



Many Local Governments have resolve to 'freeze rates' in their 2020/21 Budgets and are now considering resolutions regarding rate setting strategies, including differential rates, instalments and penalty interest on outstanding debts and rates and service charges.

The [Local Government \(COVID-19 Response\) Ministerial Order 2020, gazetted on 8 May 2020](#), (COVID-19 Ministerial Order) in accordance with section 10.3 of the *Local Government Act 1995*, will have implications for how Local Governments make rating and budget decisions, including the adoption of penalty interest rates for overdue debts.

The following example budget adoption officer recommendations, will assist Local Governments in ensuring rate setting and penalty interest decisions are consistent with the requirements of the COVID-19 Ministerial Order.

Please note that the COVID-19 Ministerial Order also includes modifications to Local Government Act requirements under sections 5.27 (electors' general meetings), 5.28 (electors' special meetings), 5.94 (public can inspect certain local government information) and 9.51 (giving documents to local governments). These modifications to the Act requirements are not explained in this Guide.

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1. Budget Adoption Officer Report Content

The budget adoption officer report should include:

- Sufficient detail to inform the Council and the Community about how the COVID-19 Ministerial Order has modified Local Government Act requirements and how the Local Government is complying with the requirements of the Ministerial Order, as applicable or not.
- Officer Recommendations to evidence compliance with the Ministerial Order.

2. Ministerial Order Clause 7 – Section 6.2 modified (local government to prepare annual budget)

- 7. Section 6.2 modified (local government to prepare annual budget)**
- (1) Section 6.2(2) is modified as set out in this clause in relation to the preparation of the 2020/21 annual budget of a local government.
 - (2) The reference to the contents of the plan for the future of the district made in accordance with section 5.56 is replaced with a reference to the consequences of the COVID-19 pandemic.

To evidence compliance with Ministerial Order clause 7, the budget adoption officer report should detail how the Council has applied consideration of the consequences of the COVID-19 pandemic to the preparation of the 2020/21 budget and particularly how these considerations have varied or impacted the previously adopted priorities arising from the Community Strategic Plan and Corporate Business Plan (Plan for the Future).

Where the Local Government identifies priorities may have been substantially impacted because of the consequences of the COVID-19 pandemic, then the Local Government may need to plan for a future review of the Community Strategic Plan and Corporate Business Plan in accordance with Administration Regulations Part 5, Division 3.

3. Ministerial Order Clause 8 – Section 6.13 modified (interest on money owing to local governments)

- 8. Section 6.13 modified (interest on money owing to local governments)**
- (1) Section 6.13 is modified as set out in this clause in relation to a resolution of a local government under section 6.13(1) that is to be included in its 2020/21 annual budget.
 - (2) The resolution —
 - (a) cannot require a person who is considered by the local government to be suffering financial hardship as a consequence of the COVID-19 pandemic to pay interest; and
 - (b) is to specify that the requirement to pay interest does not apply to a person who is considered by the local government to be suffering financial hardship as a consequence of the COVID-19 pandemic.
 - (3) The rate of interest that may be set by the local government under section 6.13 in its 2020/21 annual budget is not to exceed 8%.
 - (4) Subclause (3) applies despite the *Local Government (Financial Management) Regulations 1996* regulation 19A.

Section 6.13 enables Local Governments to adopt (by absolute majority) an interest rate applicable to any amount of money owed to the Local Government (other than rates and service charges), that has been owed for a period of time not less than 35 days after the date issued as stated on the account for payment.

Handy Hints: The WALGA Template Financial Hardship Policy and Implementation Guide are available to all WALGA Members on the [WALGA Website](#).

