

2.3 FINANCIAL HARDSHIP & DEBT RECOVERY POLICY

Distribution	Chief Executive Officer, Finance Manager, Finance Officer, Ratepayers, Debtors, Tenants
Responsible Officer	Chief Executive Officer
Date adopted	
File Reference	132

Purpose

This Financial Hardship and Debt Recovery Policy outlines how the Shire of Goomalling will assist customers who cannot pay amounts owing (“debtors”) to Council to by the due date.

Our policy applies to rates debtors (except the Emergency Service Levy)¹ and general debtors. Residential tenants who have agreed with the land owner to receive a rate notice are also covered by this policy.

The Shire of Goomalling is committed to working with debtors to find an appropriate payment solution that works for both parties. The Shire of Goomalling understands that it can be difficult to ask for support, and will treat debtors with sensitivity, respect and confidentiality.

Objective

- To ensure a consistent, collaborative and transparent approach to the recovery and collection of debts, including outstanding rates and charges;
- To provide a definition of, and, identify, those vulnerable customers who may be suffering financial hardship and outline the management of the debts they hold with the Shire of Goomalling.
- Outline the process for debt reduction with regard to administration and collection, payment arrangements and the relevant legislation;
- To provide useful Information for customers.

Scope

Chief Executive Officer, Finance Manager, Finance Officer, Ratepayers, tenants and debtors

Standard

Any debtor payment due to the Shire of Goomalling that has not be received by the due date shall be recovered in accordance with this Policy and any relevant legislation.

Rates debtor collection

The actions taken to recover outstanding amount due to the Shire will be as follows:

¹ Emergency Service Levy (ESL) is regulated by the State and therefore, persons must apply directly to the Minister for financial relief for the ESL component of the rates notice.

- Amounts outstanding after the final due date for payment will be followed up after 30 days with a final notice requesting full payment within fourteen (14) days unless an agreed Special Payment Arrangement has been entered into with the Shire of Goomalling;
- If payment is not received after 14 days, then where practicable, the Shire will endeavour to contact the debtor by email or phone prior to taking further action;
- If payment has still not been made, the Shire will issue a Notice of Intention to commence legal action letter to the debtor, requiring immediate payment or inviting the debtor to enter into a Special Payment Arrangement with the Shire;
- If there is no response, then where practicable, the Shire will again endeavour to contact the debtor by email or phone prior to taking further action;
- As per section 6.60 of the *Local Government Act* If payment is not made and no payment arrangement is entered into, the Shire can take the following course of action:

- Garnishing of rent from lessee of a property

or, using a debt collection agency:

- Via Property (Seizure and Sale) Order
- Lodging a Caveat on the Title of Land
- The Sale of land

The Shire may use a debt collection agency to undertake these actions. If no payment is made within the guidelines of the Debt collection agency, the Shire may instruct the debt collection agency to lodge a General Procedure Claim (GPC) or a Minor Case Claim (CCC) in accordance with Section 6.56 of the *Local Government Act*;

- If MCC or GPC is not served and the debtor cannot be located, the Shire may instruct an agent to undertake a Skip Trace;
- Should a MCC or GPC be lodged but there is no agreement within fourteen (14) days of issuing the claim, default judgement can be requested;
- Cost incurred as a result of proceedings on rating debts can be charged to the property's rates account as per section 6.56 of the *Local Government Act 1995*. The cost of lodging a caveat **cannot** be charged to the property.

Where the debtor has defaulted three (3) times or more from an approved Special Payment Arrangement, the Shire may proceed with further legal action and not agree to enter into another Special Payment Arrangement.

The Shire will not proceed with further legal action if the debt has been paid in full or an approved Special Payment Arrangement has been agreed and adhered to.

Shire of Goomalling does not institute legal action for concession holders.

Sundry debtor collection

- An invoice or infringement notice will be issued requiring payment within 30 days from the date of issue;
- A final statement will be issued for all sundry debtor account in arrears 30 days or more requesting payment in full.;
- Should debts remain unpaid after another 30 days, a letter of demand will be issued requiring payment within 14 days;
- Should the debt still remain unpaid, a schedule is to be present to Council at the next ordinary meeting or as soon as practicable recommending legal action. Debt remaining unpaid will be examined for the purpose of determining whether a summons will be issued. Following the issue of a summons, a reasonable offer to discharge a debtors' account will not be refused. Where a summons has been issued and remains outstanding, action will be taken to pursue that summon by whatever mean necessary to secure satisfaction of the debt. This may include the issue of a Property (Seizure & Sale) Order against goods if necessary.

