

# Implementing a Financial Hardship Policy

A Guide for developing Administrative Practices



***This Guide will assist Local Governments to implement practices that give effect to a Financial Hardship Policy, which will be particularly important in response to the severe economic impact on community arising from COVID-19.***

The Guide aligns with the WALGA Template Financial Hardship Policy and provides a starting point only that should be considered in context of adopted Council Policy, Delegated Authority and financial and administrative practices.

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## 1. Develop an Empathetic Culture

**Empathy** the ability to understand and share the feelings of another. *Synonyms:* compassion, sympathy, feeling concern, kindness, sensitivity, insight, decency.

### 1.1. Culture matters

1.1.1. The Ombudsman WA, *Good Practice Guideline for Local Government collection of overdue rates for people in situations of vulnerability*<sup>1</sup>, outlines that vulnerability can arise from:

- Disability
- Illiteracy / innumeracy
- Unemployment or under-employment
- Serious or chronic illness
- Bereavement
- Exposure to family or domestic violence
- Low English language proficiency

It is unlikely to be within any person's control whether they experience these circumstances in their lifetime, or not. This truth is the foundation for empathy with community members that experience situations of vulnerability.

1.1.2. An empathic culture means that the implementation of the Financial Hardship Policy, will consider and reflect how you would want and expect to be served and supported, if you found yourself in vulnerable circumstances.

1.1.3. The Council's adoption of a Financial Hardship Policy is the foundation for how financial hardship applications will be administered, but the Policy's adoption can also be a foundation for how Council Members, Executive and employees embed an empathic culture to support and serve community members in genuine need. The attitude demonstrated when dealing with vulnerable Ratepayers can influence whether they feel positively engaged and supported or shunned and disengaged.

1.1.4. Many Local Governments have adopted values included in the Code of Conduct and promoted these values as the basis for service standards the community can expect from the Local Government. Local Governments should consider how well, or otherwise, adopted values and an empathetic culture are demonstrated when implementing the Financial Hardship Policy.

### 1.2. The CEO's Functions and Duties to Implement the Policy

1.2.1. The Local Government Act prescribes CEO duties relevant to the implementation of the adopted Financial Hardship Policy:

- s.5.41(c) prescribes the CEO's functions, including causing Council's decision to be implemented; and
- Financial Management Regulation 5(1)(a) prescribes the CEO's duty to ensure efficient systems and procedures are established for the proper collection of money owing to the Local Government.

<sup>1</sup> [http://www.ombudsman.wa.gov.au/Improving\\_Admin/Al\\_Reports.htm](http://www.ombudsman.wa.gov.au/Improving_Admin/Al_Reports.htm)

- 1.2.2. Accordingly, adoption of Council's Financial Hardship Policy will require the CEO to review and if necessary modify the rates collection procedures, so that the Policy is appropriately implemented.
- 1.2.3. Whilst the Act and Financial Management Regulations prescribe these matters as the statutory responsibility of the CEO, the Act also provides that the CEO may fulfil these functions by '*acting though*' another employee [s.5.45(2)]. Therefore, Local Government employees whose job role includes responsibility for rates collection, should review practices and procedures in context of Council's adopted Financial Hardship Policy and consult with Executive and / or the CEO to implement procedural changes necessary for Policy implementation.
- 1.2.4. If the Local Government does not have appropriate systems and procedures to guide rates collection, then this provides an opportunity to develop appropriate procedures and improve compliance with Financial Management Reg.5.
- 1.2.5. Executive, Managers and employees involved in oversight and management of rates collection procedures should participate in induction or training that provides a consistent understanding of how the policy and procedures are expected to be implemented. Training should be ongoing and refreshed periodically and provided to all relevant employees prior to the issuing of Rates Notices each financial year, to ensure the Local Government's practices remain consistent and in compliance with legislation and policy requirements.

### 1.3. Inform your Community

- 1.3.1. Consider how well the Local Government's empathetic culture and values are communicated through:
  - Promotion of access to the Financial Hardship Policy i.e. in the information provided with the Rates Notice, the Final Notice, on the website (in the policy manual and on the rates information webpage) and in media.
  - The tone of communication used in; media, promotional material on the website and in print, as well as template application forms and letters.
  - Are overdue rates collection processes and practices; fair, reasonable, equitable and sufficiently flexible to achieve better payment outcomes.
  - Thresholds and criteria used to determine when collection action is escalated.
- 1.3.2. Proactive and prominent promotion of the Financial Hardship Policy combined with an appropriate application and assessment process will ensure that those in situations of vulnerability have the opportunity to access support.
- 1.3.3. Active promotion of the Financial Hardship Policy should not be avoided as a method of limiting or reducing the number of applications, as this would be a disingenuous approach to implementing the adopted Policy, contributing to a lack of fair and equitable access for eligible community members.