Example Officer Recommendation:

That Council:

1. ADOPT, by absolute majority, in accordance with section 6.13 of the Local Government Act 1995 and clause 8 of the Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, a rate of interest of <<insert % - cannot exceed 8%>> applicable to any amount of money owing to the local government (other than rates or service charges), with interest calculated from the due date, which is <<insert XX days – cannot be less than 35-days>> from the date of issue shown on the account for payment, subject to:
 - a. This interest rate cannot be applied to a person who is considered by the <<insert Local Government name>> to be suffering financial hardship as a consequence of COVID-19 pandemic.

4. Ministerial Order Clause 9 – Section 6.33(3) modified (differential general rates) - being twice the lowest differential rates

9. Section 6.33 modified (differential general rates)
(1) In this clause — relevant rate , of a local government, means a proposed differential general rate of the local government that under section 6.33(3) cannot be imposed without the approval of the Minister.
(2) Section 6.33(3) is modified as set out in this clause in relation to a relevant rate of a local government if —
(a) as a consequence of the COVID-19 pandemic, the local government resolves (whether before or after commencement day) that no proposed differential general rate of the local government will exceed the corresponding differential general rate that was imposed by the local government in the 2019/20 financial year; and
(b) the local government obtained the Minister's approval under section 6.33(3) to impose in the 2019/20 financial year a differential general rate corresponding to the relevant rate.
(3) The local government is not required to obtain the approval of the Minister under section 6.33(3) to impose the relevant rate.

Ministerial Order Clause 9 is only applicable to Local Governments that imposed and obtained Ministerial approval under s.6.33(3) for a 2019/20 differential rate that was twice the lowest differential rate in that financial year. Therefore the Local Government is not required to obtain the Minister's approval for the 2020/21 differential rates IF the Local Government imposes the same (unchanged) 2019/20 differential rates in 2020/21.

The below example officer recommendation has been drafted for efficiency to include minimum payments, however this may not be appropriate or may require modification if Ministerial Order Clause 11 (refer Item 6 below) applies to the Local Government.

Example Officer Recommendation:

That Council:

- IMPOSE**, by absolute majority, in accordance with section 6.32(1)(a)(ii), 6.32(1)(b)(ii) and 6.33(3) of the Local Government Act 1995 and clause 9 of the Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, the following differential rates for the 2020/21 financial year that do not exceed the corresponding 2019/20 differential rates approved by the Minister on <<dd Month>> 2019:

Differential Rate Characteristic	2019/20 Rate in \$	2019/20 Minimum Payment	2020/21 Rate in \$	2020/21 Minimum Payment
	(as adopted on dd Month 2019)			
GRV Commercial				
GRV Office				
GRV Retail				
GRV Residential				
UV Vacant Land				
UV Commercial				
UV Farmland				

5. Ministerial Order clause 10 – Section 6.34 modified (limit on revenue or income from general rates)

- 10. Section 6.34 modified (limit on revenue or income from general rates)**

(1) Section 6.34(b) is modified as set out in this clause in relation to the 2020/21 annual budget of a local government.

(2) The reference to 90% is replaced with a reference to 80%.

The Officer Report proposing budget adoption should detail the estimated revenue generated by the general rate with an officer recommendation evidencing compliance with the Ministerial Order.

Example Officer Recommendation:

That Council:

1. *NOTE, in accordance with section 6.34 of the Local Government Act 1995 and Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, the revenue estimated to be yielded by the general rates imposed for the 2020/21 financial year will be << insert % that is no less than 80% and no more than 110% >> of the 2020/21 Budget expenditure.*

6. Ministerial Order Clause 11 – Section 6.35(5) modified (minimum payment)

- 11. Section 6.35 modified (minimum payment)**
- (1) In this clause —
relevant minimum payment, of a local government, means a proposed minimum payment of the local government that under section 6.35(5) cannot be imposed without the approval of the Minister.
- (2) Section 6.35(5) is modified as set out in this clause in relation to a relevant minimum payment of a local government if —
- (a) as a consequence of the COVID-19 pandemic, the local government resolves (whether before or after commencement day) that —
- (i) no proposed differential general rate of the local government will exceed the corresponding differential general rate that was imposed by the local government in the 2019/20 financial year; and
- (ii) no proposed minimum payment of the local government will exceed the corresponding minimum payment that was imposed by the local government in the 2019/20 financial year;
- and
- (b) the local government obtained the Minister's approval under section 6.35(5) to impose in the 2019/20 financial year a minimum payment corresponding to the relevant minimum payment.
- (3) The local government is not required to obtain the approval of the Minister under section 6.35(5) to impose the relevant minimum payment.

