

Local Government Rating System Review

Submission of Financial and Consumer Rights Council

November 2019

Introduction

Financial and Consumer Rights Council of Victoria (FCRC) welcomes the opportunity to make a submission to the Rating System Review (the Review). In particular, we welcome the government's commitment to ensuring the local government rating system is fair and equitable for all of the community.

As the peak body for financial counsellors in Victoria, FCRC has had considerable feedback from its members raising concerns about how councils respond to vulnerable people in the community experiencing hardship resulting from rate charges and rate arrears. These issues are essential to address if Victoria's rating system is to be fair and equitable for everyone in the community.

Recommendation

The State Government, in consultation with peak bodies and consumer organisations develop and introduce mandated hardship and related processes for Councils to adopt and implement, including the following features:

- Consistent, humane and best practice hardship response – incorporating principles of transparency and accessibility, flexibility, fairness and responsiveness to individual circumstances.
- Specific provisions for response to family violence circumstances and support for vulnerable people dealing with challenges such as mental health, family violence, low incomes, gambling, substance use, and language and cultural barriers.
- Standards for council use of debt collection companies, to ensure debt collectors used by councils comply with the law and all relevant codes and standards.
- Promotion of early intervention engagement processes including strategies to support people who are identified as at risk of falling into arrears, and appropriate¹ referrals to financial counselling support.
- Provision in flexible responses for options, including debt moratoria, affordable payment plans that take account of individual circumstances, debt waivers, deferral of interest accrual or waiving of interest charges, flexible payment schedules, access to Centrepay as a payment method.

¹ Financial counselling services are under significant demand and often have waitlists. Councils should assume direct responsibility for dealing fairly and sensitively with rate payers in hardship, and not engage in blanket referrals to financial counsellors. Referrals may be appropriate where there are serious vulnerability issues, and/or multiple debts.

Financial counselling in Victoria

Financial counselling is a free and independent advice and advocacy service for people in, or at risk of, financial hardship. Financial counselling work is regulated by the Australian Securities and Investments Commission (ASIC), which requires that financial counsellors are qualified, work for free and without conflicts, and meet their state peak body requirements for practice.

Financial counsellors provide information, support and advocacy to enable their clients to gain control of their financial situation. Services are free, confidential and impartial. Most financial counsellors are located in not-for-profit community organisations, primarily funded by state or federal governments. Financial counsellors deal on behalf of clients with government agencies (ATO, Centrelink) and creditors, including banks, utilities, and telecommunications companies.

Financial counselling clients are often in vulnerable situations involving hardship, debt and a range of linked factors such as ill health, family violence, unemployment, disability, and harm from substance abuse or gambling. Financial counsellors negotiate a flexible approach to resolving client debt situations with creditors; making meaningful and sustainable payment arrangements that reasonably take into account a person's ongoing living expenses; preventing further impoverishment or homelessness.

As the peak body and professional association for financial counsellors in Victoria, FCRC undertakes system advocacy on behalf of its members, informed by the professional experience and knowledge of financial counsellors working with vulnerable people in our community.

What is Financial Hardship?

We define hardship as difficulty experienced in the repayment of loans and debts when they are due, because of a change in circumstances.²

Commonly acknowledged causes of financial vulnerability include loss of employment, family violence, marriage breakdown, ill health (mental and physical), natural disasters, harms from gambling or substance use. As shown in the banking royal commission, widespread exploitative and dishonest financial services practices also put people at financial risk, and the unregulated pay day lending sector is adding to debt burdens and creating debt traps for many Victorians. These are issues that can affect anyone throughout the course of their lives.

Consumer Affairs Victoria (CAV) in their summary report of work undertaken by financial counsellors in 2017-18 showed financial counsellors see an increasingly large group of vulnerable consumers; the most common vulnerability recorded is 'life event', which includes job loss, family breakdown, acute illness or death in the family.

² Financial Rights Legal Centre 2019, *Financial Hardship*, Financial Rights Legal Centre, accessed 30 October 2019 <https://financialrights.org.au/factsheets/financial-hardship/>

Current practices in Victorian Local Government regarding rates arrears

Financial counsellors in all parts of Victoria have widespread concerns about the practices of councils in pursuing rate arrears (and other debts).

Case Study: Greater Shepparton City Council

In 1996 Sarah* purchased a home with a mortgage. Sarah owned the home outright much earlier than the 30 years allocated.

