

	<b>COUNCIL POLICY</b>	
	<b>Debt Recovery Policy</b>	
POLICY NO.:	086	
DEPARTMENT:	ORGANISATIONAL SERVICES	
PROGRAM:	FINANCIAL SERVICES	
ENDORSED BY COUNCIL:	24 JUNE 2020 (ORD-2020-142)	

## 1.0 Scope

This policy applies to all outstanding rates and charges and other accounts receivable, due to Mackay Regional Council (MRC) and its commercialised business units.

## 2.0 Purpose

The key objectives of the Debt Recovery Policy are to:

- ensure a fair, consistent and accountable approach to MRC's debt management and collection practice
- recognise the importance that debt recovery has on the capacity of MRC to deliver services to the community
- maximise the collection of outstanding debts
- establish timelines of communications and debt collection itself, which will deliver consistency of service
- maximise the cost effectiveness of collection processes.

## 3.0 Reference

- *Local Government Act 2009*
- *Local Government Regulation 2012*

## 4.0 Definitions

To assist in interpretation, the following definitions shall apply:

**Commercial Debt** shall mean any debt created on a commercial basis out of an arrangement with one of Council's Business Units for the supply of goods and services.

**Council** shall mean the Mayor and Councillors of Mackay Regional Council.

**Council Business Unit** shall mean any area of Council supplying goods and services to external parties on a commercial basis.

**Debtor** shall mean any person including a ratepayer, who owes money to Council.

**Debt collection agency** shall mean the third party contracted to provide collection services for Council for the time being.

**Human Rights Complaint** shall mean a complaint about an alleged contravention of section 58-1 by a public entity in relation to an act or decision of the public entity.

**MRC** shall mean Mackay Regional Council.

**Pensioner** shall mean an elderly, invalid, disabled or disadvantaged citizen, who is:

- (a) An eligible holder of a Queensland 'Pensioner Concession Card' issued by Centrelink, on behalf of the Department of Human Services, or the Department of Veterans' Affairs, or a Queensland 'Repatriation Health Card – For All Conditions (Gold Card)' issued by the Department of Veterans' Affairs; and
- (b) The owner (either solely or jointly) or life tenant/s of a property which is his/her principal place of residence; and
- (c) Has, either solely or jointly with a co-owner, the legal responsibility for the payment of rates and charges as defined which are levied in respect of the said property by the Local Authority in whose area the property is situated.

**The Act** shall mean the *Local Government Act 2009*.

**The Regulation** shall mean the *Local Government Regulation 2012*.

## 5.0 Background

Rates and charges levied under the Act and the Regulation provide a major source of revenue for MRC and effective collection processes are vital to ensure viability of the organisation.

The Act and Regulation provide mechanisms to recover overdue rates and charges. Under section 134 of The Regulation a debt may be recovered by bringing court actions against the person who is liable to pay the overdue rates and charges.

Overdue rates and charges may also be recovered by selling land under Division 3 of Part 12 of Chapter 4 of The Regulation.

There are no obligations under the Act that require MRC to take any particular action in respect of overdue rates and charges before commencing legal action. Debt collection is a legitimate and necessary business activity, but it is essential that such activity is conducted in a fair and appropriate manner.

MRC needs to carefully monitor the level of overdue rates and other amounts due to it, and be vigilant in the recovery function, as outstanding amounts can cause disruption to the provision of services and facilities. Rather than letting the level of overdue rates and other amounts escalate over time, it is preferable to constantly and consistently apply a fair, appropriate and vigilant recovery process.

It is sound administrative practice to adopt a policy that provides a uniform approach and not only assists staff in responding to enquiries but also demonstrates transparency by making clear the obligations of ratepayers and processes used by Council in assisting them meet their financial obligations.

Other amounts due to MRC include sundry accounts receivable, licence fees, animal registrations and fines. Recognising the intricacies and specialised knowledge required in some of these functions, the financial records for amounts due are maintained within the appropriate module of MRC's corporate people/property/rating system.

Each program is responsible for managing the cash flows associated with ensuring that amounts due to MRC are collected as efficiently as possible. Assistance will be provided from the Financial Services program and Billing Services team when required, including the capacity to transfer particular debts to rates or referral for further debt recovery action.

Human Rights have been considered when preparing this Policy.

