



Federation of
Community Legal Centres
VICTORIA

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Footscray
Community Legal Centre Inc

COUNCIL DEBT COLLECTION:

Alternatives to suing ratepayers in hardship

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About Footscray Community Legal Centre

Footscray CLC is a community-based non-profit legal service. We aim to address systemic injustice by providing free legal and financial counselling services, community education, law reform and advocacy to the people of the City of Maribyrnong and the western suburbs of Melbourne. Footscray CLC has extensive experience assisting refugees and other recently arrived migrants with financial problems related to telecommunications, utilities, insurance and other issues.

About the Federation of Community Legal Centres (Victoria) Inc

The Federation is the peak body for Victoria's 50 CLCs. The Federation leads and supports CLCs to make justice accessible for all. The Federation:

- provides information and referrals to people seeking legal assistance;
- conducts law reform and policy work to improve the justice system;
- works to build a stronger and more effective community legal sector;
- provides services and support to CLCs; and
- represents CLCs with stakeholders.

The Federation assists its membership to collaborate for justice. CLC workers come together through working groups and other networks to exchange ideas and improve CLC services. The Federation regularly works in partnership with government, legal aid, the private legal profession and community partners.

About community legal centres

Community legal centres are independent, community organisations that provide free legal services to the public. CLCs provide free legal advice, information and representation to more than 100,000 Victorians each year.

Generalist CLCs provide services on a range of legal issues to people in their local geographic area. There are generalist community legal centres in metropolitan Melbourne and in rural and regional Victoria. Specialist CLCs focus on groups of people with special needs or particular areas of law such as mental health, tenancy, consumer law and the environment.

During the 2011–12 financial year, Victorian CLCs undertook approximately 12,000 credit and debt-related activities, including the provision of advice and information and undertaking casework.

CLCs receive funds and resources from a range of sources including state, federal and local government, philanthropic foundations, pro bono contributions and donations. Centres also harness the energy and expertise of over a thousand volunteers across Victoria.

CLCs provide effective and innovative solutions to legal problems based on their experience within their community. It is CLCs' community relationship that distinguishes them from other legal providers and enables them to respond effectively to the needs of our communities as they arise and change.

CLCs integrate legal assistance for individual clients with community legal education, community development and law reform projects that are based on client need and that are preventative in outcome. CLCs are committed to collaboration with government, legal aid, the private legal profession and community partners to ensure the best outcomes for our clients and the justice system in Australia.



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1. Executive summary

Rates constitute the majority of the income of councils. The payment of rates by residents is crucial to the effective operation of local government. However, many residents experience genuine difficulty in paying rates. The research documented in this report shows that councils in Victoria do not respond consistently to residents experiencing difficulty paying rates and some councils are far too quick to sue residents without adequately exploring alternatives to litigation.

Our report recommends reforms to help achieve our aims of:

- promoting early access to legal and financial counselling help for ratepayers experiencing financial hardship;
- reducing unnecessary court proceedings by identifying more appropriate ways for councils to seek payment of rates arrears;
- avoiding court and legal costs being added to unpaid rates debts; and
- encouraging consistent, ethical debt collection practices by councils across Victoria.

Our reforms aim to promote the statutory objectives of councils to seek to achieve the best outcomes for local residents and improve the overall quality of life of people in local communities.

Our key findings and recommendations are summarised below.

1.1 Victorians are being sued by their councils at alarming and increasing rates

Many Victorian councils are prolific litigators, suing people at alarming and increasing rates for small amounts of rates arrears. Specifically, Magistrates' Court data indicate that:

- councils sue over 6,000 people for unpaid rates each year;
- almost all claims are for amounts under \$10,000;
- the number of claims for unpaid rates is rising significantly. Over eight years, the number of claims for unpaid rates has tripled;
- the rise in debt claims for unpaid rates contrasts against the trend of decreasing numbers of claims for other small debts in the Magistrates' Court;
- 15 of the top 25 most prolific litigators for small debt claims since 2003–04 are councils;
- claims for unpaid rates represent a significant percentage of all small claims matters in the Magistrates' Court representing 50% of all undefended claims under \$1,000; and
- the rate at which councils sue for unpaid rates varies significantly across different councils. Some councils sue for unpaid rates far in excess of other councils with similar socio-economic populations (see Appendix 1).