Sarah's ex-husband murdered their young child. A warrant was issued for his arrest and he fled Australia. During Sarah's relationship with her ex-husband, she endured all forms of family violence and was fearful to leave as he threatened her with further harm and to take the home she owned outright before meeting him. Sarah is extremely fearful of losing the home as it is where the memories of her daughter are.

When the ex-husband fled Australia, he then initiated property settlement requesting \$250,000. As a result of this Sarah re-mortgaged her home to pay for a lawyer and the outcome was Sarah paid \$5000 to the ex-husband to settle.

Sarah has spent a lot of time in court since her daughter's death for the inquest, child protection and property settlement. Sarah is fearful of attending court and it brings back past experiences when she is required to go.

10 years ago (just before the warrant for arrest was issued) Sarah made a safety plan over a period of time and left the ex-husband. It was at this time that Sarah began to have trouble paying the rates as the household income dropped and Sarah had other expenses to pay for to keep her family safe.

Sarah on multiple occasions has attempted to set up payment arrangements with the Greater Shepparton City Council. Over the past 10 years Sarah has paid \$14710 out of \$16757.95 annual rates, which leaves a balance of \$2047. However, the failure of the council to respond fairly to Sarah's circumstances has led to a cycle of the council refusing to agree to payment plans, Sarah being unable to afford what council demands, council then taking legal action (adding costs of this onto the debt), and levying interest. As a result of this, Sarah currently owes \$12872.11.

In 2017 Sarah contacted the council and proposed to pay off the debt at the rate of \$200 per fortnight. The council stated they would not accept anything less than \$500 per fortnight and threatened they would sell her house if she didn't pay \$500 per fortnight. Sarah was told she must pay \$500 fortnight to have rates paid within the financial year (under the council's hardship policy). Sarah felt intimidated to pay \$500 per fortnight to council to keep her home. Sarah maintained the \$500 fortnight payments for almost 12 months. While council was receiving the \$500 per fortnight other expenses were left to suffer. During this time Sarah's income was \$1600 per fortnight.

Sarah's car broke down. Sarah then stopped paying the \$500 per fortnight as she needed the funds to fix her car to get to work. As a result of her car breaking down, she was unable to accept shifts that she couldn't walk to. This resulted in her income dropping from \$1600 to \$1100.

Sarah tried again to organise another payment arrangement with council of \$200 per fortnight but was advised again that she either needed to pay \$500 per fortnight or council will sell her house.

Despite Sarah offering \$200 fortnight, council proceeded with legal action against Sarah which added more charges to her account. In March 2019 Sarah received a letter from council's solicitors advising that if \$12872.11 wasn't paid by 8th of May 2019 they will sell her home under section 181.

Sarah was very fearful of speaking to the council as she finds the threats to sell her home very similar to the family violence she experienced with her ex-husband.

Sarah did not know what a financial counsellor was and was advised by council to see her accountant. Sarah sees an accountant to do her tax returns and he does not have an understanding of her financial situation. The accountant wrote a letter to council advising she was in hardship.

When Sarah received the section 181 letter, she went to a lawyer who then advised her to see a financial counsellor. The financial counsellor agreed to see her the same day.

What the financial counsellor did/outcome so far:

- The financial counsellor proposed enforcement action to cease and Sarah to start paying \$200 per fortnight in the interim. Sarah was fearful to propose anything less
- Sarah requested the option of accessing her super under compassionate grounds to pay the balance. The application was submitted and declined by the ATO
- The financial counsellor sent a letter to NAB requesting her \$20,000 mortgage and a \$500 credit card be waived in full. NAB agreed to not only waive the mortgage and credit card, but also went above the request and will be paying the rate arrears in full for Sarah
- As a result of NAB actions, this will free up approximately \$300 per fortnight for other household expenses such as the rates going forward

*Sarah is a pseudonym

The above case study illustrates a number of issues financial counsellors encounter all too frequently in dealing with councils. Use of harassment and intimidation, rigid application of questionable policies, and poor treatment of vulnerable people.

We note the problematic council behaviours in pursuing rates arrears raised in the WEStjustice submission to this Review. WEStjustice makes important and relevant points about the inappropriate use of caveats, and early and frequent use of other court processes, right up to bankruptcy.

Murrindindi Shire

In one case, Murrindindi Shire rates were overdue for a year. Four weeks after previous year's rates notice was issued, the Shire sought judgement.