Ministerial Order Clause 11 is only applicable to Local Governments that imposed and obtained Ministerial approval under s.6.35(5) for a 2019/20 minimum payment, and therefore the Local Government will not need to obtain the Minister's approval to impose the same (unchanged) 2019/20 minimum payments in 2020/21.

Example Officer Recommendation:

That Council:

- IMPOSE**, in accordance with s.6.35 of the Local Government Act 1995 and clause 11 of the Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, minimum payments for 2020/21 financial year that are consistent with the 2019/20 minimum payments approved by the Minister for Local Government on <<dd Month>> 2019:

Differential Rate Characteristic	2019/20 Minimum Payment (as adopted on dd Month 2019)	2020/21 Minimum Payment
GRV Commercial		
GRV Office		
GRV Retail		
GRV Heavy Industrial		
GRV Residential		
UV Vacant Land		
UV Commercial		
UV Farmland		

7. Ministerial Order Clause 12 – Section 6.36 modified (local government to give notice of certain rates)

12.	Section 6.36 modified (local government to give notice of certain rates)
(1)	Section 6.36 is modified as set out in this clause in relation to a local government if, as a consequence of the COVID-19 pandemic, the local government resolves (whether before or after commencement day) that —
(a)	no proposed differential general rate of the local government will exceed the corresponding differential general rate that was imposed by the local government in the 2019/20 financial year; and
(b)	no proposed minimum payment of the local government of the kind referred to in section 6.36(1) will exceed the corresponding minimum payment that was imposed by the local government in the 2019/20 financial year.
(2)	The requirements in section 6.36(1) to (4) do not apply to the local government and are replaced with the requirements in subclauses (3) and (4).
(3)	The local government must publish on the local government's official website details of each proposed differential general rate and each proposed minimum payment of the local government.
(4)	The details referred to in subclause (3) must be published by the local government within 10 days after the later of the following —
(a)	the day on which the local government makes the resolution referred to in subclause (1);
(b)	commencement day.

Ministerial Order Clause 12 is only applicable to Local Governments that have, or are proposing to, impose the differential rates and minimum payments as adopted for 2019/20 without change in the 2020/21 financial year.

Therefore Local Governments do not have to give local public notice of the intention to levy in 2020/21 the same differential rates and minimum payments as it levied in 2019/20 and consequently is not required to call for public submissions, nor consider public submissions before imposing the 2020/21 differential rates and minimum payments.

Instead the Local Government must publish the differential rates on the Local Government's website, as applicable within 10-days of the Council resolution to impose them.

However, if Council resolution imposed the differential rates before 8 May 2020 (gazettal date of the Ministerial Order), then the Local Government was required to publish the differential rates on their website by 18 May 2020 (this being within 10-days of the gazettal and commencement of the Ministerial Order). Local Government that may have missed compliance with this requirement, should ensure the information is published on their website as soon as practicable.

The exemption from public notice, public submission period and consideration of public submissions and the consequential requirement for differential rates to be published on the website should be explained for the Council and Community in the officer report with the officer recommendation evidencing compliance with the Ministerial Order.