## **6.0 Policy Statement**

### **6.1 Principles**

The principles that will apply in the management and recovery of rates and debts are as follows:

- MRC has a responsibility to recover monies owing to it in a timely and efficient manner to finance its operations and ensure effective cash management.
- MRC will operate effective billing and debt collection processes.
- MRC aims to minimise the amount of overdue monies that is owed.
- Debtors are expected to take responsibility for their debt obligations to MRC and organise their affairs in such a way as to be able to discharge these obligations when required.
- If a debtor cannot meet their obligations on the due dates, it is in their interest that they contact MRC at the earliest opportunity to make appropriate arrangements to address the overdue debt.
- Debtors have a responsibility to ensure that any change in contact details are provided to MRC without delay. Failure to provide such advice may result in collection action being undertaken and additional costs being incurred by the debtor.
- MRC will explain the debtors' rights and obligations in relation to any action that MRC might take to recover the overdue monies.
- MRC recognises that pensioners, as a class, may face many financial difficulties in meeting their obligations. However, as specific concessions are provided to them in regards to rebates and extended times to pay, pensioners with arrears are encouraged to take advantage of payment schedules that will ensure that the balance in arrears does not escalate beyond their means.
- No further recovery action will be taken against a debtor who has entered into a payment schedule acceptable to MRC, prior to the issue of a letter of demand, provided that the terms of the arrangement are being met.
- Once a letter of demand has been issued, legal action will proceed and any settlement negotiations will be made on a 'without prejudice' basis so that the legal right to collect the debt is not compromised.
- MRC will consider the probability of recovery of a debt prior to initiating legal action.

- MRC will make the processes used to recover overdue debts clear, simple to administer and cost effective.
- MRC will have regard to equity in providing the same treatment to debtors, of the different classes of debts, with similar circumstances.

## 6.2 Rates & Charges

Records of rating assessments and amounts due to MRC are maintained in “Pathway”, MRC’s corporate people, property and rating system.

Rate notices are issued half yearly in August and February of each year and have a due date 30 clear days from the issue date on the notice. For the half year ending 31 December 2020, the due date for all rates has been extended to 2 December 2020.

A concession has been granted to pensioners who have completed an application, in that the due date and availability of discount have been extended to a date set within the last month of the financial half year relating to the rates.

Water consumption accounts are issued half yearly. As the amounts are included on the same assessment as other rates and charges, no independent recovery action is used for these accounts and they are included in the action for the next rate levy.

### 6.2.1 *Initial Recovery Action*

Reminder notices will be issued approximately 14 days after the due date, for any accounts with a balance over \$20.00. Accounts which have an approved payment schedule, or are on hold due to circumstances which preclude any further collection action, will be excluded.

Prior to referral to Councils’ collection agents an attempt to contact the ratepayer by SMS text or email is made.

Should no response be received from the ratepayer following the reminder or SMS/email, ratepayers, who:

- have a balance over \$600
- has not entered into an approved payment schedule
- does not have their account on hold; or
- has defaulted on their agreed payment schedule.

Will be referred to our collection agents for further action.

This will include an initial seven-day letter of demand, followed by a final seven-day solicitor's demand letter. The letters issued will explain the possible financial impact if MRC proceeds to legal action, including an estimate of legal costs.

Water consumption accounts are issued half yearly. As the amounts are included on the same assessment as other rates and charges, no independent recovery action is used for these accounts and they are included in the action for the next rate levy.

### 6.2.2 *Payment Schedules*

MRC has not made a resolution to allow ratepayers to pay by instalments under section 129 of The Regulation. Section 125 of The Regulation however allows MRC to defer payment of rates under nominated conditions. The Regulation allows MRC to require payment of an additional amount as a condition of the deferral.

MRC will allow a deferral of rates to those ratepayers who enter into a payment schedule acceptable to MRC. A condition of the deferral will be that the ratepayer will pay an additional amount equivalent to the interest that would have applied, should the deferral not have been approved, charged in the same manner as interest.

Ratepayers may request to enter into a payment schedule with MRC via the system generated application form provided on request or other correspondence in writing or via email. Alternatively, a ratepayer can request a payment schedule over the phone with MRC's Client Service Centre.