Councils place caveats on properties and otherwise act to take control of people's houses over unpaid rates or other charges. Councils regularly sue ratepayers as an early means of recovering unpaid rates, without first adequately exploring the reasons for non-payment and negotiating a sustainable payment plan.

As WEStjustice submits, these behaviours are all the more egregious when Councils are at little or no risk of financial loss, given their statutory position as first in line to be paid at the point of a sale of the rated property.

Case study: Tina* in Golden Plains Shire

Tina was single mother with one child, and had separated from her husband. She was working two days a week and in serious financial hardship. Tina didn't want to sell property as her elderly parents (in their late eighties) lived in a unit on the property. They provided babysitting so Tina could work part-time, and contributed \$200.00 per fortnight as rent. Tina had two mortgages, totalling \$228,000., and a line of credit amounting to \$100,000.

Golden Plains Shire sued Tina which created an impaired credit file, and made it impossible for her to refinance the two home loans. Had she been able to refinance the loans, she could have saved \$4000 a year in interest, and the monthly payments would have been greatly reduced. This would have eliminated Tina's financial hardship.

Tina's financial situation has since improved, due to increased employment, and her rates have been paid in full, but her credit file is still impaired ruling out refinancing. Considerable legal costs were also added to the rates debt.

It is common to see clients that have been sued by the Ballarat and Golden Plains Shires.

*Tina is a pseudonym

Vulnerable people in rate arrears often have significant hardships in their lives, and threats to sell their home made by councils can have devastating effects. Council officers making demands under poorly designed hardship policies will have little comprehension of whether they are forcing people to go without food or power to satisfy arbitrary repayment targets.

Case Experience: Greater Geelong City

The council often divides the debt into regular fortnightly payments, however this isn't always suitable (i.e. if a client is selling a home and we ask for rates to be put on hold with interest accrued - they refuse). Debts have also been sent to debt collectors. Clients get very anxious about the debt and the letters/contacts they receive.

Councils also put into place inappropriate referral practices. Financial counselling services are currently experiencing heavy demand, so referrals can often involve delays impacting the client and creditor. However, regardless of access to service issues, it is generally inappropriate for creditor organisations to 'wash their hands' of dealing directly with people in hardship by mandating financial counselling referral at least without putting in place appropriate links and referral pathways.³

Mitchell Shire

The Council has a new hardship policy which apparently includes requirement for people to access financial counsellors in order to access hardship assistance. This also blocks implementing hold on interest and payment plans. Effectively a client is denied any opportunity to fill in and submit the hardship application themselves. There is a three month wait to see a financial counsellor in our region, even for people with rates as their only issue.

Use of debt collection services

Financial counsellors report disreputable practices by a range of debt collection companies who are employed by councils to pursue vulnerable ratepayers, including breaches of the Australian Consumer Law, the ACCC Guideline for debt collectors & creditors⁴, and privacy laws. These breaches include harassment of debtors, sharing debt information with family members, and pressuring family members that they should pay for the debt, and inappropriate use of courts and police.

This type of behaviour from debt collectors is illegal because it is understood that aggressive debt collection methods impact clients' mental health and/or exacerbate existing mental health conditions. It is unacceptable that Councils engage and use as representatives organisations that behave in this way.

Case study: Cardinia Shire

Young Indigenous woman, Amy, owed four years of council rates. Lawyers for the council sent summons for oral examination as part of seeking judgement – to the police station. Amy attended the police station and was required to complete a bail undertaking and also

³ However, this is a complex area. Moreland Council have established a good relationship with a local financial counselling service that enables early referrals and structured support that improves client outcomes – see below under good practice.

⁴ <https://www.accc.gov.au/publications/debt-collection-guideline-for-collectors-creditors>

forced to notify her employer, which caused her great stress. Amy believes the council is aware of the law firm's actions.

When financial counsellors contact Cardinia Shire to discuss overdue rates payments, payment arrangements and hardship the Shire is not forthcoming with fair or reasonable suggestions, nor have they ever provided a copy of their hardship policy.

*Amy is a pseudonym

Case study: Melton Council

Melton Council engaged Midstate as a debt collector to pursue a person in rate arrears. Midstates' agent attended the s property when only the rate payer's daughter was home. Information was provided to the client's daughter by the agent including a note outlining the exact sum owed to Melton Council, a debt the client's daughter was not aware of. The humiliation caused by this event has effected the client's already fragile mental health with the client's daughter now regularly asking when their family home will be taken.

