



## Rates – Recovery of Outstanding Debts Policy

Application	Finance Staff and Rate Payers
Responsible Officer	Director of Corporate Services
File No	CM:POL:CWP
Authorised by	General Manager – Council
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Distribution	Internet / Intranet / Public Display

### Purpose

The purpose of this policy is to determine when and how recovery action for overdue rates and charges will take place and to also maintain an acceptable level of debt recovery.

Council has a responsibility to ensure monies owed are recovered in a timely effective manner to finance its operations and to ensure effective cash flow management.

During this process Council will; treat people fairly, consistently and in a confidential manner. Council will also assist ratepayers who suffer from genuine financial hardship as laid out in the Council's Hardship Policy.

### Definitions

**Council:** Carrathool Shire Council

**Summons:** The Summons, identified as a "Statement of Liquidated Claim," is a legal document which outlines to the debtor:

- that a claim has been made to the Court for the recovery of monies;
- who has initiated the claim;
- who the claim is against;
- the monetary value of the claim; and
- time period available to the defendant before action is taken to proceed to judgment

When a summons is issued at the rated address and the defendant is not at the stated address, and the dwelling is occupied by tenants, then instructions will be given to Councils debt collection agency to issue a Rent for Rates Notice on the occupiers of the premises. This notice instructs the occupiers to pay their rent to council. This normally brings the account to a satisfactory resolution within a short period of time. See below (Section 569)

**Judgment:** In cases where the debtor does not respond to a Summons, then after 28 days Council will instruct our debt recovery agents to proceed to Judgment.

**Post Judgment Options:**

After Judgment, Council will proceed to either one of the stages below.

- a) Garnishee – this is where an order is placed over a defendant's bank account and monies deducted according to the amount outstanding.
  - A Garnishee can also be issued over a defendant's place of employment.
  - A Garnishee can be issued over a third party where the defendant is a contractor.
- b) Writ of Execution – This is where the sheriff seizes goods to the value of the debt. Essential goods or tools of trade cannot be seized. These goods are then sold and the proceeds of the sale are paid to council to satisfy the debt.

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- c) Examination – When the defendant's bank account or place of employment cannot be found and the sheriff has not been able to satisfy the writ then an Examination of the defendant's financial position will be undertaken. The information obtained from the examination will then allow council to proceed with either (a) or (b) above.

**Costs:** Amounts incurred by Council in recovering overdue debts (e.g. Court, Professional Costs), which can be legally recovered from the debtor.

**Sale of Land:** In accordance with section 713 of the Local Government Act, Council has the authority to sell land which has any unpaid rates or charges for more than 5 years.

**Rent for Rates:** Section 569 of the Local Government Act allows Councils to order tenants of properties with overdue Rates to pay rent to Councils in lieu of unpaid Rates, under specific circumstances.

### Policy statements

Council recognises that it is in the community interest to maximise the collection of Rates and Charges and to recover interest, cost and expenses where these are necessarily incurred by council. However, council recognises that the collection of Rates and Charges needs to be balanced with the identification and consideration of individual cases of genuine hardship.

Council will take recovery action within one month of the rates becoming overdue, unless the ratepayer enters into a suitable payment arrangement.

1. Council will accept that there are ratepayers who cannot meet mandatory instalment options as provided under section 562 of the Local Government Act 1993.

Council may accept by application an alternative payment schedule (hence forth called the 'Agreement')

2. In order for such an agreement to be considered an instalment arrangement form is to be completed and signed in conjunction with Councils Rating Staff. This formalises the agreement and will commit the ratepayer to the payment schedule.

3. The payment can be made in cash, eftpos, Bpay or direct debit in to council's bank, these facilities are offered daily.

4. Verbal agreements shall not be accepted.

5. Payment Arrangements:

- If an arrangement is made to pay the outstanding amount, then this would need to include the current year as well as the outstanding amount. This would need to be paid in full before the next rate or water instalment becomes due.
- Other arrangements should clear the total outstanding debt by the end of the current financial year or within a twelve month period at least.
- Council may extend this twelve month period if they believe exceptional circumstances exist. Such arrangement may be approved by the Rates Officer or Director Corporate and Community Services or in more severe cases General Manager.
- Rates Officer will monitor arrangements and refer any failure of payments change in period of payments to Director Corporate and Community Services.

6. Failure by the applicant to adhere to the agreed payment schedule or the instalment arrangement will result in further recovery action being taken. If a rate payer defaults on a



payment arrangement twice and no attempt has been made to contact Council, the debt will be referred to Councils Recovery agent.