#### *Handy Hint:*

#### **Good Governance Practice:**

Insufficiently considered and documented procedures for the governance of application and assessment practices may reduce the effectiveness of policy implementation and may have detrimental consequences for Local Government cash flow.

#### 1.4. Communications in Context of Vulnerability

- 1.4.1. People in vulnerable situations will have a diverse range of educational and socioeconomic backgrounds and whilst level of education can influence the risk of being in vulnerable circumstances, higher education does not protect people from vulnerability. Regardless of education and socioeconomic factors a person experiencing financial hardship is likely to also be experiencing stress and emotional distress, which may impact the person's capacity to absorb and understand information.
- 1.4.2. Consider and review how clearly information is communicated in the Local Government's written promotional materials and template letters with the objective of simplifying language and replacing lengthy, technical or legalistic terminology to ensure the information is easily understood by those with literacy or numeracy difficulties.
- 1.4.3. Ensure all communications offer and direct community members to accessing additional assistance if they have specific needs (i.e. disability, English as a second language, literacy issues, etc.).
- 1.4.4. When dealing with the most vulnerable people, wherever possible, try to have the same staff member assists the person. Speaking to a different staff member every time, means the person will have to re-state details that they may find embarrassing or difficult to discuss. The person may already find communication difficult or stressful and dealing with a staff member that already knows the person's situation can help them feel that they are being treated with respect and integrity.
- 1.4.5. Some people will not cope well when they are experiencing financial hardship, particularly where there are other stressful factors occurring in their lives or the lives of their loved ones. Local Government staff may be confronted with angry or aggressive behaviours. Vulnerable Ratepayers may also disclose information as part of their application that is traumatic or distressing for Local Government employees.
- 1.4.6. Staff must be provided with appropriate training, including how to deal with difficult customers and de-escalation techniques to ensure that staff have the capacity and resilience to deal with people in distress and the skills to help bring a difficult situation to a successful outcome. Training should also equip staff with the skills to connect people with appropriate welfare and support agencies where the person has disclosed trauma, mental health or distressing circumstances.
- 1.4.7. Establish peer support for Staff that are responsible for administering the Financial Hardship Policy, there will be times when the Staff member will need support and advice when dealing with particularly difficult or distressing matters.
- 1.4.8. All communications with vulnerable Ratepayers should reiterate the ability for a Ratepayer in financial hardship and with intent to address an outstanding debt, to contact the Local Government and negotiate or re-negotiate a payment agreement.

#### 1.5. Connect with Local Financial Counselling and Support Services

- 1.5.1. Work collaboratively with local (no fee for service) financial counselling and other community support services to develop Staff understanding of the scope of services available.
- 1.5.2. Distribute information about the adopted Financial Hardship Policy to financial counselling and other community services and invite these services to attend a presentation by the Local

Government detailing how financial hardship applications can be made and how they'll be assessed.

1.5.3. Developing relationships with local financial counselling and community support services can contribute to improved outcomes for vulnerable Ratepayers, through:

- Local Government being able to refer vulnerable Ratepayers to local financial counselling and other relevant community support services; and
- Those services providing accurate information to vulnerable Ratepayers and supporting eligible vulnerable Ratepayers to make timely applications.

## 2. Actively Support Vulnerable Ratepayers

### 2.1. Before Issuing the Rates Notice

2.1.1. Identify Ratepayers that have rates debts outstanding from previous years or have not adhered to previous payment agreements and consider writing to each Ratepayer, advising:

- That the current years' rates are about to be issued;
- Noting that the previous years' rates (or portion thereof) remain outstanding;
- Acknowledging that many residents are experiencing financial hardship and the Local Government wants to assist and support vulnerable Ratepayers wherever possible;
- Providing information about the Financial Hardship Policy and application (or re-application) process; and
- Providing contact information for financial counselling services and the Local Government officer / section that can assist the Ratepayer in making a financial hardship application.

2.1.2. Some Ratepayers will respond to this early advice, but those who don't may remember and take the opportunity when they receive their Rates Notice, particularly if the financial hardship application opportunity is again prominently promoted.