Any sundry debtor in arrears of 60 days or more may be excluded from further use of facilities or the provision of private works, until the account has been paid in full or an acceptable Special Payment Arrangement has been entered into and adhered to.

Interest on outstanding rates debts (s6.51)

- Interest IS charged on rates.
- Interest is NOT charged to concession holder or senior rates debtors
- Shire of Goomalling does NOT charge interest on arrears prior to concession registration.
- Interest is NOT charged on general debtors
- All interest charges may be waived, reduced or written off as directed by the relevant Minister/s for Local Government and/or for Emergency Services.

Identifying customers in financial hardship

If you think you may be in financial hardship, the Shire encourages you to make contact as soon as possible. You may ask your financial counsellor to contact the Shire on your behalf.

The Shire will assess the application within 15 business days as to whether it is considered that you are in financial hardship. If an assessment cannot be made within 15 business days, the Shire will refer you to a financial counsellor for assessment.

As part of the assessment the Shire will consider any information you or your financial counsellor may provide. The Shire will also take into account any information on hand as to your payment history.

As soon as the Shire has made an assessment, you will be advised of the outcome.

Persons in situations of vulnerability

The general principle for rates collection is that, in all circumstances, rates must be paid. This ensures fairness in the community that all property owner accept and carry out their obligations to contribute to the cost of provision of essential community infrastructure.

The ability to pay overdue debts by individual rate payers and debtors varies, and in some instances persons can be experiencing financial stress by a wide range of factors. The Shire of Goomalling recognises that vulnerable persons in particular are susceptible to experiencing harm, loss or disadvantage.

Anyone, given a combination of circumstances, can find themselves in a situation of vulnerability. The Shire recognises that specific risk factors are more prevalent for some people in the community but may not necessarily result in vulnerability. These risk factors include:

- Disability;
- Illiteracy/innumeracy;
- Unemployment;
- Serious or chronic illness;
- Bereavement;
- Exposure to family or domestic violence; and
- Low English language proficiency (Culturally and Linguistically Diverse)
- Aboriginal and Torres Strait Islander people, who as a result of historical and systemic inequity are more likely to experience disadvantage and be in situations of vulnerability.
- loss of your or a family member's primary income;
- spousal separation or divorce;
- loss of a spouse or loved-one;

- physical or mental health issues;
- a chronically ill child;
- budget management issues associated with a low income; and
- other unforeseen factors affecting your capacity to pay, such as a reduction in income or an increase in non-discretionary spending.

There are varying stages of vulnerability, which can take the form of payment difficulties or financial hardship. Payment difficulties reflect short term financial constraints whilst financial hardship may reflect longer term financial stress or wide-ranging implications. People experiencing financial hardship are generally unable to provide one or more fundamental needs including:

- Accommodation costs – arrears of rent, mortgage or utility costs;
- Food;
- Clothing;
- Medical treatment;
- Education;
- Other basic necessities.

In both circumstances “payment difficulties” and “financial hardship”, there is the willingness to pay, but a lack of the capacity to do so.

Shire of Goomalling’s approach to vulnerability

The Shire’s overall approach in situation of vulnerability is that the shire will act in an empathetic and compassionate manner, and work with each individual to tailor a payment plan considering their personal circumstances.

- Proceedings such as legal action and sale of the property as a last resort, the Shire will try to avoid this avenue as much as possible;
- Aim to achieve payment of outstanding rates and in some circumstances where necessary, payment plans will not recoup outstanding rates in one financial year;
- The Shire will consider a payment plan period that is reasonable;
- The maximum length of time that is five years and the payment plan includes future rates. This may be extended if the particulars of the case are warranted;
- The objective is to help those in genuine difficulties work through their issues, even if it takes time;
- In these circumstances, sometimes a ratepayer’s actions include poor decision-making, withdrawing and avoiding the issue by not responding to attempts to contact, or they become aggressive. The Shire attempts to contact ratepayers throughout the debt recovery process; and
- Regardless of when first contact is made by the person, the Shire will assess financial hardship in accordance with this Policy and that the ratepayer is willing to follow the requirements of the Policy.

