

6 December 2019

Local Government Rating Systems Review,  
Department of Environment, Land, Water and Planning,  
[REDACTED]  
[REDACTED]

By email: [Rating.review@delwp.vic.gov.au](mailto:Rating.review@delwp.vic.gov.au)

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Thank you for allowing the Australian Institute for Commercial Recovery (AICR) an opportunity to participate in the review into local government rating systems. In particular, you have asked for our insights regarding Council debt recovery.

By way of background, the AICR was established in 2017 to represent the debt recovery profession, and to provide leadership in the commercial recovery industry.

The AICR submits the following observations and clarification around some common misperceptions regarding council rate debt and debt recovery.

### **Assumption 1.**

#### **Need for fairness and equity in council debt collection**

Our experience of more than thirty years working with local government debt collection is that fairness and equity are primary considerations in collecting council rate debts. After all, recovery of the outstanding account is in the best interest of both the council and the debt recovery firm. This is best achieved by the recovery professional, the debtor and the Council working together to ensure a mutually acceptable outcome.

Besides being unacceptable and simply cruel, unfair or inequitable conduct by a recovery professional rarely results in success. Rather, such behaviour by an agent causes deep anxiety and stress and ensures that a debtor disengages further and does not pay.

The AICR is dedicated to ensuring debt recovery professionals use ethical, honourable and respectful practices. Our Code of Conduct sets out the behaviours expected from collection recovery professionals. These include to be fair, and to act with integrity and respect.

Most councils offer hardship assistance to those who have difficulty paying rate debts. Some councils also provide financial counsellors to those experiencing financial difficulty. The counsellors not only assist with negotiations regarding debt repayment arrangements, but also offer guidance and training so that households can better manage their finances.

Further, local government and the debt recovery industry actively seek to assist ratepayers in difficult situations. Where genuine hardship is established, further action is not taken and any costs are generally waived and absorbed.

There are, however, some debtors who simply refuse to pay council rates. In our experience, local government rate collection departments have usually tried (unsuccessfully) to recover the debts over a one and even two-year period. When non-payment has reached a certain point, it is the role of the debt recovery operator to sensitively distinguish between cases of genuine hardship and those who are avoiding civic responsibility.

Councils do not aggressively target pensioners or ratepayers experiencing hardship. Rather, private sector debt collectors working with councils have preferred to consider social standards of fairness and equity over a strictly financial approach, often allowing pensioners and others in financial distress some leeway in payments and, at times, even forgiving legal costs and interest.

A major issue in recovering rate debt is the inability to get a small group of non-payers to engage with the council and thereafter, the debt recovery professional. It is this failure to engage that leaves the Council no option but to use a debt collection agency. The agency then must attempt to engage the debtor, within regulatory guidelines, rules and legislation (including privacy legislation).

## **Assumption 2.**

### **Overdue rates create a large impost the court system.**

The court system is not over-burdened by disputes concerning overdue council rates. Most claims are filed electronically. However, of the thousands of claims filed less than half a percent proceed to a contested hearing.

Under current mechanisms used by private sector debt collectors, the Court remains a last resort for recovery of overdue council rates. For example, legal action is only pursued in instances where debts are more than twelve months in arrears, and usually not in instances where debtors have made contact and are amenable to negotiating arrangements for payment.

Further, councils earn substantial interest from overdue rates, which accrue interest that is mandated by the Local Government Act. This is substantially more than councils pay on bank interest rates during the overdue period. Importantly, rates debts (and associated legal costs) are never written off, hence the reluctance for Council's to proceed with litigation unless it is 12 months overdue.

### Assumption 3

#### High levels of bankruptcy due to rate debt.

Statistics from the Australian Financial Security Authority ([afsa.gov.au](https://www.afsa.gov.au)) show that rates of bankruptcy, debt agreements and personal insolvency have dropped. That is, the numbers of bankruptcy and personal insolvencies have fallen by 15% since 2017-18, with just over 27,000 reports last year. The rate of debt agreements also fell by more than 20% over the same period. (<https://www.afsa.gov.au/statistics/annual-statistics>)

In our experience the threat of bankruptcy is one that councils are always reluctant to adopt. It is only after at least five years of thwarted attempts to engage with the debtor that this last resort is used. Even then, the bankruptcy process is not an absolute. It is not unstoppable. There are ways to intervene and even halt the proceedings.

In our experience, councils and subsequently their debt recovery agencies have exhausted all avenues to engage with the debtor. This is in the form of numerous letters of demand, telephone calls, emails and SMS communication. Any communication always includes options for those debtors facing hardship to make arrangements for a repayment process, and avert any further action like bankruptcy action.

Almost anytime the debtor makes contact to enter arrangements to pay the debt, the bankruptcy process can be halted. As well, an approach to the court for the process to be stayed, subject to a payment arrangement being entered into, is also an option to avert the process. There are standard forms called instalment orders that can be filed with the court to support a stay request.

As mentioned earlier, most Councils accept interventions from financial counsellors on behalf of rate payers who have either not paid or defaulted on their rates. Similarly, the intervention of an independent financial counsellor in a bankruptcy case may ensure that fair repayment arrangements are made, and the threat of bankruptcy averted.

### Statute of Limitations

The recent High Court case *Brisbane City Council v Amos* [2019] HCA 27 (“*Amos*”) held that a Queensland ratepayer was entitled to rely upon a 6 year limitation period in defence of a claim for recovery of arrears of rates. This case has had some important consequences for Victoria as the Local Government Act 1989 does not specify a limitations period with respect to the recovery of rates. The decision in *Amos* and its influence in Victoria can be summarised as follows:

1. In Victoria there is only one limitations period in respect of actions by councils to recover arrears of rates, charges and interest on arrears. That period is six years and it is prescribed by section 5(1)(d) of the *Limitations Act*.
2. The decision in *Amos* does not affect the operation of sections 24 and 25 of the *Limitations Act* which, in summary, have the effect that a limitations period



recommences from any date on which there is a written acknowledgement of liability for the debt, or a part-payment of the debt, by the debtor.

3. A council's right to sell a ratepayer's land, under section 181 of the *Local Government Act 1989*, continues after expiration of the 6 year limitation period.

As part of our submission we would suggest that the review consider including a limitations period into the Local Government Act 1989. The NSW Local Government Act 1993 is worth considering. In particular, Section 712 (1) which allows for proceedings for the recovery of rates to be commenced at anytime within **twenty years** from the time the rate was due.

A twenty year as opposed to a six year statute of limitations in our opinion gives Councils greater flexibility, particularly with ratepayers who are pensioners or suffering from hardship.

Thank you for this opportunity to contribute to the Review. Should you require any further assistance, information or clarification please do not hesitate to contact me.

Kind regards,



Brian Carter  
Chairman  
The Australian Institute for Commercial Recovery