

## DEBT RECOVERY POLICY

FIN006

### BACKGROUND

Lachlan Shire Council (Council) raises approximately 25% of its income through rates and user charges. In managing one of council's most significant cash inflows, it is essential that an effective and equitable debt management policy exists to recover all rates and charges revenue. Council has a responsibility to maintain effective control over debts owed to council by maximising the collection of outstanding Rates, Charges and Sundry Debtors.

### OBJECTIVE

The policy details the guidelines for managing the recovery of outstanding debts, incorporating the following principles:

- Ensure consistency, fairness, integrity and confidentiality of all proceedings for both Council and the debtor.
- Engage with ratepayers and debtors in arrears to obtain payment to satisfy the debt.
- Recover monies owing in a timely and effective manner, with the aim to collect all outstanding amounts by the end of each financial year.
- To optimise Council's cash flow management and ensure Council's outstanding Rates and Charges ratio remains at or below the industry standard.
- Comply with statutory requirements of the *Local Government Act 1993* and associated Local Government Regulations with respect to the recovery of rates, charges and other debts.

### SCOPE

This policy applies to all debtors, including ratepayers, Council staff, elected Councillors and contracted service providers\* who have outstanding monies owed to Council.

*\*Contracted service providers must also comply with Council's Statement of Business Ethics Policy.*

The *Local Government Act 1993 section 560* defines who is a ratepayer and therefore who is liable to pay rates. This is defined as:

1. The owner for the time being of land on which a rate is levied is liable to pay the rate to the council, except as provided by this section.
2. If land owned by the Crown is leased, the lessee is liable to pay the rate, except as provided by subsection (4).
3. If there are two or more owners, or two or more lessees from the Crown, of the land, they are jointly and severally liable to pay the rate.
4. The Crown is liable to pay the rate for land owned by the Crown which is subject to the *Housing Act 2001* or the *Aboriginal Housing Act 1998*.

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### Privacy Obligations

A debtor's personal information will be treated with respect and Council will comply with the *Privacy and Personal Information Protection Act 1998* when collecting and disclosing information throughout the debt recovery process.

### Recovery of Debts

#### Rates and Charges/Water Consumption Charges

Recovery action will commence when rates and/or charges are not paid by 14 days after the due date for quarterly rates instalments and issued water notices, unless an arrangement has been entered into to make periodical payments under *Section 564 of the Local Government Act*.

Entering a payment commitment is not sufficient to avoid debt recovery action. The liable ratepayer must be in compliance with the arrangement.

#### Sundry Debtors

*General* - Recovery action will commence when invoices are not paid within 30 days from the date of issue, unless a payment arrangement is in place and being complied with.

*Children Services Debtors* - Recovery action will commence 14 days after the due date of issued invoices.

#### Arrangement for Periodical Payments

Council is considerate to accepting a mutually agreeable arrangement for the payment of overdue rates and charges, water consumption charges and sundry debtors. The agreement may be entered into at any time during the recovery process, except when Council has resolved to sell a property under the Sale of Land provisions outlined in the *Local Government Act 1993*.

It is the debtors' responsibility to ensure that payments made under an approved payment arrangement are made on time. If the arrangement is not met without prior contact with Council, the arrangement will be cancelled and debt recovery action will proceed without further notice.

The following guidelines will be used when considering an appropriate agreement:

- It is council's preference that payment arrangements are made in writing via email, letter or on Councils Payment Arrangement Application Form. Arrangements may be made over the phone if no other options exist.
- The arrangement should be made on the basis that the outstanding amounts be finalised as soon as possible, or be paid in full by 30 June of that financial year. Council recognises that reducing the debt as quickly as possible is the best possible outcome as this will minimise the amount of interest that will be charged.
- All payment arrangements will be confirmed in writing by Council.
- Arrangements can be made to pay on a weekly, fortnightly or monthly basis.