### Reminder Notices

1. A Computer Generated Reminder Notices will be issued 14 days after the due date of an instalment notice.
2. Such notice will be issued when:
  - no payment has been made;
  - insufficient payment to cover the instalment has been made; or
  - where there is no current valid instalment arrangement.
3. Reminder notices will indicate that:
  - rates are now in arrears;
  - that penalty interest is being charged at the rate set by Council; and
  - failure to make an arrangement or pay the outstanding amount in full may result in the commencement of legal action.

### Final Notices

1. A Computer Generated Final Notices will be issued 7 days after the due date of the reminder notice.
2. Such notice will be issued when:
  - no payment has been made;
  - insufficient payment to cover the instalment has been made;
  - where there is no current valid instalment arrangement; or
  - rates and charges outstanding exceed two rate instalments.
3. Final notices will indicate that:
  - rates are now in arrears;
  - that penalty interest is being charged at the rate set by Council;
  - that failure to make an arrangement or pay the outstanding amount in full will result in the matter being passed on to Council's debt collection agency; and
  - all further legal action costs will be added to the outstanding account.

### Debt Collection Agency

Where there is a failure to reply to the final notice, then those ratepayers with outstanding accounts will be sent to the debt collection agency, during a period generally not exceeding 30 days when:

- Insufficient payment to cover the outstanding amount has not been made; or
- Where there is no current valid instalment agreement.
- Rates and charges outstanding are at least \$800.00 and two instalments in arrears.
- Where debt recovery costs and fees associated with any course of action (eg, summons, judgment or writ) are payable then these costs will be passed on to the ratepayer and will subsequently remain a charge on the property until paid.



- Where any post judgment action has been issued – and a payment arrangement is entered into then any default on the payment arrangement will result in Councils instructions to their debt collection agency to immediately continue with legal action.

### Debt Recovery Procedures, Pre-Legal

#### 1. Letter of Demand

The Debt Recovery Agency will issue a Letter of Demand, allowing the Ratepayer an extra 14 days to pay before legal action to recover the debt will commence.

The Letter of Demand encourages Ratepayers who can't pay in full to make contact with Council to make an arrangement to pay. It also outlines the next action to be taken to collect the debt if no payment or arrangement is made.

#### 2. Personal Contact

During the 14-day Letter of Demand period, if Council has the Ratepayer's phone number or email address on file then the Debt Recovery Agency may contact the Ratepayer to discuss and encourage the making an arrangement to pay.

### Unresponsive Ratepayers

By this stage contact to arrange payment will have been attempted with Ratepayers multiple times, including:

- A Rates Notice.
- An instalment notice (if the instalment is due on 30 November, 28 February or 31 May).
- A Reminder Notice.
- A Letter of Demand.
- The Debt Recovery Agency will have attempted to make personal contact by phone and/or SMS and/or email.

Any Ratepayer who has still not paid, and not contacted Council and made a payment arrangement, may have legal proceedings commenced against them to recover the outstanding debt.

Any Ratepayer who has made a payment arrangement but has failed to meet their obligations under the payment arrangement may also have legal proceedings commenced against them to recover the outstanding debt.

### Threshold for Legal Action

To avoid charging legal costs to Ratepayers who have low value debts, legal proceedings will commence if either of the following criteria are met:

- The amount of the outstanding debt is greater than \$800, or
- The assessment has two or more quarterly instalments outstanding.

### Personal Service

Council recognises that legal documents are too important to trust to the postal service and therefore requires legal documents to be served personally on Ratepayers.



Personal service of legal documents allows Council to deliver documents to explain the action being taken and to encourage Ratepayers to contact Council to arrange payment. Personal contact and explanation is important to help Ratepayers understand and avoid further actions and costs.

Court Post may be used in rare events, such as the Ratepayer is refusing to accept service of a legal document, but Court Post will only be used in exceptional circumstances.

### Debt Recovery Procedures, Legal and Post-Legal

Legal action will then be considered to collect debts owed by any Ratepayers who have not paid or made an agreed arrangement to pay.

#### 1) Statement of Claim and Judgment

##### a) Statement of Liquidated Claim

The first stage of legal action is usually to issue a Statement of Liquidated Claim (SLC) and serve it on the Ratepayer. This process will incur legal costs that are raised against the rate assessment and must be paid by the Ratepayer.