Evidence of hardship

Evidence of hardship is required by the Shire of Goomalling and is treated with strict confidentiality. The debtor may provide evidence by attending the Shire’s administration building or via electronic means. A Shire of Goomalling Financial Hardship Application along with the evidence of hardship may comprise:

- a) Financial Counsellor report detailing all debts due, income and proposed payment arrangement;
OR
- b) Any of the following documents, but not limited to, to ensure a full assessment can be undertaken:
 - Bank notice, for example, for mortgage arrears

- Disconnection notice for utilities
- Notice of impending legal action
- Repossession notice of essential items such as a car or motorcycle
- Evidence of loss of employment/registration for Job Seeker allowance
- Final notice from school regarding payment of mandatory fees
- Medical certificate confirming inability to work;

OR

- c) In circumstances of natural disasters, significant economic events or pandemic:
- Shire of Goomalling completed application form “Financial Hardship – Rates Relief”
 - A letter or email from your employer advising that you have either been stood down or made redundant; or
 - If you are self-employed a letter advising how the COVID-19 has impacted your business.

Payment plans

If we determine that you are in financial hardship, we will offer you more time to pay the outstanding debt or a payment plan for this debt. We will not charge you any fees or interest as part of your extension or payment plan.

We will involve you and, if applicable, your financial counsellor in setting a payment plan. When setting the conditions of the plan, we will consider your capacity to pay and, if relevant, your usage needs. If appropriate, we will review and revise your extension or payment plan.

We do not have to offer you a payment plan if you have had two payment plans cancelled because of non-payment.

If you are a tenant, we must make sure that the land owner is aware of us giving you an extension or entering into a payment plan with you before we do so. We can agree that you notify the land owner of the proposed extension or payment plan (and provide us with evidence that you have done so), or you can give us permission to notify the land owner.

Debt reduction and collection

If you are in financial hardship, we will consider reducing the amount you owe us. We will also not commence or continue proceedings to recover your debt:

- While we are assessing whether or not you are in financial hardship; or
- If you are complying with your payment plan or another payment arrangement you have with us.

If you do not comply with your payment plan or other payment arrangement, we may outsource your debt to a debt collection agency. Please be advised that additional fees may apply in this case. We will ensure that any debt collection agency we engage will comply with Part 2 of the ACCC and ASIC’s Debt collection guidelines for collectors and creditors.

Useful Information

Redirection of Rate Notice

Shire of Goomalling will advise the customer of their right to have their rate notice redirected to another person free of charge if they’re absent or ill.

Payment Options

Acceptable payment options include:

- direct debit, Centrepay, cheque, electronic funds transfer or EFTPOS;
- Payment can be made via internet banking, in person, by telephone or via post;

- Paying by direct debit or Centrepay may help to manage bills more easily as bills will be paid through regular deductions;
- Pensioners and senior card holders will be eligible for a rebate.

For more information regarding payment options, please contact the Shire of Goomalling.

Financial Counseling

Shire of Goomalling will advise customers of any financial counselling services or other organisations that may be available to them. Financial counsellors offer free, independent information to help customers take control of their financial situation.

The Financial Counsellors' Association of WA (FCAWA) can refer customers to a financial counsellor in their area. Alternatively, customers can call the FCAWA's Financial Counselling Helpline. The Helpline provides a free confidential service for all Western Australians with financial problems and queries.

The FCAWA's contact details are:

Financial Counsellors' Association of WA
P: **(08) 9325 1617**

Financial Counselling Helpline:
P: **1800 007 007**
E: afm@financialcounsellors.org
W: www.financialcounsellors.org

Fees and charges

Shire of Goomalling will charge customers for the services provided, including but not limited to:

- Land rates;
- Sewerage services;
- Waste management services;
- Emergency Services Levy;
- Commercial or residential rent of Council owned property;
- Planning and building services;
- Health services;
- Private works; and
- Facility or equipment hire.

Complaints

Complaints should be directed to the Shire of Goomalling first. Our contact details are included in section "Our Contact Details" below.

We will consider your complaint, make appropriate investigations and advise you of any outcomes and discussions to assist you in meeting an agreeable solution.

