



LEETON
SHIRE COUNCIL

DEBT RECOVERY POLICY

JULY 2020

DOCUMENT AUTHORISATION

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REVIEW OF THIS POLICY

This Policy will be reviewed every 3 years or as required in the event of legislative changes. The Policy may also be changed as a result of other amendments that are to the advantage of Council and in the spirit of this Policy. Any amendment to the Policy must be by way of a Council Resolution.

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1. Purpose

Council relies on Rates and Charges to fund services and facilities for our community. This policy outlines the approach Leeton Shire Council will take to recover unpaid monies.

2. This Policy Applies to

This policy applies to any person or organisation owing rates, charges, fees or other debts to Council.

3. Outcomes

The objectives of this policy are to manage Council's finances in a prudent and sustainable manner that is fair to all Ratepayers and other Customers.

It describes the ways Council and its Debt Recovery Agency:

- Take action to collect outstanding debts
- Attempt to contact Ratepayers and Customers with overdue accounts and to find practical ways to help them to pay their accounts over time
- Treat discussions about Ratepayers and Customers' financial situations and payment arrangements with compassion and confidentiality
- Take legal action to recover a debt only after multiple attempts have been made to engage a Ratepayer or Customer
- Fulfil the statutory requirements of the *Local Government Act 1993* and other relevant legislation and guidelines in relation to the recovery of rates, charges, user fees and charges and any other debts.

4. Roles and Responsibilities

Council uses a modern Sustainable Debt Recovery approach which endeavours to engage Ratepayers and Customers, through supportive personal contact, to make arrangements to pay without legal action and to avoid legal costs.

It is the responsibility of Council staff who are authorised to recover debts to:

- Recover debt from unpaid rates and charges in a timely, efficient and effective manner
- Treat all customers fairly and equitably, with respect and sensitivity
- Implement Leeton Shire Council's Financial Hardship Policy where applicable
- Protect the privacy of its customers
- Comply with Statutory Requirements in relation to the recovery of rates, charge, fees and other debts.

5. Legislation and Supporting Documents

- Leeton Shire Council's Financial Hardship Policy
- Leeton Shire Council's Pensioner Policy
- *Local Government Act 1993*
- Local Government (General) Regulation 2005
- Office of Local Government Debt Management and Hardship Guidelines, November 2018

6. Requests for Payment of Fees and Charges

6.1 Recovery of Rates and Annual Charges

6.1.1 Rates and Charges Notice

Rates and charges notices are issued in July each year and are payable as a lump sum on 31 August or in four instalments on 31 August, 30 November, 28 February and 31 May each financial year, as per the table below. A rate instalment notice is issued to those ratepayers who have chosen to pay quarterly 30 days before each instalment is due.

	Annual	Quarterly instalments			
Billing period	Whole year	1 July to 30 September	1 October to 31 December	1 January to 31 March	1 April to 30 June
Payment due date	31 August	31 August	30 November	28 February	31 May

6.1.2 Reminder Notice

If any account remains unpaid after 14 days from the due date, then a Reminder Notice will be sent. Council strongly encourages anyone having difficulty paying their Rates and Charges to contact staff to discuss the payment options that might be available to them.

6.1.3 Referral to Debt Collection Agency

If an account remains unpaid after 14 days from the Reminder Notice is sent out, then the account will be referred to Council's Debt Recovery Agency.

6.2 Recovery of Water Rates and Charges

Council makes two types of water charge:

1. **An annual charge** which is included on the Annual Rates and Charges Notice, Debts relating to this annual charge are recovered using the Rates and Annual Charges process.
2. **A Water Consumption charge** per kilolitre of water consumed, as measured via a Water Meter, which is charged 3 times each year in September, January and May.

6.2.1 Water Account

Water Accounts are sent out in September, January and May.

6.2.2 Reminder Notice

If an account for Water Consumption remains unpaid after 14 days from the due date, then a Reminder Notice will be sent with a due date 14 days from the date Reminder Notice was issued. Council strongly encourages anyone who is having difficulty paying their Rates and Charges to contact staff to discuss the payment options that might be available to them.

6.2.3 Debt Recovery/Water restrictions – unoccupied and owner-occupied premises

If a water account remains unpaid after the due date specified in the Reminder Notice, Council may either restrict water supply and/or refer the matter to its Debt Recovery Agency.

If Council determines that water supply restrictions are necessary, a 7-day Notice of Intention to Restrict will be issued and delivered by hand. If the account remains unpaid after 7 days, then Council will proceed with its intention to restrict water supply to the property.

6.2.4 Debt Recovery – tenanted premises

If a water account remains unpaid after the due date specified in the Reminder Notice and the property is tenanted, the overdue account will be referred to Council's Debt Recovery Agency.