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- Arrangements that are made after the 3rd instalment due date may extend into the following year; however, must be reviewed once the subsequent year's levy also becomes payable.
- An arrangement should not extend beyond two years unless approved by the responsible accounting officer. This would only be approved in exceptional circumstances.

Council acknowledges that some ratepayers may be experiencing hardship and cannot meet any of the above conditions. In such cases, Council may approve an arrangement over a longer period, in accordance with Council's *Hardship Policy* and *Section 564* of the *Local Government Act 1993*.

### Legal Fees

All legal fees accrued during the debt recovery process are payable by the debtor and will be added to the outstanding balance of the debt.

### Interest

Interest accrues on a daily basis, in accordance with *Section 566* of the *Local Government Act 1993*, on rates and charges that remain unpaid after they become due and payable. The rate to be charged is the maximum allowable as advised by the Office of Local Government each year unless it is resolved by Council, at its annual budget meeting, to charge a lower amount.

### Writing Off by Resolution

Rates, charges (including accrued interest) or other debts will be written off only by resolution of Council, under delegated authority or in accordance with Council's *Hardship* and *Undetected Water Leak Policies*.

### Pensioners

Due consideration will be given to pensioners, taking into account income and other circumstances, prior to legal action commencing.

### **Procedures for Debt Recovery**

One of Council's objectives in managing the recovery of Rates and Charges is that all reasonable efforts are made to ensure that Ratepayers have an opportunity to relinquish their debt, prior to initiating formal proceedings.

### Rates and Annual Charges

- An instalment default letter will be issued 14 days after the instalment due date to ratepayers with one or more instalments overdue with a balance of \$50.00 or more.
- If the instalment default letter does not result in payment in full, or suitable arrangements are not made within 14 days from the date of the default letter, Council's debt collection agency will be instructed to issue a 'Final Reminder' or 'Letter of Demand', which will advise ratepayers of further actions if the arrears are not paid in full.
- If the debt remains unpaid 14 days after the date of the 'Final Reminder' or 'Letter of Demand', legal action will commence on outstanding balances exceeding \$500.

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Water Usage Charges

- Council will issue a 'Reminder Notice' if water usage charges are not paid in full within 14 days after the water usage accounts are due and payable. The notice will be issued to accounts with outstanding balances over \$20.00 and will include Council's intention to restrict water flow.
- If water usage charges remain unpaid or a suitable arrangement to pay the account is not made within 14 days from the date of the 'Reminder Notice', a 'Notice of intention to restrict water supply' will be issued advising that Council will restrict the flow to the service.
- If the outstanding debt remains unpaid after a further 14 days, the water service will be restricted without further notice. A 'Notice of restricted water supply' shall be issued at time of restriction, advising of the process and applicable fees and charges to have the restriction removed.
- The restriction of water will only be carried out for amounts greater than \$200. Please note that this action will not commence in case of tenanted properties unless Council has exhausted all available options to recover the debt from the landlord and then from the tenant under *Section 569 of the Local Government Act 1993*. Upon payment of the outstanding debt, or suitable payment arrangement, along with an unlocking (restriction) fee (as per Council Fees & Charges), the appropriately authorised employee will be notified to restore the water supply as soon as possible.
- Council will continue to pursue all other avenues of recovery of outstanding water usage accounts, including any of the abovementioned legal processes instigated for the recovery of Rates and Charges.

Sundry Debts – other than Children Services

- Sundry debtor invoices are raised as required and account statements are issued as reminders at the end of every month. Amounts outstanding for more than 30 days are regarded as overdue and the debtor is to be advised by a 'Reminder Letter'.
- Where an amount is overdue for more than 60 days, credit is to be stopped and account be forwarded to Council's debt collection agency for recovery. The debt collection agent will issue a 'Letter of Demand' with debt to be paid in full in 14 days. Recovery action can be put on hold where a repayment schedule is approved by Council and adhered to by the debtor.
- If the debt remains unpaid 14 days after the date of issue of the 'Letter of Demand', or an appropriate payment arrangement has not been made, legal action will be commenced on outstanding balances which exceed \$200.