To be approved, a payment schedule must allow for the full balance overdue to be paid by 31 July or 31 January following the relevant rating period, either by weekly / fortnightly / monthly remittances. Exceptions or extensions may be approved at the discretion of Manager Financial Services, Revenue & Treasury Coordinator or other delegated officer.

If a ratepayer has been severely affected by a natural disaster, a deferral of rates, suspension of interest and / or allowance of late discount, may be approved for an appropriate period, at the discretion of Chief Executive Officer, Director Organisational Services, Manager Financial Services or other delegated officer.

When a payment schedule has been approved, a letter detailing the schedule of payments and conditions will be sent to the ratepayer as confirmation. If MRC does not approve the schedule, the ratepayer will be notified in writing with advice on how to re-apply with an offer that would be acceptable to MRC.

MRC should be notified by the debtor where an arranged payment will be missed. Defaulted payments are to be caught up within seven days of falling due. Notification may be made in writing / email or by contacting MRC's Client Service Centre.

Failure to meet the agreed payments or any amended amount will result in the cancellation of the payment schedule and referral to MRC's debt collection agency for commencement of recovery action.

### 6.2.3 *Legal Action*

Legal action is seen as a last resort to enforce collection; however, such action will be taken following previously mentioned initial recovery processes. All recoverable costs, as part of all debt recovery processes, will be passed on to the ratepayer.

Where the probability of successful recovery of an outstanding debt is low, particularly in relation to debts where past legal action has not resulted in repayment of the outstanding debts, MRC may elect not to proceed with further legal action and consider alternate collection action and strategies.

### 6.2.3.1 *Claim and Statement of Claim*

If no returned mail is received by MRC or its debt collection agents, it will be assumed that the correspondence has been received. Legal action will be commenced if the account remains unpaid or an approved payment schedule is not made with the collection agency.

An attempt to contact the ratepayer by telephone or email will be made before proceeding.

Ratepayers with an individual or combined balance over \$1,500 will be subject to the issue of a Claim and Statement of Claim in the appropriate court. At this stage, the debtor will incur legal costs that are recoverable with the debt.

### 6.2.3.2 *Judgment*

Prior to seeking judgment of an overdue amount, a letter will be sent to the debtor advising that this is the next step and of the potential impact on their credit history. If a mobile telephone number is recorded, a text will be sent to the debtor requesting contact be made urgently.

For debts where substantial payment has been received and / or where the balance remaining outstanding is the legal fees only, an attempt will be made by our debt collection agents to contact the debtor by telephone.

If, within 28 clear days after service of claim, the ratepayer has not paid the debt and costs, the Chief Executive Officer or other delegated officer may approve judgment to be obtained for the debt.

Once filed with the court and approved, judgment will affect the debtor's credit history file for a period of five years.

### 6.2.3.3 *Indicative Collection Timeline*

#### **Pre-legal process**

<b>Day 0</b>	<b>Issue of Rate Notice</b> - Debt becomes payable
<b>Day 30</b>	End of discount period – Debt becomes due
<b>Day 31</b>	Debt becomes overdue
<b>Day 45</b>	<b>Issue of Reminder Notice</b> by Mackay Regional Council
<b>Day 59</b>	Reminder period closes
<b>Day 66</b>	Account referred to Debt Collection Agency
<b>Day 70</b>	<b>Issue of Demand Letter</b> by Debt Collection Agency
<b>Day 78</b>	Account referred to collection Solicitors
<b>Day 82</b>	<b>Issue of Final Demand Letter</b> by collection Solicitors
<b>Day 90</b>	Account referred back to Council for claim authorisation
<b>Day 94</b>	Claim authorisation confirmed by delegated Council officer

#### **Legal Proceedings**

<b>Day 95</b>	<b>Lodgement of Magistrates Court Claim</b>
<b>Day 96</b>	Service of claim documents by bailiff
<b>Day 124</b>	End of timeframe for debtor to pay debt or defend claim
<b>Day 125</b>	Debtor become liable to have judgment entered against them

#### 6.2.3.4 *Further collection action that may be considered*

MRC may initiate other collection action in order to recover outstanding debts such as:

- Oral examination to determine income/assets
- Bankruptcy if the judgment obtained is over \$5,000
- Sale of land in accordance with the Regulation - see section 6.2.4 in this policy
- Full wind up on companies issued with Statutory Demand
- Any other process as recommended by the debt collection agency to successfully recover the debt.