6.3 Recovery of Vacation Care Fees

An invoice is sent after each Vacation Care program has finished. A statement of account is sent at the end of that month. If the account is not paid after 30 days another statement is sent with a reminder that the account is overdue and that customers have 7 days in which to pay. If the account is not paid within that 7-day period, Council officers will try to contact the account holder either by telephone or email. Finally, the account is referred to Council's Debt Recovery Agency. Any legal fees associated with Debt Recovery will be charged to the customer.

6.4 Recovery of After-School Care Fees

An invoice for After-School Care Fees is generated every fortnight. The invoice is provided to parents or caregivers when they collect their child/children.

If the invoice is not paid within 7 days, a statement is sent advising of the overdue account and requesting immediate payment.

If the account is not paid after a further 14 days, another invoice is generated for the new fortnightly charge plus the outstanding fortnightly charge. This invoice is provided to parents when they collect their child/children. Attached to this invoice is a note stating that the parent/guardian needs to make immediate contact with centre staff to arrange payment.

If the parent/guardian does not make contact and does not pay the outstanding account, Council officers will telephone or email to advise that the child's placement will be cancelled.

If failure to pay exceeds 21 days, then a Final Notice is sent requesting payment and warning that legal action is now pending.

All through the account payment process, parents/guardians are encouraged to discuss any difficulties that they may have in paying fees with the Nominated Supervisor, who is authorised to discuss and make suitable payment arrangements for any overdue fees.

Finally, if payment is not received or payment plans are not adhered to, Council staff will cancel the child's place at the centre and the debt recovery process will begin. Any legal fees associated with Debt Recovery will be charged to the customer.

6.5 Recovery of Sundry Charges

Invoices are sent out other 'sundry' charges and if not paid 30 days after the invoice is sent then a Reminder Notice is sent. If the invoice is not paid within 14 days of the issue of the Reminder Notice, Council will refer the account to its Debt Recovery Agency. Any legal fees associated with Debt Recovery will be charged to the customer.

7. Debt Recovery Agency Actions

Following the process outlined in the section above, a list of accounts that remain overdue and don't have agreed and compliant payment arrangements will be forwarded to Council's Debt Recovery Agency.

The Debt Recovery Agency will then take a series of debt collection actions to collect the overdue debt.

Legal costs and expenses incurred in debt recovery will be added to any outstanding debts

7.1 Letter of Demand

The Debt Recovery Agency will send a Letter of Demand to the Ratepayer or Customer, allowing an extra 14-day period to pay before further action is taken.

The Letter of Demand encourages Ratepayers and Customers who can't pay in full to contact Council to arrange to pay. It also indicates next actions which may be taken to collect the debt if no payment or arrangement to pay is made.

7.2 Overdue Account Contact

The Debt Recovery Agency may attempt to make personal contact up to 3 times on each overdue account, by telephone phone, SMS and/or email.

The personal contact is a supportive endeavour to:

- Check that the Ratepayer or Customer has received their account and is aware of the amount due.
- Seek payment.
- Discover whether the Ratepayer or Customer is experiencing financial hardship or is receiving a pension.
- Check whether the Ratepayer or Customer is receiving all benefits offered by Council to Ratepayers and Customers experiencing financial hardship or on a pension.
- Encourage the Ratepayer or Customer to contact Council to make a payment arrangement.

A small Overdue Account Contact Fee will be charged to each overdue account referred to the Debt Recovery Agency, to recover the cost of contact attempts.

7.3 Compassionate Late-Stage Intervention

During the Debt Recovery process an Agent may visit the Ratepayer or Customer to enquire whether the Ratepayer or Customer requires any assistance and to give Council a better understanding of the Ratepayer or Customer's circumstances.

The approach taken in such visits is confidential, empathetic, and practical.

If the Ratepayer or Customer is willing, the Agent may be able to:

- Compassionately listen to the Ratepayer or Customer to understand their situation.
- Explain concessions available from Council.
- Propose a payment plan to resolve the outstanding debt.
- Introduce the Ratepayer or Customer to a local Financial Counselling service.
- Introduce the Ratepayer or Customer to other local professionals to give the Ratepayer or Customer help.

With the consent of the Ratepayer or Customer, Council or its agent may take further actions to help the Ratepayer or Customer to resolve the situation.

An Attendance Fee will be incurred for Agent visits and added to the Ratepayer or Customer's account.

7.4 Locating Missing People

Where a Ratepayer or Customer is not contactable by Council or its Debt Recovery Agency and is believed to be living away from the property, the Debt Recovery Agency may attempt to locate the Ratepayer or Customer.

When the Ratepayer or Customer is located, then a Location fee will be added to the debt in accordance with section 605 of the *Local Government Act 1993*.