We may consider the advice of a Financial Counsellor and if deemed appropriate, engage you with a meeting between all parties so as to arrive with an amicable solution to your situation.

If you are not satisfied with the way we handle your complaint, you may refer your complaint to the Ombudsman of Western Australia. The Ombudsman of Western Australia will investigate your complaint and may mediate the dispute between you and Shire of Goomalling.

The Ombudsman Western Australia's contact details are:

Phone: (08) 9220 7588 Freecall: 1800 754 004

Fax: (08) 9220 7599 Freefax: 1800 611 279
Interpreter Service: 131 450 National Relay Service: 1800 555 727
Email: energyandwater@ombudsman.wa.gov.au
Website: www.ombudsman.wa.gov.au/energyandwater
Postal Address: PO Box Z5386, St Georges Terrace, PERTH WA 6831
Street Address: Level 2, Albert Facey House,
469 Wellington Street, PERTH WA 6000

Approval and review

Our policy was approved by the Economic Regulation Authority of WA.

We will review our policy at least every five years to ensure it remains up-to-date and relevant.

Our contact details

You can contact us at:

Shire of Goomalling
32 Quinlan Street (PO Box 118)
Goomalling WA 6460
P: 08 9629 1101
F: 08 9629 1017
E: goshire@goomalling.wa.gov.au
W: www.goomalling.wa.gov.au

Roles & Responsibilities

Chief Executive Officer

- Ensure compliance with policy

Manager of Finance

- Ensure compliance with policy

Finance Officer

- Apply and action Special Payment Arrangement and Debt collection

Definitions

Default judgement	means application for judgement in default of appearance, which can be made 14 days from the date of service of the General Procedure Claim (GPC) or Minor Case Claim (MCC) and made within 12 months of lodgement of a MCC or GPC.
Financial hardship	means a state if more than immediate financial disadvantage which I the debtor being unable to pay outstanding amount without affecting the ability to meet basic living need of the debtor or a dependant ² – in short, if you have the intention but not the financial capacity to pay.
General Procedure Claim	means a claim lodge with the Magistrates Court where the value of the claim or the relief claimed does not exceed the limit set by the Magistrates Court of Western Australia (\$75,000 as a March 2020).

² Clause 19 of the *Water Services Code of Conduct (Customer Service Standards) 2018* defines financial hardship as “being in an ongoing state of financial disadvantage in which the customer’s ability to meet the basic living needs of the customer or a dependent of the customer would be adversely affected if the customer were to pay an unpaid bill for a water service supplied in respect of the place used solely or primarily as the customer’s dwelling”.

Garnishing of rent from lessee of a property

In accordance with Section 6.60 *Local Government Act*, the Shire will write to the owner or managing agent of a rental property and seek to make a Special Payment Arrangement. Where unsuccessful the Shire will require the tenant to pay their rental directly to the Shire to clear the outstanding rates and charges.

Property (Seizure and Sale) Order

A property (seizure & sale) order authorises a bailiff to seize and sell as much of the judgment debtor's real or personal property as necessary to satisfy the judgment debt wholly or partially.

Means inquiry

Where a judgement has been obtained for a MCC or GPC and no payment has been received or payment amount is insufficient to pay the outstanding amount within a reasonable time, the City may lodge a Means inquiry with the Magistrates court.

Lodging a Caveat on the Title of Land

In accordance with section 6.64 (3) of the *Local Government Act 1995*, where payment of rates or service charges are in arrears, the Shire can lodge a caveat, and this will be registered on the title for the that has unpaid rates and services charges. The cost of lodging a caveat cannot be charged to the property.

Property sale and seizure order PSSO

In accordance with a Magistrate Court (Civil Proceedings) for Goods & Land A Property (Sale and Seizure) Order the Shire may authorise a Bailiff to seize and sell as much real estate or personal property as necessary to pay the judgment debt. There are strict guidelines around what property cannot be taken to preserve a level of liability for the owner.

Sale of land

In accordance with section 6.64 of the *Local Government Act 1995*, if any rates or services charges which are due to the Shire in respect of any rateable land, has been unpaid for a least three years and the Shire has attempted to commence legal proceedings at least once within the period of three years prior to the exercise of the power of sale, the Council if it resolved, may take possession of the land and sell the land to recover the outstanding payment amounts.