2.1.3. Early identification of people in situations of vulnerability may assist in minimising the person's accumulation of debt.

### 2.2. Issuing the Rates Notice

2.2.1. Prominently promote the right to access the Financial Hardship Policy in the Rates Notice information. The information should be sufficient to lead those in situations of vulnerability to details of the Financial Hardship Policy and the application process.

2.2.2. Providing information to the Community at the time the rates are issued, may contribute to:

- The Local Government demonstrating an open and accountable commitment to supporting vulnerable Ratepayers.
- Vulnerable Ratepayers feeling empowered to take positive action to address their financial hardship by entering into alternative rate payment arrangements earlier than they otherwise would have.
- The Local Government having an earlier understanding of cash flow implications arising from increased applications from vulnerable Ratepayers.

### 2.3. Final Notices

- 2.3.1. When issuing the Final Notices, increase the prominence of the right to access Financial Hardship Policy. People in situations of vulnerability will be increasingly stressed on receipt of 'final demand' notices. The tone of the communication should convey that they have an opportunity to take positive action by engaging with their Local Government in an environment where they will not be judged, but will be supported in doing the best they can to reduce the debt.
- 2.3.2. Include information with the Final Notice promoting local (free) financial counselling services that can support Ratepayers experiencing financial hardship.

## 3. Application Process

### 3.1. Access and Clarity

- 3.1.1. Consider making the application forms available through different means and sources, for example – downloadable from the website, by mail or email on request and perhaps even available from financial counselling services.
- 3.1.2. Make sure information provided with the application form outlines the clear and consistent criteria for determining 'financial hardship' and the minimum application requirements, so that the applicant understands how the information they provide will be used to make decisions.

### 3.2. Support

- 3.2.1. Local Governments should plan and prepare for providing assistance to complete applications, particularly to people who have physical or intellectual impairment or disability, people who have English as their second language or have difficulties with literacy or numeracy.
- 3.2.2. Local Governments should consider if they have capacity to allocate staff other than the rates staff (for example from the community development team), to assist community members in completing financial hardship applications. Separating provision of assistance to make an application from those that will be responsible for assessing applications and perhaps determining applications under delegation or providing recommendations to council on applications, ensures that the application process is not subject to perceptions of bias or undue influence.
- 3.2.3. CEO's may have performance criteria that require rates staff to achieve rates collection milestones within specified timeframes. Any such performance criteria will require review, as they are unlikely to be achievable in the current economic down-turn and may undermine consistent and reasonable implementation of the adopted Financial Hardship Policy.
- 3.2.4. Ensure staff have access to meeting rooms that provide privacy for appointments with vulnerable ratepayers and that sufficient staff are available and trained to provide support and facilitate appointments without excessive delays.
- 3.2.5. Plan and be prepared to connect vulnerable ratepayers with financial counselling and other relevant community services that can also assist them with completing and submitting an application, but may also extend to other matters i.e. assisting a vulnerable person to connect with family and domestic violence services.

## 4. Assessing Financial Hardship Applications

### 4.1. Reviewing Applications

- 4.1.1. Acknowledge receipt of the application in writing and advise the applicant of when they can expect a decision.
- 4.1.2. Check applications for completeness and if required, contact the applicant at the earliest opportunity to ask for more information. Recognise however, that due to the fast paced progression of the Covid-19 Emergency, applicants may not have the documented evidence that would usually be required. Take a flexible and reasonable approach, so that decisions are based on analysis of the probability as to whether or not the person is more likely to be in financial hardship than they are not.
- 4.1.3. Applicants are likely to feel high levels of stress arising from financial hardship. The Local Government should work to minimise unnecessary additional worry, by processing and providing decisions in the shortest reasonable timeframe.
- 4.1.4. Develop a checklist for staff to use when processing applications so that assessments and subsequent decisions are consistent and accountable. Checklists should include assessment criteria based upon the adopted Financial Hardship Policy principles that will then inform the subsequent recommendation to the decision maker (CEO under delegated authority or the Council). An example template checklist is provided in section 8 of this Guide.
- 4.1.5. Checklists and any information gathered that helps to inform the decision must be retained as confidential Local Government records. If the decision is made under delegated authority, then the records must comply with Administration Regulation 19.
- 4.1.6. If the decision is delayed, keep the applicant informed.

