



# General Financial Hardship Policy 2020

**Effective Date 29 March 2020**

**Version 2**

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## 1.0 Policy statement

Permits, licenses, fees and charges (other than rates and charges) constitute a significant portion of Council's annual income. Permits, licenses, fees and charges (other than rates and charges) are raised in accordance with the Local Government Act 1989 (the Act) and provide a number of options through which payments can be made.

Sections 113(3) and 142 of the Act give Council the power to defer and/or waive in part or whole the payment of permits, licenses, fees and charges (other than rates and charges).

The purpose of this Policy is to enable a Person or a Body liable for permits, licenses, fees and charges (other than rates and charges) and experiencing hardship to make application to Council for assistance relating to permits, licenses, fees and charges (other than rates and charges) levied under the Act.

The Policy

- defines permits, licenses, fees and charges (other than rates and charges)
- defines hardship, and
- provides the framework and guidelines to Council,

in accordance with the Act, relating to the possible granting of a deferral of the payment of levied fees or charges (including payment plans), and waiver of part or all of those levied fees and charges.

The difference between a deferral and waiver is that:

- a) A deferral suspends payment for a period of time
- b) A waiver permanently exempts payment of the permits, licenses, fees and charges (other than rates and charges) under discussion

Council recognises that managing hardship is a shared responsibility and offers flexible payment arrangements for Person or a Body experiencing hardship.

## 2.0 Definitions

In this policy –

**Permits, licenses, fees or charges** means –

All other user fees and money owing to City of Melbourne that **does not include**

- rates and charges,
- parking infringements, and
- rent

**Financial Hardship** means –

**For a Person:** Severe suffering or privation which could be brought on by unemployment, sickness, family breakdown, lower income, loss of income

**For a Body:** Severe financial suffering due to a Force Majeure Event which could be brought on by at least 25% decline in turnover compared to the same period last financial year

**Person** means –

An individual who has attained the age of 18 years but does not include a corporation or a Council or any other body incorporated or constituted by or under the Act or any public statutory corporation.

**Body** means –

A business that meets City of Melbourne definition of Small Business or Medium Business for the purpose of this policy.

**Force Majeure Event** means –

Any circumstances not within the reasonable control of the Body affected, but only if and to the extent that:

- i. such circumstance, despite the exercise of reasonable diligence and the observance of good business conduct, cannot be or be caused to be, prevented, avoided or removed by such Body, and
- ii. such circumstance, materially and adversely affects the ability of the Body to perform business as usual, and such Body has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the Financial Hardship effect of such event, and to mitigate the consequences thereof.

**Instances of Force Majeure** includes:

- i. Natural Force Majeure events
  - o Fire, chemical or radioactive contamination, earthquake, lightning, cyclones, hurricanes, floods, droughts or such other extreme weather or environmental conditions, unanticipated geological or ground conditions
  - o Epidemic, pandemic, famine, plague or other natural calamities
- ii. Government Direction Force Majeure events
  - o Declaration of state of emergency in Victoria
  - o Any ban or prohibition adversely impacting the business
- iii. Other Force Majeure events
  - o Explosion, accident, breakage of a plant or equipment, structural collapse, or chemical contamination not caused by the Body or one of its contractors or subcontractors or any of their respective employees or agents
  - o Strikes, lockouts, work stoppage, labour disputes and such other industrial action by workers not caused by the workers of the Body
  - o Acts of terrorists, blockade, embargo, riot, public disorder, violent demonstrations, rebellion, and sabotage

That takes place within the City of Melbourne

**Small Business** means a registered business (ABN/ACN) that meets all the following criteria –

- i. a business that employs between 0 and 19 employees,
- ii. a business that has aggregated turnover of less than \$1 million per annum,
- iii. a business that is not a subsidiary or associate of a medium or large business, and
- iv. a business that is not a superannuation or trust fund

**Medium Business** means a registered business (ABN/ACN) that meets all the following criteria –

- i. a business that employs between 20 and 199 employees,

- ii. a business that has aggregated turnover of less than \$5 million per annum,
- iii. a business that is not a subsidiary or associate of a large business, and
- iv. a business that is not a superannuation or trust fund

### **3.0 Objectives of the hardship policy**

The purpose of this policy is to:

- a. Provide assistance to Persons and Bodies experiencing financial hardship.
- b. Provide a mechanism that enables Persons and Bodies to feel comfortable approaching Council about current hardship circumstances.
- c. Provide Persons and Bodies with assurance they will be treated in a consistent, equitable and confidential manner.
- d. Provide Persons and Bodies with clearly defined options when applying for a deferment or waiver of fees and charges.
- e. Provide a transparent decision making framework for Council officers when assessing hardship claims.
- f. Ensure the policy is fair to all Persons and Bodies.
- g. Ensure Council's debt collection practices are sensitive and responsive to financial hardship issues.
- h. Demonstrate Council's constructive culture and core values.