Example Officer Recommendation

That Council:

1. *NOTES, that in accordance with section 6.36 of the Local Government Act 1995 and clause 12 of the Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, the <<insert Local Government name>> is not required to give local public notice nor seek and consider public submissions for imposing the 2020/21 differential rates as they are unchanged from those imposed in 2019/20 and will publish the differential rates on the website by insert date that is less than 10-days from the date of this resolution <<dd Month>> 2020.*

8. Ministerial Order Clause 13 – Section 6.45 modified (options for payment of rates or service charges)

- 13. Section 6.45 modified (options for payment of rates or service charges)**
- (1) In this clause —
financial hardship policy, in relation to a local government, means a policy addressing the manner in which the local government will deal with financial hardship that may be suffered by ratepayers and other persons who are required to make payments to the local government.
 - (2) Section 6.45 is modified as set out in this clause in relation to payment by instalments of a rate or service charge imposed by a local government in the 2020/21 financial year.
 - (3) The local government cannot impose an additional charge (including an amount by way of interest) under section 6.45(3) in respect of payment by instalments made by an excluded person.
 - (4) If the local government has not adopted a financial hardship policy, the maximum rate of interest that may be imposed by the local government under section 6.45(3) is 3%.
 - (5) Subclause (4) applies despite the *Local Government (Financial Management) Regulations 1996* regulation 68.

Ministerial Order Clause 3 prescribes definitions important to the application of Clause 13 (above):

excluded person means a person who —

- (a) is a residential ratepayer or small business ratepayer of a local government; and
- (b) is considered by the local government to be suffering financial hardship as a consequence of the COVID-19 pandemic;

residential ratepayer, in relation to a local government, means a person who under section 6.44 is liable to pay a rate or service charge that is imposed by the local government on land on the basis that the land is used for residential purposes;

small business has the meaning given in the *Small Business Development Corporation Act 1983* section 3(1);
small business ratepayer, in relation to a local government, means a person who under section 6.44 is liable to pay a rate or service charge that is imposed by the local government on land used by the person for the purposes of carrying out a small business owned or operated by the person.

Ministerial Order clause 13(3) prohibits Local Governments from applying an additional charge and / or interest under s.6.45(3) on a rate or service charges instalment arrangements on an **excluded person** (being a residential ratepayer or small business ratepayer that is considered by the Local Government to be suffering financial hardship as a consequence of the COVID-19 pandemic).

In addition, Ministerial Order clause 13(4) limits the interest rate to 3% (maximum) applicable to a rate / service charge instalment arrangement, if a financial hardship policy has not been adopted.

If a financial hardship policy has been adopted by Council, then the 5.5% interest rate [FM r.68] can be applied to ratepayers, including residential and small business ratepayers suffering financial hardship not related to COVID-19 or that choose to pay by instalment for any other reason.

The purpose of the Financial Hardship Policy is to establish principles that guide decisions about whether or not financial hardship exists and whether or not it is as a result of COVID-19, so that decisions are transparent, accountable and consistent.

The officer report should detail if the Council has adopted a Financial Hardship Policy or not, explain the definition of 'excluded order' (as defined in the COVID-19 Ministerial Order), with the officer recommendation evidencing compliance with the Ministerial Order.

In the absence of an adopted Financial Hardship Policy, the officer report should outline how the Local Government will determine if a person is suffering financial hardship as a consequence of COVID-19 pandemic, to ensure that such decisions are transparent, accountable and consistent. This may ultimately require the Council to consider adopting a policy position on the matter.

Example Officer Recommendation (Financial Hardship Policy)

That Council:

1. ***IMPOSES**, in accordance with section 6.45(3) of the Local Government Act 1995 and clause 13 of the Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, an additional charge of \$xx and interest rate of <<insert % - cannot exceed 5.5%>> applicable to rate and service charge instalment arrangements, subject to:*
 - a. *This additional charge and interest rate cannot be applied to an excluded person, as defined in the Local Government (COVID-19 Response) Ministerial Order 2020, that has been determined as suffering financial hardship as a consequence of the COVID-19 pandemic in accordance with Council Policy <<insert ref number>> Financial Hardship Policy.*

Example Office Recommendation (NO Financial Hardship Policy)

