at the rate of interest adopted by Council each year. Under the provisions of Section 567 of the Act, ratepayers who have complied with the conditions of an agreement made under Section 564 of the Act can apply to have the accrued interest written off by Council where they can demonstrate that:

- They were unable to pay the rates or charges when they became due and payable for reasons beyond the person's control; or
- They are unable to pay the accrued interest for reasons beyond the person's control; or
- Payment of the accrued interest would cause the person hardship.

Applications for writing off accrued interest shall be determined on the merits of each individual case on the basis of whether or not the hardship criteria have been satisfied by the applicant and a proper opinion can be formed.

4.2 Grounds for Hardship

Consideration will be given to cases of hardship only on the following grounds:

- Terminal illness – consideration will be given to waiving interest on rate and water accounts for a specific term.
- Temporary illness – consideration will be given to waiving interest on rate and water accounts for a specific term.

Natural disasters (bushfire, flooding, and drought) consideration will be given to waiving Interest for rates and water accounts for a specific term. Details of the extent of the losses will be required.

4.3 Hardship resulting from valuation changes

Under Section 601 of the Act which relates to Hardship resulting from certain valuation changes, Council has discretion to defer the payment of the whole or any part of the increase in the amount of the rate payable by the ratepayer, for such period and subject to such conditions as it thinks fit. Council will not waive or reduce whole or any part of the increase.

4.4 Hardship Application Process

All applications for hardship are to be made by filling out the Federation Council “Hardship Application Form” available from the Council website or by contacting Council offices. In the first instance, the Finance Manager, Director Finance and Revenue Officer, under delegated authority from the General Manager, will give consideration to cases of hardship and the waiving of interest on the merits of each case using the guidelines outlined in the Act.

5. Special Provisions – Eligible Pensioner/s

Eligible pensioners shall be required to pay the amounts of rates remaining following any statutory reduction in rates required under the Act. Such amounts shall be paid by the due date.

Under Section 575 of the Local Government Act 1993 Council may provide relief to eligible pensioners who are unable to pay rates and charges or accrued interest where an application is made to Council demonstrating that non-payment is because of reasons beyond their control or where payment may cause hardship

6. Debt Recovery Procedures for Water, Sewerage and Trade Waste Charges

6.1 Restrictions on the Flow of Water to the Property

After expiration of 14 days for payment on a *Final Notice* a Restriction Fee may be raised and an *Intent to Restrict* Notice issued.

The service of an *Intent to Restrict* Notice will be posted to the property. In those instances the Notice will be mailed to the mailing address and a copy served at the property to the occupier.

After expiration of seven days for payment on an *Intent to Restrict* Notice, a written instruction will be given to the Federation Water Supply Technician to restrict supply.

Restriction will be made by the fitting of a restriction device but so as to make available a nominal supply (approximately two litres per minute).

6.2 Disconnection of Water to the Property

After expiration of three calendar months from the billing date an *Intent to Disconnect* Notice may be issued, which also incurs a fee. An *Intent to Disconnect* Notice should only be considered for Residential properties, where all alternate measures have been exhausted. **All** Notices of Intent to Disconnect must be discussed with the Director prior to being instigated.

The service of an *Intent to Disconnect* Notice will be by hand delivery to the property, except where the mailing address is not the property. In those instances the Notice will be mailed to the mailing address and a copy served at the property to the occupier.

After the expiration of seven days for payment on an *Intent to Disconnect* Notice, a Water Supply Disconnection Fee will be raised and written instruction given to the Federation Water Supply Technician to disconnect the supply.

7. Debt Recovery Procedures for Accounts Receivable

7.1 Accounts Receivable Invoices

Council will generally only raise Accounts Receivable invoices for amounts of \$20 or greater. All accounts are strictly 30 days from the date of invoice.

Council may negotiate deferred payments for specific accounts as required for commercial arrangements.

Monthly statements are to be forwarded to Debtors. Outstanding amounts of more than 30 days are to be regarded as overdue. A list of accounts with outstanding balances of over 30 days will be reviewed with the Business unit responsible for the raising of the debt for review.

The Director may authorise in writing to the Finance Manager the holding of legal action for recovery of the overdue amount.

7.2 Contribution to Capital Works (kerb and gutter) Invoices

Where Council has invoiced for improvements to kerb and guttering ratepayers will be granted the option to pay by instalments over a period of six months before interest will be charged.

7.3 Cessation of credit

Where amounts are outstanding for more than 60 days, credit will cease. Credit facilities may be ceased earlier than 60 days at the authorised officer's discretion. Credit will only be reactivated when payment has been made in full.

If Council does not receive payment within 14 days after the issue of the monthly statement, and the account is more than \$20, Council will send a Reminder Notice to the debtor. This Reminder Notice gives the debtor a summary of the outstanding debt and a further 14 days to pay the account.

If Council does not receive payment within the 14 day period stated on the Reminder Notice, a Final Notice will issue giving a further seven days to pay the account before legal action for recovery will be initiated against the debtor.

7.4 Legal Proceedings

If Council does not receive payment within the seven day period as stated on the Reminder Notice, legal proceedings will be commenced. The procedures for legal action against Accounts Receivable will follow those outlined in point 3 under the debt recovery procedures for rates and charges.

This procedure will not apply to amounts due from Government Departments and such amounts shall be recovered by direct liaison action with the Government Department direct.

Delegated write offs may take place and the delegations for authority shall be adhered to in these cases. A review of these accounts will entail Council's Trust Register Listing.

FEDERATION COUNCIL



The Accounts Receivable procedures are to apply to all of Council's external sites with all information recorded and processed through the central system.

8. Development contributions

Development contributions charges become payable when an application to build a dwelling or multiple dwellings and/or subdivision application has been submitted to Council for approval. Conditions of consent of both these forms of development are subject to the payment of a development contribution charge and the issue of the occupation certificate and or subdivision certificate is not issued until payment has been received.

NOTE: This is a controlled document. If you are reading a printed copy please check that you have the latest version by checking it on Councils Electronic Document system. Printed or downloaded versions of this document are uncontrolled.