A number of councils have favoured selling debts to Collection House. The Collection House subsidiary Lion Finance recently featured in a report authored by three leading consumer organisations⁵. In the twelve months between July 2018 and June 2019, Lion Finance made more than 500 court applications for bankruptcy to have a debtor declared insolvent as a way to recoup their debts (almost as many as the Australian Tax Office). The report shows how people with a property that could be seized and sold were targeted. The next highest number of bankruptcy applications from a debt collector in the same period was 28. The highest number from a bank was 36. It is impossible from the data to see who the original creditor was, so it is not possible to identify how many Victorian councils (if any) were involved in the applications from Lion Finance.

Councils, as creditors, should ensure that they are only engaging debt collectors that comply with their legal obligations and have a best practice approach to financial hardship; bankruptcy to pursue rate arrears should only be used in the most exceptional circumstances.

The MAV Hardship Policy Guidelines

FCRC was one of the organisations consulted by the Municipal Association of Victoria (MAV) in the formulation of hardship policy guidelines in 2013. FCRC began looking further into the

⁵ Consumer Action Law Centre, Financial Counselling Australia, Financial and Legal Rights Centre (2019) *Who is Making Australians Bankrupt?*, <https://consumeraction.org.au/wp-content/uploads/2019/08/Who-is-making-Australians-bankrupt-July-2019.pdf>

issues with councils and hardship in 2018 and initially found that the guidelines were no longer on the MAV website, though following an enquiry they reappeared.

These guidelines, which are clearly out of date, lacking even the most basic references to family violence, have also been purely voluntary and largely ignored by many councils.

Murrindindi Shire

The Shire refused to give a client a copy of their hardship policy (which is not on their website), and required them to go to a financial counsellor to obtain one. The financial counsellor rang the council and was told they would send it out, and confirmed it is not on the website.

Hindmarsh Shire

The hardship application is longer than an application for bankruptcy.

The negligible impact the MAV guidelines have had on council practice demonstrates the need for stronger regulatory action on local government in relation to hardship response. A voluntary 'self-regulation' model has clearly failed in Victoria.

The thrust of the WEstjustice submission arguing for mandated standards on hardship response is supported by FCRC. The detail of how those standards should be established, enacted and enforced are matters for detailed consideration and consultation. The establishment by the Essential Services Commission of the Payment Difficulties Framework in the energy sector provides a useful example of how this can be approached. There are some councils with good practices (see below), and they should be recognised and given a role in the establishment of statewide standards.

Good practice examples in local councils

Notwithstanding the problems outlined above, which involve most councils, there are some councils that exhibit better practices. However, even here there is variability. In some cases the council has a good culture, in others good practice is more down to an individual council officer having a good relationship with financial counsellors, and who treats residents in hardship compassionately. A change in staff or supervisor may see this change as well. Sometimes there is a mix of good and poor practices, depending on the aspect of hardship that is relevant.

Monash Council

I have completed a number of hardship applications with City of Monash. When in hardship they leave the debt sitting, accruing a small amount of interest, as they know they will receive the funds when the house is sold. All my clients have been happy with the outcomes. I also always try to get the client to start a payment plan for future rates that will fall due. Even debts that have gone to debt collectors have been recalled and then managed internally. City of Monash are actually now proactive and refer clients to us for assistance.

Frankston City: A mix

Frankston City Council have a hardship policy that provides some flexibility and protection from interest and legal fees. Clients can submit an application to pay form offering fortnightly payment usually what annual rates are though e.g. \$60 f/n. The financial counsellor can submit a letter requesting all interest be waived & ongoing interest put on hold for two years. If legal proceedings have commenced, then all legal fees will also be waived. If the client works, they must submit Statement of Financial Position, but if the client is on Centrelink no statement or proof is required. These are progressive and helpful approaches.

The council rate debt sits there never to be actioned as long as client keeps to the payment plan. But after two years of hardship the Council charges 50% interest again. Often vulnerable people have another event in their lives that makes it impossible to resolve debts within an arbitrary time frame or keep to a payment plan.

Moreland Council approach to financial hardship

Uniting Lentara in Broadmeadows, services the Hume/Moreland local government areas has a very positive experience with Moreland Council. Over the past 2 years both have worked together to achieve good outcomes for Moreland ratepayers.