### 4.2. Debt Servicing Capacity

- 4.2.1. Applicants may be juggling other debt obligations, so every effort should be made to consult with the applicant to ensure that payment plans are reasonably structured and support the person in meeting their commitments, without impacting their capacity to meet their basic living expenses for themselves and their dependents.
- 4.2.2. A payment amount that is too high will quickly become too difficult to maintain, eroding the person's confidence and may result in them giving up on the payment plan.
- 4.2.3. Where the rates debt is substantial, or two or more years of rates are outstanding, encourage vulnerable Ratepayers to work with a financial counselling service to support them in managing their capacity to meet living expenses and to clear debts.
- 4.2.4. A large rates debt that has been outstanding for more than 3 years, may require the Local Government to consider taking action to sell the land to recover the rates debt. A decision to do this should consider if the person has the capacity to clear the rates debt within a reasonable timeframe (i.e. not more than 3-years) and if not, in some instances it can be in the Ratepayer's best interest to sell the property to clear debts and avoid the remaining equity in the property being eroded further.
- 4.2.5. Local Governments should also consider the implications of allowing rates debts to accrue for periods beyond 3 years, as these debts create a cost burden for all other ratepayers, lost revenue and impact the Local Government's capacity to deliver services.

## 5. Decision Making

### 5.1. Delegated Authority

- 5.1.1. It is recommended that Local Governments consider delegated authorities that assist Local Governments to make decisions under the Financial Hardship Policy efficiently and avoid unnecessary delays in determining applications.
- 5.1.2. Lengthy delays in a vulnerable Ratepayer commencing to make payments may mean that the Ratepayer who is willing and able to make a payment at the time of their application, may not be in the same position if they are required to wait a month or more before their application is considered and approved.
- 5.1.3. Delegated authorities may include:
  - Section 6.12(1)(c) provides authority to write off an amount of money which is owed to the Local Government and may apply to write off of penalty interest accrued on outstanding rates (cannot be waived refer s.6.12(2) and s.6.51(3)) and / or an outstanding rates or service charge amount. This delegation should include conditions that establish the \$value threshold for when a proposal to write off a debt must be referred for Council decision.
  - Section 6.49 providing authority to make an agreement with a person for the payment of rates or service charges.
  - Section 6.46(1) providing authority to recover rates or service charges, as well as costs of proceedings for the recovery, in a court of competent jurisdiction.
  - Section 6.64(3) providing authority to lodge (and withdraw) a caveat to preclude dealings in respect of land where payment of rates or service charges imposed on that land is in arrears.

### 5.2. Council

- 5.2.1. If the Council has not delegated authority as detailed above, then confidential officer reports and attachments will be required to enable the Council's consideration.
- 5.2.2. Officer recommendations will need to be carefully drafted to ensure that no personal information is included in the public minutes. This may require an officer recommendation that states *"That Council approves rate payment agreements as detailed in confidential attachment No.#"*, with the confidential attachment containing a table or other format, the provides specific details of each Ratepayers proposed agreement.

### 5.3. Decision Making Principles

- 5.3.1. Regardless of whether decisions are made under delegation or by the Council, the records of decision must evidence the basis for the decision and that the decision is consistent with:
  - Local Government Act requirements,
  - the terms of the Financial Hardship Policy applied reasonably and with reasonable flexibility; and
  - Procedural fairness, which shows that the Local Government has consulted with the person to try and assist them to make an acceptable application, before a decision is made to refuse or grant the application.

## 5.4. Confidentiality and Record Keeping

- 5.4.1. The Council Minutes, or Local Government Records if the decision is made under delegation, must be created, retained and managed so that the sensitive information about a vulnerable ratepayer is maintained as confidential.

## 5.5. Applicant Requests for Decision Reviews

- 5.5.1. Where an applicant is dissatisfied with the decision about their financial hardship application they may request a decision review. This accords with principles for integrity in decision making and aligns with the WALGA Template COVID-19 Financial Hardship Policy.
- 5.5.2. A decision review must be an independent assessment by a person that was not involved in the original decision. The outcome of a review will either validate or vary the original decision.
- 5.5.3. Options for undertaking a decision review, will depend on who made the original decision:
- If the original decision was made by the CEO under delegated authority, the Council may undertake the decision review. The officer report and recommendation to Council should be written by an officer other than the CEO.
  - If the original decision was made by another staff member under delegation, then the CEO may undertake the decision review.
  - If the original decision was made by the Council, then the Local Government may need to engage the services of an external experienced and independent person to undertake the review i.e. a local justice of the peace or former President / Mayor.