Discontinuance of legal action

(a) The Notices of Discontinuance of Case (NOD)

The NOD is able to be issued with the Magistrates Court of WA, provided the Shire has not applied/been granted a Default Judgement (DJ) on the claim. The effect of a NOD is to advise credit recording agencies that the Claim has been satisfied, from the Shire's perspective. It does not remove the claim from the debtor/ratepayers credit record.

(b) The Memorandum of Consent Order (MOCO)

The MOCO is only agreed to by the Shire where the Shire has made an error in the action taken or exceptional circumstances as determined by the CEO apply. Where the Shire instigates this action it will bear the cost. If a rate

	payer required the MOCO then they are to apply directly to the court and pay all fees associated, the Shire is not obliged to agree this action,
Means Enquiry	an inquiry conducted in the Magistrates Court to determine the judgement debtor's means to pay the judgement debt.
Minor Case Claim	a claim lodged with the Magistrates Court where the value of the debt or damages claimed does not exceed \$10,000.
Payment difficulties	Immediate financial disadvantage that result in the debtor being unable to pay an outstanding amount by reason of a change in personal circumstances.
Skip trace	process of locating a person's whereabouts.
Payment arrangement	or special payment arrangement is an arrangement made under Section 6.49 of the <i>Local Government Act 1995</i> .
Vulnerability	A person who may have low income or, as a result of their circumstances, be experiencing financial shock, leading to difficulties paying debts by the due dates. This can take the form of "payment difficulties" or "financial hardship"

Legislation

[Water Services Code of Conduct \(Customer Service Standards\) 2018](#)

[Local Government Act 1995](#)

(Part 6 Div 5 & 6, s6.12, s6.47, s6.49, s6.51, s6.55-6.56, s6.60, s6.64-6.75)

[Local Government \(Financial Management\) Regulations 1996](#)

[Waste Avoidance and Resource Recovery Act 2007](#) (Part 6)

[Fire & Emergency Services Act 1998](#) (Part 6A)

Document Links

Strategic Community Plan

C1.5 Develop a policy framework to guide Council's decision making

C2.7 Provide reporting processes in a transparent, accountable and timely manner

Policy

Legal Proceedings

Procedures Manual

Financial Hardship & Debt Recovery Procedure

Local Law

Not Applicable

Delegation

The Council as delegated authority to Chief Executive Officer to implement this policy which includes the ability to enter into Special Payment Arrangements under Section 6.49 and to write off small debts under section s6.12 (1) (c) of the *Local Government Act 1995*, and in accordance with this policy.

- i. Writing off debts
The Shire has a position that it will not write off a rates debt unless the debt is a small debt. A small debt is that amount determine by the Council for the purpose of delegating to the Chief

Executive Officer under section 6.12 (1)(c) of the *Local Government Act 1995*. However, in some cases, the shire may write off outstanding interest.

- ii. Suspending the accruing interest
Provides immediate relief for debtor
- iii. Deferring interest and write off charges
A suspension of interest for three months will occur immediately from the date of receiving the completed application form and confirmation of the appointment made with the Financial Counsellor. The Shire recognises that there may be a waiting period to see a Financial Counsellor, and so long as there has been a booking made and the Shire receives confirmation of this, the interest will be suspended. Once the Financial Counsellor has sent the City the report and recommended payment amount, the maximum length of time interest can be suspended is 12 months.
NB At all times, interest and charges may be affected in a manner as directed by the relevant Local Government and/or Emergency Services Minister/s.
- iv. Debt recovery action and legal proceedings
While the Shire is awaiting the debtor to meet with a Financial Counsellor to commence a payment plan, legal proceedings may be put on hold for an agreed period.
- v. Financial counselling
The Shire may recommend a ratepayer meeting with a Financial Counsellor, who will provide advice to the debtor in relationship to managing their debts.
- vi. Special payment arrangement – payment terms
In the case of hardship, the Shire will assess the period required to clear outstanding rates and charges when paid in conjunction with the annual year's rates and charges, in exceptional circumstances this will be to a maximum term of five years from the date of commencement.

Review History

Version	Review date	Minute no.	Notes
1	September 2015	1 092015.SM	
1.1			
			Formerly 2.10 Financial Hardship & 1.4 Debt Recovery Procedures