Moreland came to us with the hope that their ratepayers could be supported during financial hardship, but found that ratepayers were not willing to openly discuss their personal hardship situations with the Council Rates department directly. What has since occurred is a system where the Council will refer a client to financial counselling when they

are in rate arrears. In some situations, it has been not much, around \$1500 - \$2000 arrears, but we have seen cases of \$25,000 arrears; we get approximately 1-2 referrals per month. Moreland City Council require that a client in financial hardship discuss their situation with a financial counsellor before Moreland will provide them with hardship assistance. Moreland require us to answer the following questions:

- Background of hardship – We give a short summary to confirm the client is in financial hardship. Moreland Council do not require a copy of the client's budget.
- Proposed payment plans – We work out what the client can afford by doing their budget during the financial counselling session. Sometimes they can afford only the current rates and we advocate that they maintain their current payments and ask the council not to pursue the arrears, especially in situations where the arrears are in the thousands.
- Waiving accumulated interest - Moreland regularly waives historical interest on the clients' accounts should the client have no additional properties and are in genuine hardship.
- Future interest – Moreland, at our request, in most situations will hold future interest on the arrears for up to 3 years. This allows any additional payments that the client is making to directly go towards the arrears.
- How many properties – Clients with multiple properties are generally not offered hardship, unless is it extenuating circumstances. This system has been very successful over the past two years. We have picked up new clients who have additional financial issues which may not have been picked up had they not had the referral from the council.

FCRC acknowledges the role of the Victorian Ombudsman in providing a complaint and redress pathway that encourages councils to improve their practices. The Ombudsman has worked with financial counsellors to start addressing the system issues, and would be in a position to provide further information to the Review on council practices.

Case study: City of Whitehorse improves its hardship policy

The financial counsellor lodged a complaint regarding the hardship policy of local council on behalf of their client. Due to a lack of response from the council, a complaint was lodged with the Victorian Ombudsman. Following the Ombudsman's investigation into the interpretation of the Local Government Act by the local council, the Victorian Ombudsman instructed them to review and rewrite their hardship policy, and apply it to residents of the local council area.

A couple of years later the local council contacted the financial counsellor to advise they wanted to meet, which they did. Not only had the local council changed their hardship policy

to better fall in line with the legislation, they had also altered their practices within the rates department to better assist people with rates difficulties.

Conclusion

Local councils are the third tier of government in Australia, and consequently have distinct rights and responsibilities. In particular, as a tier of government proud of its closeness to local communities, councils have obligations to foster and build social inclusion and support vulnerable members of the community.

To discharge their responsibilities to their communities it is essential that Councils have consistent, easily accessible, and best practice hardship responses at the core of how they operate in relation to the rating system.

Unfortunately, it is clear from the feedback we have received across the state that most councils have very poor practices in response to hardship, and these practices reflect a deep culture of antagonism towards people in debt. In the context of record levels of household debt, and situations where home or property ownership are not effective protections against income poverty, it is essential that councils significantly improve their performance. Poor practices link to an emphasis on rates as a zero sum game – where any relief offered is simultaneously cast as a cost on other ratepayers. This is a narrow, destructive and inappropriate way to conceptualise financial debt. Hardship issues result in significant ‘externalities’ that are excluded from consideration by this type of logic: If someone in rate arrears is forced into bankruptcy and homelessness, this results in significant costs to various government tiers and both the local and wider community which do not figure in the council analysis that justifies such action on the basis that otherwise other rate payers would be ‘footing their bill’.

Major corporate organisations involved in Thriving Communities Partnership⁶ understand the importance to communities of treating people in hardship with compassion and sensitivity – including major banks and utilities not otherwise known for their good customer reputations. That the local government sector is so far behind good industry practices in the private sector is simply unacceptable.

Presently under the Local Government Act 1989 sections 169, 170 and 171 councils can defer, reduce or waive council rates, if the payment would cause hardship to the person. Yet, as our submission shows, councils in Victoria have highly variable, and all too commonly very poor approaches to applying hardship measures. These deficiencies are causing great harm to individuals and to the communities that councils are meant to be serving. The problems are widespread and cultural as well as technical or skills based. The breadth and spread of these issues requires a strong regulatory response to lift standards, developed in consultation with councils, and financial counsellors and community lawyers.

⁶ <https://thriving.org.au/>