Sundry Debts – Children Services

- Children Services invoices are raised weekly and are due within 14 days from the issue date. If the amount is unpaid 14 days after the due date Lachlan Children Services (LCS) will issue a default notice on any outstanding amount.
- If, after a further 14 days the debt remains unpaid LCS will issue a 'Final Notice' requesting payment within seven (7) days. Should the debt remain unpaid after the seven (7) days LCS will discontinue care arrangements, until the debt is paid, and send the debt to Council's debt collection agency.
- Further information is provided in the Lachlan Children Services Fee Policy.

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## Legal Procedures – Debt Collection Agency

Legal action as described below will be undertaken by a debt collection agency contracted by the Council. Council will be guided by its Debt Recovery Agent as to the most suitable action after the debt is passed to them for recovery.

### Statement of Liquidated Claim (Summons)

If there is a response to the summons and a suitable arrangement is made to discharge the debt, Council will not proceed with legal action. However, should an arrangement be broken, with no prior consultation, Council will immediately proceed with legal action.

### Default Judgement

If the debt remains unpaid, or a suitable payment arrangement has not been made, 28 days after the date of service of the Statement of Liquidated Claim (summons), Default Judgement will be entered against the ratepayer.

Once Default Judgement has been entered, Council's Debt Recovery Agent will consider taking the following legal actions to recover the outstanding debt.

These include but are not limited to:

- Writ of Execution;
- Garnishee Orders (wages, bank account or rent);
- Examination Summons;
- Warrant of Apprehension;
- Creditors Statutory Demand; and
- Bankruptcy Notice.

It is at this stage of the recovery process that the Debt becomes a public document, and can be accessed by credit agencies, or banking/lending authorities. The Default Judgement will be recorded against the individual's credit history for a period of five (5) years. It is important to note that council cannot remove this from the individual's credit history.

### Sale of Land for Unpaid Rates

- Pursuant to *Section 713* of the *Local Government Act 1993* Council has the authority to sell land which has any unpaid rates and charges for 5 years or more.
- In case of vacant land, if the outstanding debt is more than unimproved land value, it can be sold after one year.
- Any land to be sold under *Section 713* must be by resolution of Council.
- All outstanding rates and charges must be paid to Council prior to withdrawing any property from a *Section 713* sale.
- Fees associated with a *Section 713* sale must be added to the debt on the property.
- If the purchase money is insufficient to satisfy all rates, charges and debts owing in relation to a property, the debt is taken to have been fully satisfied.

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- If the purchase money is more than the amounts owing the balance will be held in Council's trust fund for the persons having estates or interests in the land immediately before the sale.

