



<b>POLICY NO</b>	<b>CP/FIN-3214</b>	
<b>POLICY</b>	<b>Sundry Debt Collection</b>	
<b>RESPONSIBLE DIRECTORATE</b>	Corporate Services	
<b>RESPONSIBLE OFFICER</b>	Senior Finance Officer	
<b>COUNCIL ADOPTION</b>	Date: 26/08/2014	Resolution No: 10504
<b>REVIEWED/MODIFIED</b>	Date: 25/08/2015	Resolution No: 11088
	Date: 26/09/2017	Resolution No: 117802
	Date: 27/03/2018	Resolution No: 117920
<b>REVIEW DUE</b>	March 2020	
<b>LEGISLATION</b>	<ol style="list-style-type: none"> <li>1. <i>Local Government Act 1995 – Sections 6.12, 6.13, 6.16</i></li> <li>2. <i>Local Government (Financial Management) Regulations - Regulations 19A and 19B</i></li> <li>3. <i>Magistrates Court (Civil Proceedings) Act 2004 – Section 12</i></li> <li>4. <i>Civil Judgments Enforcement Act 2004 – Section 8</i></li> <li>5. <i>Civil Judgments Enforcement Regulations 2005 – Regulation 4</i></li> </ol>	
<b>RELATED POLICIES</b>	<ol style="list-style-type: none"> <li>1. CP/FIN-3211 Fees and Charges Pricing</li> </ol>	
<b>RELATED ORGANISATIONAL DIRECTIVES</b>	<ol style="list-style-type: none"> <li>1. Code of Conduct for Council Members, Committee Members and Employees</li> <li>2. Audit (Finance and Risk) Committee Terms of Reference</li> <li>3. Organisational Directive – Sundry Debt Collection (under development)</li> </ol>	

#### **PURPOSE:**

This policy will establish clear guidelines for the efficient, effective and economical collection of sundry debts and fees and charges to reduce the likely occurrence of unrecoverable debts and to ensure consistency for all debt collection activities.

#### **DEFINITIONS:**

**Claim** means a claim made to the Court by a party (whether a claimant, a defendant or another party).

**Council** means the Council of the Shire of Wyndham East Kimberley.

**Court** means the Magistrates Court.

**Default** means that the customer has failed to meet their obligations in accordance with the special payment arrangement that they have entered into with the Shire of Wyndham East Kimberley.

**Financial year** means the period commencing on 1 July and ending on the next following 30 June.

**General procedure claim** means a claim where the value of the claim or the relief claimed does not exceed \$75,000.

**Judgment** means —

- (a) a monetary judgment; or
- (b) a judgment or an order of a court that requires or has the effect of requiring a person —
  - (i) to give possession of any property to another person; or
  - (ii) to do an act, to not do an act, or to cease doing an act.

**Judgment creditor** means a person who is entitled to the benefit of a monetary judgment, including a person to whom the benefit of a monetary judgment has passed (by assignment or any other way).

**Judgment Debtor** means a person against whom a monetary judgment has been given or may be enforced.

**Judgment sum** means the amount of money ordered to be paid under a monetary judgment, whether or not the money is or includes costs or pre judgment interest.

**Local government is** the Shire of Wyndham East Kimberley.

**Magistrate** means a magistrate of the Court.

**Means Enquiry** is an enquiry conducted in Court to determine whether the judgment debtor is able to pay the judgment debt.

**Memorandum of Consent** is an application to the Court requesting orders to have the judgment or claim dismissed.

**Notice of Discontinuance** is a notice lodged at the Court that updates the status of the claim to “discontinued”.

**Stop credit** means that the Shire of Wyndham East Kimberley will not have any further business dealings with the customer unless the customer pays in cash, or the account is paid in full.

**Property (Seizure and Sale) Order** authorises a bailiff to seize and sell as much of the judgment debtor’s real or personal property as necessary to satisfy the judgment debt wholly or partially, and is effective for 12 months from the date the order is made.

**Waive** means to provide a special concession to a person or organisation that extinguishes a debt that would have been owed to the Shire. A waiver may be provided prior to, or subsequent to the date that the debt is incurred.

**Write Off** occurs following the realisation that the asset can no longer be converted into cash (e.g. a bad debt), can provide no further use to the Shire, or has no market value.