1.2 Victorian legislation gives councils highly favourable protections around unpaid rates, significantly reducing the need to sue

Victorian legislation gives councils highly favourable protections regarding unpaid rates debts. Under the *Local Government Act 1989* (Vic) ('Local Government Act'), councils can charge penalty interest on overdue unpaid rates and charges.¹ The current penalty interest rate is 10.5%, well above cash interest rates.²

The legislation also provides that councils automatically receive a statutory charge over a property for any unpaid rates, interest and associated legal costs and court fees, guaranteeing that rates debts will be paid to a council when the property is sold before any other debts owing to creditors such as the mortgage.³

The legislation provides that, after certain criteria are met, councils can enforce the sale of a property to recover their rates and associated costs and interest.⁴ In practice, we understand that councils rarely do this.

¹ *Local Government Act 1989* (Vic) s 172.

² Attorney-General, 'Penalty Interest Rates Act 1983' in Victoria, *Victoria Government Gazette*, No G 2, 14 January 2010, 15.

³ *Local Government Act 1989* (Vic) s 156(6).

⁴ *Ibid*, s 181.

These protections effectively guarantee councils' ability to recover unpaid rates debts and accrue a generous interest rate on the debts while they remain unpaid. Accordingly, this issue is all about *when* the council will get paid, not *if* the council will get paid.

1.3 Many councils are far too quick to sue and do not properly explore alternatives to litigation such as payment plans

Our financial counselling and community legal casework demonstrates that some councils frequently sue their residents as an early means of recovering small amounts of unpaid rates, without first adequately exploring the reasons for non-payment and negotiating a sustainable payment plan when the resident is experiencing genuine financial hardship.

1.4 Councils are suing even where they are on notice about their local residents' serious hardship

Our casework indicates that court proceedings are being issued against people facing serious personal crises and financial hardship. Cases analysed through this project include people dealing with cancer; the serious illness or death of an immediate family member; redundancy and unemployment; single motherhood combined with serious personal or family illness; serious and long-term mental illness; and recent separation and divorce. Personal circumstances like these do not relieve a person of their obligation to pay rates, but do merit a fair and appropriate response from councils and will often constitute compelling reasons to negotiate an appropriate plan for the payment of rates arrears, particularly where there is evidence that the personal crisis or financial hardship is temporary and the ratepayer will be able to resume normal rates payments.

1.5 Legal costs and court fees often add substantially to the overall debt, making it even harder for the ratepayer to pay the rates arrears

When a council successfully sues a ratepayer for an unpaid rates debt, legal and court costs are added to the total debt. Legal costs and court fees for small debt matters typically exceed \$650 and often make up a significant proportion of the original debt of unpaid rates, sometimes exceeding it. Adding these costs and fees to the rates debt makes it even more difficult for ratepayers to repay the original debt. Our casework shows that once the council has a court order for the unpaid rates, its solicitors or debt collectors continue to pursue the arrears, interest, legal costs and court fees – often failing to itemise the bill to distinguish between each. Many of our clients pay off their rates arrears through an instalment plan and are left paying off the associated legal and court costs, exacerbating their financial hardship. Further, a number of clients interviewed for this report told us that the debt collectors sought payment of enforcement/legal costs prior to a court order requiring payment of legal costs. There is arguably no lawful basis for such costs being demanded prior to a court order.

However, while some councils sue for very small debts, others have policies which provide that they will not sue for debts under a prescribed amount. This helps to ensure that any legal and court costs are not disproportionate to the unpaid rates debt.

1.6 The manner in which councils pursue unpaid rates exacerbates the financial stress and health concerns of their local residents

Our casework indicates that the manner in which some law firms and debt collectors pursue unpaid rates on behalf of councils often causes significant stress to often vulnerable residents, exacerbating their financial disadvantage and health concerns.

1.7 There is little regulation addressing how councils should respond to financial hardship

The Local Government Act confers a broad discretion on councils to either defer or waive unpaid rates and interest, or enforce their payment through legal action. It does not provide guidance on how this discretion should be exercised. Our clients' experiences show this discretion is being exercised by some councils (including through their agent debt collectors and lawyers) in a manner that is inflexible, insensitive, lacking in transparency and in some instances arguably unlawful on administrative law grounds.

Further, there is no statutory requirement for councils to have a financial hardship policy in existence or publicly available. The existence, scope and public availability of council hardship policies varies greatly.

This lack of regulation is a key structural driver of the practice of some councils suing ratepayers at an early stage for small amounts, without adequately exploring the reasons for non-payment and options for payment plans.

1.8 Councils are falling far behind best practice financial hardship regulation, processes and practices

In comparison to other sectors, such as the utility sector, local government is lagging far behind in terms of best practice financial hardship regulation and monitoring. Utility providers are statutorily required to have a financial hardship policy which must be displayed on their website and which can be audited by an independent agency. Utility providers must enter an approved Industry Ombudsman scheme, which can, if necessary, make binding determinations to resolve disputes (avoiding the need for court action). Audit findings demonstrate that utility sector hardship plans are accessible and utilised and are accompanied by staff training and proactive community engagement.