That Council:

1. ***IMPOSES**, in accordance with section 6.45(3) of the Local Government Act 1995 and clause 13 of the Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, an additional charge of \$xx and interest rate of <<insert % - cannot exceed 3%>> applicable to rate and service charge instalment arrangements, subject to:*
 - a. *This additional charge and interest rate cannot be applied to an excluded person, as defined in the Local Government (COVID-19 Response) Ministerial Order 2020, that has been determined by the <<insert Local Government name>> as suffering financial hardship as a consequence of the COVID-19 pandemic.*

9. 6.51 modified (accrual of interest on overdue rates or service charges)

- 14. Section 6.51 modified (accrual of interest on overdue rates or service charges)**
- (1) Section 6.51 is modified as set out in this clause in relation to a resolution made under section 6.51(1) by a local government at the time of imposing a rate or service charge for the 2020/21 financial year.
 - (2) The resolution —
 - (a) cannot impose interest in respect of a rate or service charge payable by an excluded person; and
 - (b) is to specify that the imposition of interest does not apply in respect of a rate or service charge payable by an excluded person.
 - (3) The rate of interest that may be set by the local government under section 6.51 is not to exceed 8%.
 - (4) Subclause (3) applies despite the *Local Government (Financial Management) Regulations 1996* regulation 70.

Ministerial Order Clause 3 prescribes definitions important to the application of Clause 14 (above):

excluded person means a person who —

- (a) is a residential ratepayer or small business ratepayer of a local government; and
- (b) is considered by the local government to be suffering financial hardship as a consequence of the COVID-19 pandemic;

residential ratepayer, in relation to a local government, means a person who under section 6.44 is liable to pay a rate or service charge that is imposed by the local government on land on the basis that the land is used for residential purposes;

small business has the meaning given in the *Small Business Development Corporation Act 1983* section 3(1);

small business ratepayer, in relation to a local government, means a person who under section 6.44 is liable to pay a rate or service charge that is imposed by the local government on land used by the person for the purposes of carrying out a small business owned or operated by the person.

Ministerial Order Clause 14 prohibits local governments from imposing under s.6.51 an interest rate exceeding 8% (applicable to unpaid rates or services charges after becoming due and payable) and provides that this interest cannot be imposed on an **excluded person** (being a residential ratepayer or small business ratepayer that is considered by the Local Government to be suffering financial hardship as a consequence of the COVID-19 pandemic).

The Ministerial Order requires Council's resolution to explicitly state the requirement for interest to not apply to an **excluded person**.

The officer report should detail the effect of Ministerial Order Clause 14 limiting overdue rates / service charge interest to not exceed 8% (that under Financial Management Regulation 70 could usually be up to 11%) and that the interest rate cannot be applied to **excluded persons**, with the officer recommendation evidencing compliance with the Ministerial Order.

Example Officer Recommendation

That Council:

1. ***IMPOSES**, by absolute majority, in accordance with section 6.51(1) of the Local Government Act 1995 and clause 14 of the Local Government (COVID-19 Response) Ministerial Order 2020, gazetted on 8 May 2020, an interest rate of <<insert % - cannot exceed 8%>> applicable to overdue and unpaid rate and service charges, subject to:*
 - a. *This interest rate cannot be applied to an excluded person, as defined in the Local Government (COVID-19 Response) Ministerial Order 2020, that has been determined by the <<insert Local Government name>> as suffering financial hardship as a consequence of the COVID-19 pandemic.*

10. Need more information or assistance?

WALGA has a range of additional COVID-19 resources to assist Local Governments, available for download from the [WALGA website](#), including:

- Template Financial Hardship policy and Implementation Guide
- Electronic Council Meetings Guide
- Delegations and Decision Making Resource
- Updated Template Purchasing Policy

Please contact the **WALGA Governance Team** on (08) 9213 2000 or governance@walga.asn.au if you need any additional assistance or advice.