#### 6.2.3.5 *Direct Statutory Demand and Wind up Action*

At the discretion of the Chief Executive Officer or other delegated officer, companies with a combined overdue balance of more than \$10,000 may be subject to the issue of a Statutory Demand, without proceeding to claim and judgment, in the appropriate court.

If, within 21 clear days after service of the Statutory Demand, the ratepayer has not paid the debt and costs, the Chief Executive Officer or other delegated officer may approve wind up action to be commenced to recover the debt.

#### 6.2.4 *Sale of Land for Arrears of Rates*

Where rates on a property remain overdue for the times referred to below, no payment arrangements exist, and other collection action has failed to recover the amount, MRC will commence proceedings to sell the property subject to and by virtue of its powers under Division 3 Part 12 Chapter 4 of The Regulation.

This division applies if some or all of the rates have been overdue for at least:

- (i) generally - three years; or
- (ii) if the rates or charges were levied on vacant land or land used only for commercial purposes, and the local government has obtained judgment for the overdue rates and charges – one year; or
- (iii) if the rates or charges were levied on a mining claim – three months.

Properties that will be subject to these provisions will be identified and a letter sent warning the ratepayers that MRC will be considering action to sell the property.

A report to MRC will be tabled for a resolution to issue a notice of intention to sell for arrears of rates, thereby commencing the sale of land process.

This process will be conducted as a part of MRC's debt management contract.

### 6.2.5 Pensioners

MRC recognises that for a variety of reasons some pensioners will have difficulties in availing themselves of the early payment discount by paying their rates by the due date and provided the ratepayer is willing to engage with MRC to ensure that their debt does not escalate will provide a further concession to the eligible pensioner under the following terms.

Pensioners who have an overdue rates balance, of more than \$200 will receive a reminder notice and those with an arrears balance of \$1,000 or more will be eligible to make an extended arrangement for payment by regular amounts. Such payments are to be sufficient to ensure that the arrears situation does not worsen (i.e. at least enough to clear current period's rates and charges each year).

Subject to the payments covering accruing rates and charges, no interest will be charged on overdue rates whilst the pensioner honours the arrangement.

Should the pensioner default under the arrangement then they will be allowed 14 days to rectify the situation. If the situation is not rectified then the arrangement will be cancelled and interest will be charged from the date of default.

Pensioners who have arrears of \$1,000 or greater at the end of financial year and who fail to contact MRC to make a formal arrangement or have an arrangement cancelled will become subject to MRC's normal recovery action for overdue rates as outlined in this policy.

### 6.2.6 Rates Relief Policy

MRC's Rates Relief Policy establishes a framework whereby ratepayers who are experiencing serious financial hardship, and as a result are unable to pay their rates and charges, are able to apply for some form of relief.

This relief can be in the form of extended payment plans or the write-off of rates and charges, interest, legal fees or other amounts. Other forms of assistance apply to pensioners and self-funded retirees as detailed in the policy.

The policy only applies to non-profit community organisations or residential properties where the property is the ratepayer's principal place of residence and no commercial benefit is derived from the property.

The above information provides a summary of the content of the policy and further information is provided in the policy that can be found on Council's website by searching "Rates Relief Policy".

## 6.3 Accounts Receivable / Sundry Debtors

Records of accounts receivable amounts due to MRC are maintained in "Finance 1", MRC's corporate financial records system.

Prior to a debtor being created in the system, an "Application to Establish an Account" form will need to be completed by the debtor or the Manager of the program requiring the facility to be created.



Following receipt of an application for a corporate or business entity the relevant Australian Company Number (ACN) or Australian Business Number (ABN) details will be verified via a search.

Invoices are issued for both scheduled and continuing amounts and on an ad hoc basis.

The Accounts Receivable officers will maintain a register of scheduled and continuing amounts, such as lease payments, which will include details of the debtor amounts and any Consumer Price Index (CPI) type adjustments required.

For all other amounts, the relevant program will be required to submit a request for invoice in the approved format and the invoice will be prepared and either issued to the debtor or returned to the requestor for further attention, as required.

#### *6.3.1 Initial Recovery Action*

Following the end of each month, all accounts are reviewed in conjunction with the printing of monthly statements which are then issued with appropriate notations made on the document.