1.9 People in financial stress generally do not seek financial counselling or legal advice without referral

Footscray CLC conducts a free financial counselling service at the Magistrates' Court at Sunshine. Magistrates and Registrars refer many people to the counselling service who have been sued for unpaid rates. In almost all cases, this is the first time they receive advice on their financial difficulties. Our observations reflect the broader research findings on advice-seeking behavior. Studies confirm that people with debts are less likely to seek assistance compared to people experiencing other types of legal issues. Common reasons for not seeking advice include perceptions that seeking help will make little difference and that people don't know how to get help. Those that do seek help often experience barriers in doing so, including difficulty in getting through to help over the phone or making an appointment, and the lack of local services. This highlights the need for effective early referrals of people facing financial hardship so that they can access expert advice to help them resolve unpaid rates matters at the earliest possible opportunity. It also highlights the need for properly resourced and accessible financial counselling and community legal services.

1.10 Suing for unpaid rates is often unnecessary, inefficient and unfair

It is our strong view, based on the court data and our casework, that in many cases, it is unnecessary, inefficient and unfair for councils to sue ratepayers for unpaid rates.

It is far preferable for councils to adopt a consistent, ethical procedure that:

- promotes early and proactive assessment of a ratepayer's capacity to pay;
- where there is genuine hardship, refers them to financial counselling or community legal assistance; and
- promotes the early resolution of unpaid rates matters through the negotiation of a sustainable payment plan.

We believe this approach will:

- resolve unpaid rates matters earlier;
- avoid unnecessary distress and health problems for often vulnerable residents;
- avoid exacerbating financial hardship for often vulnerable residents;
- avoid unnecessary legal and court costs for councils; and
- reduce court proceedings and consequently avoid unnecessary costs to court administration.

1.11 We recommend the implementation of a Local Government Hardship Code of Practice

We believe that this consistent, ethical approach is best achieved by the implementation of a Hardship Code of Practice overseen by the Victorian Ombudsman. This approach is consistent with best practice and the approach adopted in other sectors including the utility, banking and finance sectors.

The key aims of introducing a Hardship Code of Practice include the following:

- to dramatically reduce the number of vulnerable Victorians being sued for unpaid rates by their councils;

- to encourage councils to consistently and proactively seek to identify and assist ratepayers who may be experiencing difficulty paying their rates due to personal or financial hardship, in advance of undertaking debt collection or legal proceedings;
- to promote early access to legal and financial counselling help for people experiencing financial hardship;
- to encourage consistent and ethical debt collection practices by councils across Victoria;
- to reduce court administration costs by identifying more appropriate ways for councils to seek payment of rates arrears;
- to reduce court proceedings and associated court and legal costs being added to rates arrears.

2. Background: the importance of legal and financial counselling assistance on debt matters

2.1 Debt is a growing problem for the community

Personal debt has significantly increased over the last decade in Australia.⁵ Although evidence suggests the growth in household debt has slowed since 2006, it continued to increase by 5% on average each year between 2006 and 2010.⁶ The household debt-to-disposable-income ratio in Australia rose from approximately 70% in 1996 to over 150% in 2006, and has stabilised at this level over recent years.⁷ During the 2011–12 financial year, credit and debt was the third most common legal issue that Victorian CLCs assisted people with (behind family violence and child contact issues). During the year, Victorian CLCs provided people with 12,000 services relating to credit and debt.

2.2 Debt can compound disadvantage and health problems

International and Australian studies have established that debt-related problems do not occur alone, and are often clustered around other issues, including ill health, drug and alcohol use, unemployment and other sources of disadvantage.⁸ Legal issues including those related to debt can bring about illness, increase the likelihood of people experiencing further legal problems,⁹ and increase the likelihood of homelessness.¹⁰ Victorian research conducted in the 'Drowning in Debt' report of clients receiving financial counselling services found that over 90% of participants were experiencing multiple debts, with over 50% reporting five debts or more.¹¹

Australian research conducted in the 'Bulk Debt Negotiation Project' found that the most common indicator of disadvantage of those in debt was health problems – 47% of all clients represented in the study experienced some form of physical or mental illness.¹² Approximately one third of the participants in a study conducted for the 2008 Victorian Department of Justice report, *Courting Debt: The legal needs of people facing civil consumer debt problems* ('Courting Debt')¹³ had experienced mental illness and the study noted that many identified that debts increased

⁵ Richard Finlay, 'The Distribution of Household Wealth in Australia: Evidence from the 2010 HILDA Survey' (Bulletin, Reserve Bank of Australia, March 2012), 25.