**Suspension order** means an order made under section 15(3) of the *Civil Judgments Enforcement Act 2004* which states “*On such an application, the court may only make such an order if there are special circumstances that justify doing so.*”

**Time for payment order** means an order made under section 32(2) of the *Civil Judgments Enforcement Act 2004* which states “*The court may make such an order, subject to sections 21 and 22.*”

## **POLICY STATEMENTS:**

The Shire of Wyndham East Kimberley will exercise its debt recovery powers in order to reduce the overall sundry debt. It will be guided by the principles of:

**1. Equity**

Ensuring that the debt collection procedures are undertaken in a fair and equitable manner and therefore providing the same treatment for all sundry debtors with similar circumstances.

**2. Administrative Efficiency**

Providing the Shire of Wyndham East Kimberley with a more effective method over the collection of outstanding debtors and ensuring that the processes used to recover outstanding debts are clear, simple to administer and cost effective.

**3. Transparency**

Ensuring the obligations of the Shire's sundry debtors are clear, and assisting them to meet their financial obligations where possible.

**4. Compliance**

Ensuring that the Shire of Wyndham East Kimberley is compliant with the *Local Government Act 1995* and all associated regulations.

## **POLICY**

The Shire of Wyndham East Kimberley's credit terms are as stated on the issued tax invoice. The recovery of outstanding sundry debtor accounts will be collected in a fair and timely manner.

**1. Fees and Charges**

- 1.1. Only approved account holders can request to be invoiced for fees and charges, however in the case of building, planning, research / retrieval and Leisure Centre fees, these must be paid in full before service / approval is received or the Leisure Centre facilities can be used.
- 1.2. Exceptions to 1.1 are listed below and the recovery of monies for some of these fees and charges are handled differently to the standard sundry debtors and are explained further in the policy.
  - a) Bonds;
  - b) Annual registration for caravan park and camping fees and food business licence fees;
  - c) Annual lodging house fees;
  - d) Quarterly swimming pool sampling fees;
  - e) Annual Lease Fees;
  - f) Regular / seasonal hires of community and recreation facilities and equipment;
  - g) Annual waste receptacle charges, waste management charges and swimming pool / spa inspection fees are charge on the annual rate notice and are collected as per Council Policy *CP/FIN-32 12 Rates and Charges Debt Collection*;
  - h) Bin replacement or repairs are charged on rates interim notices and are collected as per Council Policy *CP/FIN-32 12 Rates and Charges Debt Collection*;

- i) Fees and charges collected under contract by external agencies, such as Airport aircraft parking fees, Aircraft landing fees, passenger taxes and screening fees;
- j) Fees and Charges collected under a memorandum of understanding arrangement;
- k) Infringements and fines.

Discretion for invoicing of fees and charges not covered in the exceptions list is delegated to the Director Corporate Services and in the case of the Director being on leave the Coordinator Financial Operations.

## **2. Invoices and Statements**

- 2.1. All invoices are raised within five (5) working days after receiving an authorised invoice request.
- 2.2. Due date for payment is strictly thirty five (35) days after the date of invoice.
- 2.3. Statements are to be sent out within five (5) working days after the end of month.

## **3. Special Payment Arrangements**

Before authorising any special payment arrangement in accordance with sub-delegation provided by the Chief Executive Officer, the Director Corporates Services will consider the following:

- 3.1. That the terms of the agreement require that all outstanding amounts will be recovered by the Shire of Wyndham East Kimberley by 30 June of the financial year in which the agreement is entered into.
- 3.2. That the sundry debtor is aware of the costs and charges associated with entering into a payment arrangement, of which the charges will be those adopted by the Council each year.
- 3.3. At the discretion of the Chief Executive Officer, a payment arrangement term may be extended beyond 30 June, but not exceed two (2) successive financial years.
- 3.4. Where a sundry debtor fails to meet their full obligation under the agreement, the agreement may be terminated and legal action may commence for outstanding charges.
- 3.5. If a sundry debtor defaults on the special payment arrangement agreement twice in any 12 month period, no further special payment arrangements can be made and charges are required to be paid in full.

## **4. Recovery of Sundry Debtors in Arrears**

- 4.1. Fees and charges are due and payable within thirty-five (35) days from the date of issue of the invoice, as shown on that invoice.
- 4.2. Where payment is not received within thirty-five (35) days from the date of the initial invoice, interest will be applied on money that remains outstanding, excluding those charges prescribed under other legislation. Interest is calculated

from the number of days from the due date of payment until the payment is received in full by the Shire of Wyndham East Kimberley.