Council requires a side-letter to be hand delivered with each SLC, encouraging the Ratepayer to contact council to arrange to pay and avoid further legal action.

##### b) Judgment

After the issue of a Statement of Liquidated Claim, if the Ratepayer has still not paid, and not contacted Council to make a payment arrangement, the normal course of proceedings is to obtain Judgment from the Court and then take enforcement action.

The Debt Recovery Agency may continue to encourage the Ratepayer to pay, using additional channels of communication such as letters, SMS reminders, emails, telephone calls, and personal visits.

#### 2) Enforcement of Judgment

Council may choose from a range of actions to enforce Judgment and collect debts, including but not limited to:

##### a) Garnishee

The Ratepayer's wages, bank accounts, or other 3<sup>rd</sup> parties owing monies to the Ratepayer may be garnisheed.

##### b) Examination Notice/Summons

The Ratepayer may be required to send written evidence of their financial position to Council or may be required to produce that evidence in Court.

##### c) Writ of property

In certain specific cases a Writ may be issued for the Sheriff to seize property to settle the debt. Writs are generally ineffective, so they will not be used without either prior assessment that there is likely to be property that may be seized or other specific purpose.



### d) Sale of Land

Section 550 of the Local Government Act 1993 gives Council effective security over the land relating to the outstanding debt.

As an action of last resort, Council has 3 Civil actions available to seek to exercise the rights conveyed by S550 of the Local Government Act 1993 and have the rates debt paid by having the land sold if required. The actions are:

- Winding Up - where the Ratepayer is a corporation.
- Writ of Property - Sheriff's Sale of Land.
- Bankruptcy - where the Ratepayer is an individual.

Council will only take these actions after full consideration, and resolution of Council, and as a last resort after many other endeavours to collect the debt have been unsuccessful.

### Other Debt Recovery Actions

#### a) Sale of Land under Sections 713-726 of the Local Government Act 1993.

As an action of last resort, where the debt is more than 5 years old or the debt is more than one year old and greater than the value of the land, then Council may exercise the rights awarded it under Sections 713 to 726 of the Local Government Act 1993 to have the rates debt paid by selling the land.

#### b) Rent for Rates

The Local Government Act 1993 provides that If the property is rented, in certain circumstances the rent may be required to be paid to Council until the debt is recovered in full. By law the tenant is excused from paying that rent to the landlord. If the tenant doesn't comply with the Rent for Rates notice then the tenant may become personally liable for the debt.

Tenants are generally unaware of Rent for Rates and the notice can cause concern to them, so Council requires a letter to the tenant to be hand delivered with a Rent for Rates notice to explain the process in plain language and to outline the tenant's obligation under the Act.

#### c) Mortgagee Letter

If a mortgage is registered on the land title, then Council may notify the Mortgagee that the rates are overdue.

### Credit Agency Reporting

Where Judgment has been entered, and all debts have been paid in full, the Debt Recovery Agency will notify the 2 main Credit Reporting agencies in Australia.

### Skip Tracing

Where a Ratepayer is not contactable by Council or its debt recover agency and believed to be living away from the rated property, the Debt Recovery Agency may attempt to locate the Ratepayer using skip tracing methods. Where a skip trace successfully locates the Ratepayer, then a skip tracing fee will be added to the debt in accordance with section 605 of the Local Government Act 1993.



### Sale of Land

Where legal action is unsuccessful and rates and charges are overdue for more than 5 years (1 year in the case of vacant land), the property may be sold by public auction in accordance with S713 of the Act, subject to a resolution of Council. Once a property is listed to be sold, Council will only accept a payment of 100% on the outstanding balance provided that the balance is forthcoming prior to the date of auction. Unless full payment is received council will continue to proceed with the Sale of Land.

### Revision Table

Minute /Date	Amendment Summary	Reason or Reference
0799/15.09.1987		
3915/16.09.2003		Replaced 2.12 and Review
15.09.2011		Reviewed by General Manager
1366/15.05.2012		Replaced Policy 15 Recovery of Outstanding Rates
1131/ 22.10.2019	Major amendments to debt collection agency information	Reviewed

### Associated Documents

- Payment arrangement form
- Hardship assistance for rates and annual charges – Policy 100
- Water Supply Recovery of Unpaid Charges – Policy 146

### Review

This policy may be amended from time to time and will be reviewed within four years of its adoption (or latest amendment) with reference to any relevant legislation, best practice guides, or other factors.