## 6. Reporting and Monitoring

### 6.1. Reporting

- 6.1.1. Prepare periodic reports (monthly or quarterly) detailing outstanding rates and service charge debts, collating Ratepayers into three categories:
- Ratepayers that have committed to instalments or other agreed payment plan and have substantially adhered to the plan.
  - Ratepayers that have committed to instalments or other agreed payment plan, but have not substantially adhered to the plan.
  - Ratepayers that have not paid their rates debt and have not contacted the Local Government to make payment arrangements in any form.
- 6.1.2. The reports may also include information about:
- The number of years' rates outstanding in full. This information may support early notice to a vulnerable Ratepayer that their property is at risk of being sold by the Local Government to recover the rates debt.
  - The % of debt outstanding to original rates as levied - this may provide a risk / vulnerability insight as to Ratepayers for whom vulnerability is likely to increase when next years' rates notices are issued.
  - Details to monitor missed payments / level of adherence to agreed payment plans.

- 6.1.3. Local Governments may need to consider proactive strategies that target communications and support suitable to the different situations of Ratepayers within these categories, to support them in maintaining reasonable and consistent payment plans.
- 6.1.4. Local Governments should embed a culture of empathy and support when dealing with vulnerable Ratepayers and in this context, a series of missed payments, inconsistent payments or an absence of any contact regarding an overdue rates debt, should initiate an action from the Local Government in the form of a phone call or written communication, encouraging the Ratepayer to contact the Local Government and resolve the issue.
- 6.1.5. The Local Government may initiate strategies to:
- Advise Ratepayers that the current financial years' rates will soon be issued and remind them that the Financial Hardship Policy, provides them with support to clear their outstanding rates debt;
  - Encourage Ratepayers to honour commitments to instalments / payment plans; and
  - Offer opportunity to renegotiate payment plans, subject to an application and assessment process.

## 6.2. Dealing with Payment Plan Defaults

- 6.2.1. Written procedures for rates debt recovery must be prepared in accordance with Financial Management Regulation 5(1)(a) and should include dealing with defaults i.e. when to revoke defaulted payment plan agreements and initiate debt recovery actions.
- 6.2.2. Maintain regular communications with vulnerable Ratepayers (i.e. quarterly or biennially and more often if required) to support and encourage payment plan adherence and where necessary, make adjustments.
- 6.2.3. If a payment is missed, phone the person to check and see if they are struggling. Or, perhaps consider empathic text reminders before the next due payment, encouraging ratepayers to make contact if circumstances have changed. Offer to adjust payment plans where necessary. Adjustments may apply to a few scheduled payments to allow the person to get through a period of additional difficulties or may be a longer term or permanent adjustment to their payment plan. Confirm in writing the terms of any payment plan adjustment.
- Adjustments to support capacity to make payments is a positive action that means the vulnerable person continues to reduce their debt and there is ongoing cash flow for the Local Government.
- 6.2.4. Wherever possible, despite defaulting on an agreed payment plan, if the Ratepayer is willing they should be encouraged to again recommence regular payments.
- 6.2.5. If however, the payment plan remains in default, then as at 1 July 2021 the Local Government will offer the Ratepayer, in accordance with the Policy, one further opportunity to agree and adhere to a payment plan. If the Ratepayer does not take up the offer or fails to genuinely try to adhere to the payment plan, then the next phase of the rate recovery process may be initiated.

### 6.3. Rates Debt Recovery

*Note:*

A [Ministerial Order Gazetted on 8 May 2020](#) in accordance with Part 10 of the *Local Government Act 1995*, prohibits application of interest or penalty charges on an excluded person's rate and service charge debts in the 2020/21 financial year or until the Order is revoked or expires.

6.3.1. Written procedures for rates debt recovery must be prepared in accordance with Financial Management Regulation 5(1)(a). The procedure may include steps related to:

- Referring the debt to a debt collection service.
- Initiating a court summons or legal proceedings [s.6.56].
- Requesting a lessee to pay rent to Local Government (and not the land owner) [s.6.60].
- Taking action to lease the land, sell the land or take possession of the land [s.6.64].

## 7. Attachments

WALGA has produced the following attachments to assist with the consistent and evidence based implementation of the practices set out in this Guide, and the Local Government's adopted Financial Hardship Policy. In each case, WALGA recommends that the template is reviewed and modified to align with the adopted Financial Hardship Policy, your community's circumstances and administration operational requirements.

7.1. [Template Financial Hardship Application Form](#)

7.2. [Template Financial Hardship Application Assessment Checklist](#)