### **4.0 Principles for hardship policy**

Financial hardship may arise for a range of reasons, as not all circumstances are alike, and is often where the Person or Body would like to pay, but is unable to due to one or a combination of those reasons. To accept a claim for hardship, it is important to adopt the following principles:

- a. early identification - successful hardship programs have good identification and communication strategies, including proactive material on Council websites
- b. support for Persons - Council will encourage Persons or Bodies to utilise financial counselling, legal and other supporting services
- c. payment plan/extensions – Council are able to offer payment plans and/or extensions in order to assist the Person to clear the amount outstanding.
- d. fairness

### **5.0 Payment reduction, waiver, refund or deferral**

Section 113(3) of the Act provided for a reduction, waiver or refund of payment of fees that are raised in accordance with a local law for a Person or Body and Section 142 gives power to defer or waive payments by a Person which may cause hardship.

Section 113 and 142 of the Act:

113 Permits, licences, fees and charges:

(3) If a local law provides for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply—

(a) subject to specified conditions or in the discretion of any specified person or body; and

(b) either generally or specifically—

(i) in respect of certain matters or transactions or classes of matters or transactions; or

(ii) in respect of certain documents or classes of documents; or

(iii) when an event happens; or

(iv) in respect of certain persons or classes of persons; or

(v) in respect of any combination of matters, transactions, documents, events or persons.

#### 142 Power to defer or waive payments

(1) A Council may waive the payment by a person of the whole or part of any money payable by the person to the Council for a particular purpose or as a condition of any agreement or arrangement which has not been performed or which has been only partly performed whether by that person or the Council.

(2) Subsection (3) applies—

(a) to a person who owes any money (other than rates and charges) to a Council for any act, matter or thing done by the Council or for a particular purpose or as a condition of any agreement or arrangement; and

(b) if the Council considers that the payment of the money would cause hardship to the person.

(3) The Council may—

(a) defer the payment of the whole or any part of the money and the interest or any part of the interest payable on that money for the period and subject to any conditions determined by the Council; or

(b) waive the payment of the whole or any part of the money and the interest or any part of the interest payable on that money; or

(c) waive the payment of the whole or any part of the interest payable on the money.

In all applications for fees and monies owing deferral/waiver, the applicant will be encouraged to continue to pay the portion of the fees and charges that is affordable given their individual circumstances. This will be mutually agreed on a case-by-case basis.

In the case of a deferral, if approved, the balance of fees and charges owing will be deferred for a period of up to 6 months at which time a review will be carried out with the Person to determine the Person's circumstances.

Payment reduction, waiver, refund or deferral of fees raised outside of local laws:

Council will consider a payment reduction, waiver, refund or deferral of fees raised outside of local laws for a Person or a Body.

For a Person:

- A Person must demonstrate a case of Financial Hardship
- Council can waive, reduce or defer the payment of the whole or in part and the interest that may be applicable

For a Body:

- A Body must demonstrate a case of Financial Hardship
- To apply for a reduction, waiver or refund of the relevant fees raised in accordance with a local law, the Body must meet City of Melbourne's definition of Small Business as defined in this policy
- To apply for a reduction, waiver, deferral or refund of the relevant fees raised outside of local law (e.g. a lease in accordance to Section 190 of the Act), the Body must meet City of Melbourne's definition of Small Business or Medium Business as defined in this policy
- Council can reduce, waive, defer or refund, in whole or in part, the relevant fees.

## **6.0 Payment arrangement**

A payment arrangement is a schedule of payments that is negotiated with Council to establish an agreed amount and a payment frequency. These arrangements are made with the following in mind:

- a) A Person has demonstrated a genuine effort to meet obligations in the past.
- b) A payment arrangement should be set with a known end date that clears the debt within an agreed timeframe.
- c) Repeated payment defaults may result in cancellation of the arrangement and initiation of recovery action for unpaid debt.

Payment arrangement for infringement notices (other than parking infringement that is not covered in this Policy) will be reviewed on a case-by-case basis.

## **7.0 Application procedure**

In the case of hardship, a request for assistance from Council must be made in writing, including the details of the circumstances preventing the Person or Body from meeting their financial obligation to Council.

A fully completed Financial Hardship Consideration Application Form and supporting documentation must be submitted to Council.

Council will consider the request for financial hardship and advise its decision in writing within 14 days (for a Person) or within 21 days (for a Body) of receiving an application for financial hardship consideration, subject to all relevant information being provided.

Depending on the number and complexity of applications received, Council may utilise external organisations that employ qualified financial counsellors to undertake financial hardship assessments.

A Person or Body may request a review of the Council decision by outlining the grounds for the review. This must be in writing and addressed to the Chief Executive Officer.

## **8.0 Confidentiality**

Applications for financial hardship will be treated in accordance with Council's Privacy Policy.