

Debt Collection Policy Rates and Charges

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1. Introduction

The objective of this policy is to provide guidance and inform officers of Council's debt collection procedures to reduce Council's outstanding debts while maintaining Council's professional relationship with ratepayers.

2. Definitions

Rates and charges	Including general rates, municipal charges, service rates and charges, special charge schemes and special rates and charges declared under the <i>Local Government Act 1989</i> or the <i>Local Government Act 2020</i> .
Field call	A process server appointed by the debt collection agency attends the residential postal address of the ratepayer to interview the debtor.
Complaint	The commencement of civil legal proceedings through the Magistrates' Court of Victoria by lodging a form 5A complaint.
Caveat	A type of statutory injunction preventing the registration of particular dealings with real property. A caveat acts as a warning or formal notice to tell the public that there is an interest on the land or property for a particular reason.
Default Judgement	The default court order that is obtained if no payment/ arrangement or defence is received within 21 days (individual) or 25 days (company).
Mortgagee	The lender in a mortgage, typically a bank, building society, or savings and loan association
First charge	Council has a first call on any funds from the disposal of the rateable property, ahead of any other mortgagee, including banks and other lending institutions.
Rental demand	A written demand that the tenant pay any rent to Council rather than the landlord or agent.

3. Rates and charges instalments

The instalment dates for each financial year are fixed by the Minister for Local Government by notice in the *Victorian Government Gazette* as referred to in section 167(2) of the *Local Government Act 1989*. These dates are:

- 30 September
- 30 November
- 28 February
- 31 May

Once a year a final notice is issued to all ratepayers who have an outstanding amount for rates and charges. This account must be paid by 30 June of the relevant financial year.

4. Rates and charges debt collection process

If the account remains unpaid the debt is then referred to the debt management agency when:

- The ratepayers fails to pay their rates in arrears within the 14 day period; and
- No attempt is made to contact Council to make a payment arrangement under Council's Hardship Policy; and
- The outstanding debt is greater than \$300.

Council have agreed upon processes with the incumbent debt management agency. Currently this process is as follows:

Day 1	Reminder Letter	<i>All accounts referred</i>
Days 8 -10	EMAIL/SMS Debtor	<i>to Debtors who have not made contact</i>
Days 10 -14	Field Call	<i>Only those where no contact made</i>
Day 14	Letter of Demand	<i>Chief Financial Officer approval required - sent to both rated and postal address where different</i>
Day 28	Notice of Complaint	<i>Council approval required</i>

4.1 Debt Collection File

A file is produced listing all outstanding debts greater than \$300. This file is reviewed by the Rates and Valuations team and then referred to the debt management agency to commence the recovery process.

4.2 Field calls

Amounts over \$500 that remain unpaid will then be listed for a field call.

- In undertaking a field call, a process server goes to the residential postal address or property location to interview the debtor or ascertain where the debtor may be located.
- If no one is in attendance at the premises then the process server returns another (2) times and will leave a card advising the occupier of the premises to contact them.
- The process server completes a report which is sent back to the debt collection agency which shows the type of property, vehicles on the premises and any other information as to the interview or non-presence of persons.

4.3 Complaints

Where outstanding balances exceeding \$5,000 remain unpaid a complaint may be issued.

- The debt management agency sends a list is sent to Council outlining the accounts that are still outstanding and no arrangement or contact has been made by the debtor to either the debt collection agency or Council.
- This list is reviewed by the Rates and Valuations team and then the Finance Manager will provide approval for a complaint to be issued or advise to place the pending legal action on hold for a specified reason.
- A complaint is applied for at the Magistrates court by the debt management agency and to be served on the debtor within the next 12 months (generally within (1) month if the debtor can be located).

4.4 Default Judgment entered

If the amount remains outstanding after 21 days of the service of the complaint then judgment may be entered.

- This may affect the debtor's credit report listing held by a credit report agency and will result in the debtor being "black listed" for the next 5 to 7 years.
- If payment is made in full then Council will issue a letter confirming the debt has been paid and requesting the default judgment to be set aside by the court. The debtor can then apply to the court to have the default judgment set aside.

Where the above actions fail to result in collection of the outstanding debt, the following actions are available to Council to facilitate recovery:

5. Mortgage letters

If other legal procedures have not been successful, Council can establish via a Title search if there is a mortgage on the property.

A letter of demand is then sent to the mortgagee. This may result in the bank or other lending institution paying the outstanding amount.

6. Instalment order (*Judgment Debt Recovery Act 1984*)

An application may be made to the Court for an Order that debts including interest and costs be paid by instalments. This is done by way of Application to the Court. The Court then may Order that the defendant pay the outstanding amount according to their means.

7. Caveats

As rates and charges are a first charge on a property, Council can lodge a caveat on title where rates and charges remain unpaid.

This does not result in immediate payment, however secures Council's debt. If the property is sold or re-financed the caveat cannot be withdrawn to allow transfer unless the outstanding amount is paid in full.

8. Rental demands

The rental demand procedure is available under Section 177 of the Local Government Act 1989.

By way of service of a rental demand, the rent paying occupier is notified that he/she is required to pay rent directly to Council. It is an offence for the owner to interfere with these payments.

If the occupier refuses to comply with this demand, Council may issue legal proceedings against the occupier to recover the total amount due in accordance with the provisions of the Local Government Act 1989.

9. Summons for oral examination

This procedure is used for gathering information about the debtor, including assets, bank account, employment details, etc.

A summons for oral examination is served on the defendant, which requires them to attend Court and be examined by the Registrar of the Magistrates' Court.

The defendant must divulge their financial situation under oath to the Registrar including their means to satisfy the debt.

If the defendant fails to attend on the specified day, the Court may issue a Warrant to Arrest to enforce attendance.

10. Attachment of Earnings

An Attachment of Earnings Summons can be issued by the Court. A "Particulars of Employment" form is sent to the payroll office of the defendant's employer. This form is then completed and returned to the solicitor setting out the gross/net wages, number of dependents etc.

The Court can then order that a specified amount be deducted from the defendant's wages. It is an offence for the employer not to return the particulars of employment form or refuse to make deductions as ordered by the court.

The defendant's employment cannot be terminated under the Act as a result of this action.

11. Sale of Property (Section 181 of the Local Government Act 1989)

Council may sell land to recover unpaid rates in accordance with the process in section 181 of the *Local Government Act 1989* where:-

- Rates are more than 3 years overdue
- No arrangement is in place
- Council has court order for all or part of the amount due.

This is an action of last resort and will only be initiated where all other options have been exhausted.

12. Sundry debtors

Council follows internal processes when collecting outstanding sundry debts as described in Council's Sundry Debtor Policy.

13. Review of policy

This policy will be reviewed every four years or as required in the event of legislative changes. The Audit and Risk Committee or Council may initiate review outside this cycle.