- 4.3. The interest (percentage) charged on sundry debtors is the percentage as adopted by the Council in accordance with section 6.13 (1) of the *Local Government Act 1995*. The rate as set out under section 6.13 (1) of the *Local Government Act 1995* is not to exceed the maximum rate of interest as prescribed within regulation 19A of the *Local Government (Financial Management) Regulations 1996*.
- 4.4. At the end of each month a Final Notice will be issued for all accounts exceeding 35 days, allowing fourteen (14) days for payment, unless the debtor has agreed to enter into a special payment arrangement.
- 4.5. If payment is not received fourteen (14) days after the issue of a the Final Notice a Letter of Demand will be issued by the Shire's debt collection agency allowing seven (7) days for payment or for the sundry debtor to contact the Shire to enter into a payment arrangement. The debtor will also be placed on "stop credit" and the account will be placed on hold until the outstanding amount is paid in full.
- 4.6. Accounts under \$500.00 may be referred to the Shire's debt collection agency at the discretion of the Director Corporate Services or the Coordinator Financial Operations.
- 4.7. If the sundry debtor has made no contact with the Shire and no payment is received, it will be determined in consultation with the Shire's debt collection agency whether it is economical to proceed with a General Procedure Claim (GPC). This action will be based on a risk management approach as determined by the value and type of debt incurred.
- 4.8. If no response to the General Procedure Claim (GPC) is received within fourteen (14) days after being issued, Judgment will be applied for and any or all of the following legal processes may be undertaken, depending on the circumstances, to be determined in consultation with the Shire's debt collection agency.
  - i. Means Enquiry
  - ii. Property (Seizure and Sale) Order on Goods
  - iii. Property (Seizure and Sale) Order on Land
- 4.9. Payments Received or Contact Made After Legal Action Commenced
  - a) If any payments or contact is made by the ratepayer ~~of~~ against whom legal action has commenced the Shire's debt collection agency will be notified that legal action ~~must~~ is to be placed on hold immediately.
  - b) If the sundry debtor defaults a payment or no further contact is received from the debtor, legal action will resume and the payment arrangement will be terminated.
  - b) When payment has been received in full, the Shire's debt collection agency will be

notified to close the account. If payment in full is received prior to Judgment, a Notice of Discontinuance will be lodged. A Memorandum of Consent may be lodged at the request of the debtor if payment in full is received either before or after judgment has been obtained.

**5. Cancellation of an Account**

If an account has received three (3) stop credits, the account is to be referred to Coordinator Financial Operations to determine if the account should be closed. In the case that the Coordinator Financial Operations is on leave the Director Corporate Services or the Coordinator Financial Management is to be notified and a determination made.

**6. Bonds**

6.1. An invoice for a bond will not be issued.

6.2. Bonds are to be received in full five (5) working days prior to the hiring of Shire facilities / equipment.

6.3. Bonds will be refunded once a Shire Officer has inspected the facility / equipment hired and approve of the bond release.

6.4. Bonds are only to be refund if the company / person do not owe any monies (current or outstanding) with the Shire.

**7. Annual Registration Fees for Caravan Parks, Camping Grounds, Food Business Licence, Lodging Houses, Swimming Pool Sampling fees**

7.1. The collection of these charges will be handled by the Community Development Support Officer for Health.

7.2. On a weekly basis, a list is to be sent to the Officer outlining the outstanding charges.

7.3. In the case of the Food Business Licence, if the licence is to be cancelled, the holder of the licence is to notify the Shire in writing and the invoice is to be cancelled on notification.

**8. Infringements and Fines**

8.1. The collection of these charges is handled by the Infrastructure Support Officer or Customer Service Officer.

8.2. In accordance with the *Fines, Penalties and Infringement Notices Enforcement Act 1994*; twenty-eight (28) days after the issue of the Infringement/fine notice a final notice will be issued. A final notice must identify the infringement notice concerned and the alleged offence.

8.3. Twenty-Eight (28) days after the issue of the final notice the account will be registered with the Fines Enforcement Registry (FER).