## RELATED DOCUMENTS

The Local Government Act 1993

Local Government (General) Regulations 2005

Unclaimed Money Act 1995

Privacy and Personal Information Protection Act 1998

Lachlan Children Services – Fee Policy

Hardship Policy

Undetected Water Leak and Faulty Water Meter Policy

Code of Conduct for Staff Policy

Statement of Business Ethics Policy

Greg Tory

**GENERAL MANAGER**

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## APPENDICES

## Appendix 1 – Debt Recovery Process

Debt Recovery Process - Rates & Charges					
Stage	Timing	Action	Comment	Authority	Action taken by
1	14 days after the due date on the Rates notice	<b>Instalment Default Notice</b> Advises Rates are now overdue and interest is accruing. Legal action may be initiated if the debt is not paid in full or suitable payment arrangement entered into.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer	Council
2	14 days after issue of Default Notice	<b>Letter of Demand</b> Advises ratepayers of potential legal actions if the debt is not paid in full or suitable payment arrangement entered into within 14 days.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too. Legal action will only commence on amounts which exceed \$500	Revenue Officer Financial Accountant	Council & Debt Recovery Agent
3	14 days after issue of Letter of Demand	<b>Statement of Liquidated Claim (Summons)</b> Advises ratepayers legal action has commenced with legal fees added to the balance of the outstanding debt.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer Financial Accountant	Council & Debt Recovery Agent
4	28 days after Statement of Liquidated Claims	<b>Pre-Default Judgment Letter</b> Advises ratepayers Judgement will be entered against them if the account is not paid within seven (7) days, and that this will affect their credit history.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer Financial Accountant	Council & Debt Recovery Agent
5	14 days after Pre-Default Judgement Letter	<b>Post-Default Judgement Letter</b> Advises when judgement was entered, and if payment is not made in fourteen (14) days further legal action will be commenced. This will include, but is not limited to: <ul style="list-style-type: none"> <li>• Writ of Execution;</li> <li>• Garnishee Orders (wages, bank account or rent);</li> <li>• Examination Summons;</li> <li>• Warrant of Apprehension;</li> <li>• Creditors Statutory Demand;</li> <li>• Bankruptcy Notice.</li> </ul>	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer Financial Accountant	Council & Debt Recovery Agent
6	Sale of Land	<b>Notice of Sale of Land</b> In accordance with Local government legislation, Council may proceed to sell the land for the recovery of outstanding Rates and Charges in arrears for at least:  <b>1 year</b> - vacant land, if the outstanding debt is greater than the unimproved land value. <b>5 years</b> - all other land.	Further action suspended if account is paid in full.	Council	Council or Council's appointed Legal Representative

Debt Recovery Process - Water Consumption Charges					
Stage	Timing	Action	Comment	Authority	Action taken by
1	14 days after the due date on the Water notice	<b>Instalment Reminder Notice</b> Advises Water charges are now overdue and accruing interest. Details Council's intention to restrict water flow if the debt is not paid in full or suitable payment arrangement entered into.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer	Council
2	14 days after issue of Reminder Notice	<b>Notice of Intention to Restrict Water Supply</b> Advises ratepayers if debt is not paid or suitable arrangement entered Council will restrict water services on debts greater than \$200.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer Financial Accountant	Council
3	14 days after issue of Notice of Intention to Restrict Water Supply	<b>Notice of Restricted Water Supply</b> Advises the water flow has been restricted and notes the process and applicable fees to have the restriction removed.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer Financial Accountant	Council
4		In the case of tenanted properties, or where flow restriction has not resulted in payment, outstanding balances exceeding \$500 will be sent to Council's Debt Recovery Agent and legal action will be commenced	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Revenue Officer Financial Accountant	Council & Debt Recovery Agent

Debt Recovery Process -Sundry Debts					
Stage	Timing	Action	Comment	Authority	Action taken by
1	30 days after the due date on Invoice	<b>Reminder Letter</b> Advises account is overdue and payment is required within seven (7) days.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Payroll Officer	Council & Debt Recovery Agent
2	60 days after the due date on invoice	<b>Letter of Demand</b> Advises debtor credit is to be stopped and if account is not paid or suitable arrangement made in fourteen (14) days, Council intends to commence legal action	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Payroll Officer	Council & Debt Recovery Agent
3	14 days after issue of Letter of Demand	If the debt has remained unpaid legal action will commence on outstanding balances exceeding \$200	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Payroll Officer	Council & Debt Recovery Agent



Debt Recovery Process - Sundry Debts - Children Services					
Stage	Timing	Action		Authority	Action taken by
1	14 days after due date of Invoice	<b>Default Notice</b> Advises account is overdue and payment is required within fourteen (14) days.	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Lachlan Children Services Co-ordinator	Council
2	14 days after issue of Default Notice	<b>Final Notice</b> Advises debtor care arrangements will discontinue if the account is not paid or suitable arrangement made in seven (7) days and advises of Council's intention to commence legal action	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Lachlan Children Services Co-ordinator	Council
3	14 days after issue of Final Notice	If the debt has remained unpaid legal action will commence on outstanding balances exceeding \$200	Further action suspended if account is paid in full or a payment arrangement is accepted and adhered too.	Lachlan Children Services Co-ordinator & Director of Corporate and Community Services	Council & Debt Recovery Agent