A reminder letter will be issued to the debtor 15 days after the due date for the invoice. This reminder letter requires payment to be made within 14 days. Where payment is not received, the account would be referred to Collection House Limited to initiate recovery action.

Details of all overdue accounts are provided to the relevant program each month and it will be the responsibility of the Manager or Director to confirm the escalation of the recovery action.

It is vital to the process that the amounts invoiced can be verified and justified at the time they are requested by the program in order to ensure that a successful legal action can be undertaken in the event of non-payment.

#### *6.3.2 Interest on Overdue Invoices*

MRC's credit terms are 30 days. Overdue balances on invoices issued on commercial debts will bear interest at the rate of 8.53% per annum compounding, charged at the end of each month, after the aging of the invoice has reached 60 days. If the invoice is paid on or before the date of 60 days after issue no interest will be payable. Interest charged will accrue after the end of the month in which the invoice becomes overdue.

Monthly interest amounts less than \$5.00 per debtor account will be waived and not invoiced.

Invoices which are generated from contractual arrangements will be subject to the terms of the contract rather than MRC's standard credit terms.

#### *6.3.3 Payment Schedules*

It is generally not appropriate for MRC to enter into a payment schedule for sundry accounts receivable; however, the Manager of the program instigating the invoice may approve an arrangement with an individual debtor.

#### 6.3.4 Legal Action

Legal action is seen as a last resort to enforce collection and will be undertaken if the debtor fails to respond to the contact made by MRC or its representatives, following the issue of the previously mentioned correspondence.

The decision as to whether the amount outstanding warrants the use of further legal action for recovery and the appropriate level of legal action to be taken rests with the Manager of the relevant program, who instigated the invoice.

#### 6.4 Human Right Complaints

When an individual feels that they are the subject of MRC's failure to act compatibly with human rights, they can make a complaint directly to MRC. These complaints will be assessed against the *Human Rights Act 2019*.

### 7.0 **Bad Debts / Write Off**

The process for writing off uncollectible amounts will be documented within each program.

For a rates account to be deemed uncollectible it will be necessary that:

1. The ratepayer be deceased, bankrupt or untraceable or in the case of a company be in liquidation or receivership with advice from the trustee or other liquidator that the prospect of a dividend being declared would be remote or that the dividend amount would be minimal; and

There is no avenue to recover the debt by way of sale of the land for rate arrears. This would normally arise in the instance of a state tenure or lease that has been terminated or otherwise surrendered; or

2. The amount of the debt is less than \$10,000 and legal advice received that the circumstances relating to the creation of the debt make the eventual collection of the amount unlikely even if legal action were considered or, if such legal action would be too costly in relation to the amount sought or, if all legal avenues have failed to recover the amount owing plus costs.
3. For a sundry debtor to be deemed uncollectible it will be necessary that:
  - a) The debtor be deceased, bankrupt or untraceable or in the case of a company be in liquidation or receivership with advice from the trustee or other liquidator that the prospect of a dividend being declared would be remote or that the dividend amount would be minimal; or
  - b) The amount of the debt is less than \$10,000 and the circumstances relating to creation of the debt make the likely eventual collection of the amount unlikely even if legal action were considered, or if such legal action would be too costly in relation to the amount sought or, if all legal avenues have failed to recover the amount owing plus costs.

**Authorisation levels are:**

Write-off amount less than \$10,000

Relevant Program Manager with endorsement of Manager Financial Services

Write-off amount \$10,000 - \$50,000

Relevant Director

Write-off amount greater than \$50,000

Chief Executive Officer

Details of any amount written off will be advised to Council in the monthly Strategic Financial Report submitted to Council.

**8.0 Delegations**

The Chief Executive Officer is delegated authority to make determinations relating to this policy.

**9.0 Review of Policy**

This policy will be reviewed when any of the following occur:

1. The related documents are amended or replaced; or
2. Other circumstances as determined from time to time by a resolution of Council

Notwithstanding the above, this policy is to be reviewed annually.

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Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date	Folio
1	New Policy		By Council	27.08.14	
2	Review		By Council	22.06.16	
3	Review		By Council	26.10.16	
4	Annual Review		By Council	28.06.17	44769
5	Annual Review		By Council	18.07.18	57832
6	Annual Review		By Council	26.06.19	63040
7	Annual Review		By Council	24.06.20	ORD-2020-142