8.4. Any further action is to be taken by the Fines Enforcement Registry (FER) according to the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

## **9. Debt Collection / Legal Expenses**

Debt collection and legal fees associated with the recovery of outstanding debts will be recovered from the sundry debtor to the extent allowable under legislation and will be assessed on a case by case basis.

## **10. Responsibility of Sundry Debtors**

It is the responsibility of the sundry debtor to ensure that the payments made electronically use the correct reference number. If an incorrect reference number is used and the Shire is not advised by the sundry debtor that this error has occurred, then the sundry debtor will be responsible for the payment of any interest or debt collection charges that may have been incurred in the meantime.

## **11. Write off of Sundry Debts**

1. Write off of sundry debts will only be considered when all recovery processes available under this policy and allowable under legislation have been followed and there is no prospect of recovery of the debt.
2. Write off of sundry debts can occur under Council delegation 11 for amounts up to \$500 or by resolution of the Council for amounts over \$500.

## **EXPLANATORY NOTES:**

The collection of sundry debtors and fees and charges is an important component of the Shire's management of adequate cash flows as well as the overall management of the Shire's financial performance and position.

The Shire's fees and charges are adopted by a Council resolution in accordance with the *Local Government Act 1995*. These fees and charges can only be modified by a resolution of the Council or under delegated authority by the Chief Executive Officer. All requests for concessions on fees and charges must be made in advance, in writing and addressed to the Chief Executive Officer.

This policy aims to provide manageable and efficient control over sundry debts by closely monitoring aged accounts in order to reduce the likely occurrence of unrecoverable debts.

### **Scope & Limitations**

In accordance with the *Local Government Act 1995*:-

#### **6.12. Power to defer, grant discounts, waive or write off debts**

- (1) Subject to subsection (2) and any other written law, a local government may —
  - (a) when adopting the annual budget, grant\* a discount or other incentive for the early payment of any amount of money; or
  - (b) waive or grant concessions in relation to any amount of money; or
  - (c) write off any amount of money,

*which is owed to the local government.*

*\* Absolute majority required.*

- (2) *Subsection (1)(a) and (b) do not apply to an amount of money owing in respect of rates and service charges.*
- (3) *The grant of a concession under subsection (1)(b) may be subject to any conditions determined by the local government.*
- (4) *Regulations may prescribe circumstances in which a local government is not to exercise a power under subsection (1) or regulate the exercise of that power.*

#### 6.13. Interest on money owing to local governments

- (1) *Subject to any other written law, a local government may resolve\* to require a person to pay interest at the rate set in its annual budget on any amount of money (other than rates and service charges) which —*
  - (a) *that person owes to the local government; and*
  - (b) *has been owed for the period of time referred to in subsection (6).*

*\* Absolute majority required.*

- (2) *A resolution under subsection (1) is to be included in the annual budget.*
- (3) *The rate of interest that may be set by the local government under this section is not to exceed the rate for the time being prescribed as the maximum rate of interest that may be set for the purposes of this section.*
- (4) *Where a local government imposes interest under subsection (1) on any outstanding amount of money the local government is not to also impose an additional charge in relation to that amount.*
- (5) *Accrued interest is, for the purpose of its recovery, taken to form part of the money owed to the local government on which it is charged.*
- (6) *A local government is not to impose interest on any amount of money under subsection (1) until the money has been owed to the local government for the period of time set by the local government in its annual budget (not being less than 35 days) after the date which is stated on the relevant account for payment as being the date the account was issued.*
- (7) *Regulations may provide for the method of calculation of interest.*

#### 6.16. Imposition of fees and charges

- (1) *A local government may impose\* and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.*

*\* Absolute majority required.*

- (2) *A fee or charge may be imposed for the following —*
  - (a) *providing the use of, or allowing admission to, any property or facility wholly or partly owned, controlled, managed or maintained by the local government;*
  - (b) *supplying a service or carrying out work at the request of a person;*



- (c) *subject to section 5.94, providing information from local government records;*
  - (d) *receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate;*
  - (e) *supplying goods;*
  - (f) *such other service as may be prescribed.*
- (3) *Fees and charges are to be imposed when adopting the annual budget but may be —*
- (a) *imposed\* during a financial year; and*
  - (b) *amended\* from time to time during a financial year.*

*\* Absolute majority required.*

In accordance with the *Local Government (Financial Management) Regulations 1996:-*

