



GUIDELINES FOR A COUNCIL RATES HARDSHIP POLICY	
DATE	August 2011

1. Objective

A rates hardship policy outlines how council may help resident ratepayers who experience genuine financial difficulties to pay their rates and charges (financial hardship). The following guidance is provided to councils as to how such a policy may be designed and what it may include.

The main objective of the hardship policy should be to provide for the welfare of the resident ratepayer and resident dependants and for the protection of their place of residency.

Individual council rates hardship policies need to be developed locally to recognise the individual circumstances of different communities.

2. Coverage of policy

The policy should cover:

- Financial hardship resulting from certain changes in land valuation according to section 601 of the *Local Government Act (NSW) 1993*; and
- All other instances of financial hardship.

The policy should not cover financial assistance councils can provide under section 356 of the *Local Government Act (NSW) 1993*.

The policy should distinguish and deal with residential, business and farmland ratepayers. Generally, commercially used properties (business, farmland) should be excluded from the policy. However, the policy should include arrangement for the scenario where the commercially used property is also used as place of residency.

However, the policy might include assistance for businesses or farmers in financial difficulties in the form of special payment arrangements (see principle 3). For farmland ratepayers this could include consideration of adverse environmental condition such as droughts or floods.

The policy should make reference to and/or include concessions available to pensioners under section 575 of the *Local Government Act (NSW) 1993* and related hardship provisions (see principle 3).

3. Financial hardship scenarios/eligibility criteria

The policy should comprehensively define hardship scenarios and other eligibility criteria.

Financial hardship

Financial hardship should be determined in relation to both income (gross household income, commercial income/profit) and assets (income producing assets).

Gross household income should include income from employment, pensions, other social security benefits, income from rental properties, other investment income, as well as deemed income (e.g. potential rental income from non-owner residents such as children that live at home and earn income but do not pay rent).

The policy could also include an asset test to capture other resources the ratepayer could utilise to make payments. Where the gross household income criterion includes income produced from assets a separate asset test might not be necessary.

In the context of financial hardship, the policy should also enable consideration of other personal and family circumstances including age, physical or mental disability, injury and illness of the resident ratepayer or family members living with him/her.

The policy should include guidance as to what documentation is satisfactory to prove financial hardship and be required by council to make an informed decision.

Other general eligibility criteria

Generally, assistance should only be available to ratepayers for rates/charges levied on their principal place of residency/principal place of living.

Rates/charges payable on rental properties should be excluded from assistance as it can be assumed that rental income would cover rates and charges and due to the taxation advantages associated with rental properties. However, assistance options available to commercial ratepayers could be applied in the case of rental properties.

Eligibility criteria for section 601 of the Local Government Act (NSW) 1993

In relation to section 601 of the *Local Government Act (NSW) 1993*, the eligibility criteria could also include at what level a rate increase as a result of changes in land valuation is considered in order to trigger assistance options. This would not exclude the ratepayer to apply for assistance under the general financial hardship provisions.

4. Assistance options

As required by council, the policy could include a range of assistance options as outlined below. The policy should consider the limitation period under section 712 of the *Local Government Act (NSW) 1993* pursuant to which proceedings for the recovery of a rate or charge may be commenced at any time within 20 years from the date when the rate or charge became due and payable (section 712 (1)).

Assistance options

- a. Writing-off or deferral of a whole or part of any rate or charge or interest;¹
Note: A deferral should also address the issue of accrual of interest.
- b. Deferral against security (e.g. ratepayer's land/estate, commercial assets)
A deferral against security needs to specify the security (normally land rate is levied upon) and contain conditions for when the deferred amount becomes due and payable (e.g. specified end of deferral period, death of ratepayer, sale/purchase of security, or change of occupancy).
Note: Where required, legal advice should be sought on the effect of section 712 (20 year limitation period) and sections 713-726 (sale of land provisions) of the *Local Government Act (NSW) 1993* on any such deferral arrangement.
- c. Special payment arrangements where, for example, accrued interest is written off or reduced if the agreement is complied with (section 564 of the *Local Government Act (NSW) 1993*);

¹ The difference between writing-off and a deferral is that a deferral suspends payment for a period of time whereas writing-off permanently exempts payment.

Note: This option might also be available to ratepayers in relation to rates levied upon land that is not the principal place of residence (e.g. businesses, farmers). The option should include arrangements for the event of non-compliance.

- d. Writing-off or deferral of a part of the rate in case of rate increases as a result of changes to land valuations of section 601 of the *Local Government Act (NSW) 1993*;
- e. Interest concessions - writing off accrued interest; section 567 of the *Local Government Act (NSW) 1993*;
- f. Writing-off of rates and charges levied on pensioners or other person receiving social security benefits, sections 582, 583 of the *Local Government Act (NSW) 1993*;
- g. Extension of pensioner concession for persons living with pensioners, section 577 of the *Local Government Act (NSW) 1993*;
- h. Other assistance such as referral to welfare agencies or assistance in facilitating financial advice.

Amount of assistance

Where applicable, the policy should set out the methodology for determining how much and for which period assistance is provided. The policy could include minimum and maximum amounts. In relation to rate relief under section 601 of the *Local Government Act (NSW) 1993*, the amount should be determined based on the difference between the new rate as a result of the change in land valuation and the hypothetical rate, including general and special rate increases, had the change in land valuation not taken place.

Change in hardship circumstances

The policy should set out how assistance is affected by a change in the circumstance of financial hardship. The ratepayer should be required to inform council of any changes.

5. *Process of applying for and deciding on assistance*

The policy should set out a clear and transparent process for the application for and decision of application for assistance. Responsibility for approval of any application should be delegated to the general manager.

6. *Communication of policy*

To maintain a high level of publicity of the policy and to ensure ratepayers in need are aware of the policy, the policy should require council to adequately communicate its rates hardship policy. The policy and associated material should be available on the council website.

7. *Monitoring and data collection*

The policy should require council to monitor assistance requested and provided under the policy including:

- Register of application;
- Reasons for applications; and
- Report on shortfall in council income as a result of assistance provided.

8. *Confidentiality and privacy*

The policy and in particular monitoring and data collection process need to ensure privacy and confidentiality laws are adhered to. The policy should set out that any data collected through the hardship assistance process will be dealt with by way of council's privacy policy.

Privacy and confidentiality rules should be communicated to ratepayers and stated on the application form/s.

9. Review of policy

The policy should contain a requirement for it to be reviewed regularly.