7.5 Legal Action

Where accounts remain outstanding, legal proceedings may commence if any of the following criteria are met:

- The amount of the outstanding debt is greater than \$600.
- A Ratepayer has two or more quarterly Rates and Annual Charges instalments outstanding.
- A Ratepayer or Customer has repeatedly failed to pay their bills when due.
- A Ratepayer or Customer has arranged to pay but failed to maintain payments under the arrangement.

According to each circumstance, several legal actions may be taken to recover debts. Some of the main legal actions that may be taken are outlined below.

7.5.1 Statement of Claim and Judgment

7.5.1.1 Statement of Liquidated Claim

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

Council will have an additional document hand delivered with each SLC, encouraging the Ratepayer or Customer to contact council to arrange to pay and avoid further legal action.

7.5.1.2 Judgment

Twenty-eight days after an SLC has been served, if a Ratepayer or Customer has still not paid and has not made a satisfactory payment arrangement, the normal course of proceedings is to obtain Judgment from the Court and then take enforcement actions.

The Debt Recovery Agency may continue to encourage the Ratepayer or Customer to pay, making reasonable use of additional channels of communication such as letters, SMS Reminders, emails, telephone calls, and personal visits.

Note: When Judgment is entered, the debt is reported on the credit record of a Ratepayer or Customer by Credit Reporting Agencies. When all debts have been paid in full, the Debt Recovery Agency will automatically notify the main Credit Reporting agencies that the debts are no longer outstanding but to have it removed from your credit rating an application will need to be made to Council.

7.5.2 Enforcement of Judgment

Council's Debt Recovery Agency may choose from a range of actions to enforce Judgment and collect debts, including but not limited to the following actions, which may be taken in any order:

7.5.2.1 Garnishee

The Ratepayer or Customer's wages, bank accounts, or other third parties owing monies to the Ratepayer or Customer may be garnisheed.

7.5.2.2 Examination Notice/Summons

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

7.5.2.3 Writ

A Writ may be issued for the Sheriff to seize property to settle the debt. Writs are rarely effective, so they will not be used without either prior assessment that there is likely to be property that may be seized, or for other specific purposes.

7.5.2.4 Winding up or bankruptcy

As an action of last resort to recover large debts, Council can initiate the following actions:

- Winding Up - where the Ratepayer or Customer is a corporation.
- Bankruptcy - where the Ratepayer or Customer is an individual.

Council will only initiate these actions after full consideration of expert advice, and after other endeavours to collect the debts have been unsuccessful.

Note: Council recognises the significance of legal documents and requires them to be served personally on Ratepayers and Customers. Personal service of legal documents allows Council to deliver a supporting document which explains the action being taken and again encourages Ratepayers and Customers to contact Council to arrange to pay. Legal documents may be delivered by Court Post in exceptional circumstances on a case by case basis.

7.6 Other Debt Recovery Actions

7.6.1 Sale of Land

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

7.6.2 Payment of Rent by a Tenant

If the property on which a debt is owed is rented Council can, under certain circumstances, require that the rent be paid to Council until the debt is recovered in full.

Council issues a Rent for Rates Notice to the tenant. Because the Notice is likely to cause the tenant some concern, Council has this Notice hand-delivered, along with a letter explaining the process.

By law the tenant is excused from paying that rent to the landlord. If the tenant does not comply with the Notice, then the tenant may become personally liable for the debt.

8. General Matters

8.1 Payment Arrangements

Wherever possible, Council prefers to make a sustainable payment arrangement with Ratepayers and Customers rather than take legal action.

Council will treat any request for a payment arrangement sympathetically and reserves the right to accept or decline any payment arrangement.

- Payment arrangements may be weekly, fortnightly or monthly.
- Payment arrangements will be negotiated with a view to clearing all outstanding arrears, and new charges billed, within a 12-month period and/or before the next Rates Levy for outstanding rates.
- In extraordinary circumstances, the Manager Finance may agree to a longer-term payment arrangement.
- Ratepayers and Customers may be offered an extension of time to pay a missed payment. Extensions of time are limited to within a period of 2 months. If scheduled payments are 2 months overdue, then Council requires a new payment arrangement to be agreed.
- Normal interest charges will apply to arrangements unless interest is to be written off in accordance with the provisions of the Financial Hardship Policy.
- When making payment arrangements, Ratepayers and Customers will provide contact phone numbers and email addresses to help Council to contact them if required.
- If a payment arrangement is dishonoured, Debt Recovery Action may continue without further notice.

8.2 Emails

Council can post notices by mail or by email if the ratepayer is registered via eNotices. Ratepayers and Customers are encouraged to share their email addresses with Council to enable faster and more reliable communication about their account.

Appendix 1. Leeton Shire Council Debt Recovery Process Flowchart