19A. *Maximum rate of interest prescribed (Act s. 6.13(3))*

*The maximum rate of interest to be imposed under section 6.13(1) is prescribed as 11%.*

19B. *Interest on money owing, calculating (Act s. 6.13)*

- (1) *Interest on money that remains owing after the date determined in accordance with section 6.13(6) (the **due date**) is to be calculated on a simple interest basis for the number of days from the due date until the day before the day on which a payment is received by the local government.*
- (2) *The principal sum on which interest is calculated for a financial year may include interest accrued but not paid in a previous financial year but is not to include interest accrued in the current financial year.*
- (3) *If payment is received by the local government during the period from 1 July in a financial year until the annual budget for that financial year is adopted, interest referred to in sub regulation (1) for that period is to be at the rate of interest imposed under section 6.13(1) for the previous financial year.*
- (4) *If under section 6.13 interest is to be imposed on money owing, a request for payment of that money is to include or be accompanied by a statement that interest is to accrue on money that remains owing after the due date and stating —*
  - (a) *the date from which interest will be imposed; and*
  - (b) *the rate of interest.*

In accordance with the *Magistrates Court (Civil Proceedings) Act 2004:-*

12. *Pre judgment interest may be awarded*

- (1) *If the Court gives judgment in favour of a claim for money, including a debt, damages or the value of goods, it may include in the judgment sum either —*
    - (a) *interest, at a rate decided by the Court, on the whole or a part of the money for the whole or a part of the period that —*
      - (i) *begins on the date when the cause of action arose; and*
      - (ii) *ends on the date when the judgment is given;*
- or*

- (b) a lump sum of money in lieu of such interest.

In accordance with the *Civil Judgments Enforcement Act 2004*:-

8. Interest on judgment sums

- (1) Interest is to be paid on the unpaid amount of a judgment sum from the date of the judgment until the date on which the judgment sum is paid —
  - (a) at the rate prescribed by the regulations; or
  - (b) at the rate set by the court in the judgment or by an order made after the judgment is given.
- (2) Subsection (1) applies whether or not —
  - (a) a suspension order has been made; or
  - (b) a time for payment order or an instalment order has been made, unless the court that made such an order orders otherwise.
- (3) The judgment creditor may waive the payment of the whole or a part of the interest referred to in subsection (1).
- (4) A judgment creditor who waives interest under subsection (3) must advise the court of the fact when applying for an enforcement order under Part 4.
- (5) Subsection (1) does not apply to —
  - (a) a judgment that is registered under section 105(1) of the *Service and Execution of Process Act 1992* of the Commonwealth; or
  - (b) a judgment sum on which interest is payable under another written law.

In accordance with the *Civil Judgments Enforcement Regulations 2005*:-

4. Interest on unpaid amount of judgment sum

- (1) The rate of interest for the purposes of the Act section 8(1)(a) is 6.00% per annum.
- (2) The waiver of the payment of the whole or a part of the interest by a judgment creditor under the Act section 8(3) must be in writing.

In accordance with Council Delegation 11. - Waive, grant concessions or write off debts

*Legislative power Local Government Act 1995, Section 6.12(1)(b) and (c)*

*Delegate: Chief Executive Officer*

*Function to be performed*

*The Council delegates its authority and power to the Chief Executive Officer in exceptional circumstances to:*

1. *Waive or grant concessions in relation to sundry debts owed to the Shire (other than rates and services charges)*
2. *Write off money owed to the Shire*
3. *Determine the conditions to be applied to waive, grant a concession or write off money owed to the Shire*

*Conditions:-*

- a) *Limited to individual debts not exceeding \$500*
- b) *Write-off rates and service charges not exceeding \$200*
- c) *Report to the Audit (Finance and Risk) Committee on the exercise of this delegation*

*In this delegation:-*

**Waive** means to provide a special concession to a person or organisation that extinguishes a debt that would have been owed to the Shire. A waiver may be provided prior to, or subsequent to the date that the debt is incurred.

**Write Off** occurs following the realisation that the asset can no longer be converted into cash (e.g. a bad debt), can provide no further use to the Shire, or has no market value.

**RISK:**

**Risk:** Failure to comply with legislative requirements leading to damage of reputation and/or financial loss.

**Control:** Review policies and procedures in accordance with review schedule.