⁶ Ibid.

⁷ Ellis Connolly and Daisy McGreggor, 'Household Borrowing Behaviour: Evidence from HILDA' (Bulletin, Reserve Bank of Australia, March 2011), 9. The authors report that '[a]n important factor explaining the rise in household debt was the structural fall in nominal interest rates following the transition to low inflation in the early 1990s, which raised the borrowing potential of households', in addition to deregulation and greater accessibility to loan products. Practical experience of member community legal centres, along with quantitative legal needs studies, suggest that debt-related problems are now one of the most common legal issues encountered in the community. The impacts of legal debt issues often disproportionately affect those facing other economic and social disadvantage: indigenous people are twice as likely to report a debt problem than non-indigenous people, and those with a disability are 1.7 times more likely to report a debt problem than other individuals: Christine Coumarelos, Wei Zhigang and Albert Zhou, 'Justice Made to Measure – A NSW Legal Needs Survey in Disadvantaged Areas' (Report, Law and Justice Foundation Sydney, 2006) 23; Hazel Genn, *Paths to Justice – What people do and think about going to law*, (Hart Publishing, 1999) 8.

⁸ See Nigel Balmer et al, 'Worried Sick: The Experience of Debt Problems and their Relationship with Health, Illness and disability' (2005) *Social Policy and Society* 5(1), 39; Denis Nelthorpe and Kate Digney, 'The Bulk Debt Negotiation Project' (Report, West Heidelberg Community Legal Service, March 2001) 10.

⁹ Pascoe Pleasence et al, 'Causes of Action: Civil Law and Social Justice: Final Report of the First LSRC Survey of Justiciable Problems' (Report, Legal Services Commission, 2004) 107.

¹⁰ Suzie Forrell, Emily McCarron and Louis Schetzer, 'No home No justice: The Legal Needs of Homeless People in NSW' (Report, Law and Justice Foundation of NSW, 2005) 270.

¹¹ Louis Schetzer, 'Drowning in Debt' (Report, Department of Justice Victoria, 2007) 49.

¹² Denis Nelthorpe and Kate Digney, 'The Bulk Debt Negotiation Project' (Report, West Heidelberg Community Legal Service, March 2001) [3.1] 10.

¹³ Louis Schetzer, 'Courting Debt: legal needs of people facing civil consumer debt problems' (Report, Department of Justice Victoria, July 2008), <<http://www.justice.vic.gov.au/home/consumer+protection/justice++courting+debt>>.

their levels of anxiety.¹⁴ Research in the United Kingdom has similarly identified that long-term illness or disability is one of the strongest predictors of debt problems.¹⁵

2.3 Legal and financial counselling help can resolve debt problems and avoid social and health costs

Access to justice research shows that legal issues can cause a range of social, economic and health problems¹⁶ and unresolved legal issues can cause and reinforce social exclusion.¹⁷

Strategies aimed at facilitating advice and assistance for debtors at an early stage can decrease the risk of social, economic and health problems arising from or being exacerbated by debt, including stress and anxiety-related mental illness, family instability, loss of employment and homelessness and criminality.¹⁸

Additional benefits include:

- identifying and addressing the underlying causes of cyclical debt;
- reducing unnecessary use or wastage of court resources; and
- avoiding the increase of debt resulting from additional legal costs being added to the original debt due.¹⁹

2.4 People experiencing debt-related legal problems often do not seek professional advice

It is widely recognised that people experiencing legal problems often don't seek professional help. This is particularly the case for debt issues. The 'Justice Made to Measure' report found that people facing credit and debt issues were less likely to seek professional advice than people facing other legal issues. In 42.3% of credit and debt issues, no action at all was taken by debtors.²⁰ The most common reasons for inaction were found to be perceptions that the issue was not serious and that seeking help would make little difference or make things worse.²¹

The Courting Debt telephone survey considered the advice-seeking behaviours of 450 individuals who had a default judgment made against them.²² More than two thirds (67.6%) of the default judgment debtors studied did not seek advice.²³ Study members who believed that they should not have to pay monies owing were more likely to seek advice than those who believed they should.²⁴ The three most common reasons for not seeking help were that the individual '...dealt with it [them]self', that it was '[their] responsibility to pay' and that they '[d]idn't know how to get help'.²⁵

2.5 People who seek professional advice report experiencing barriers to advice and assistance

The 'Justice Made to Measure' study found that in 38.2% of the legal events where individuals sought help, one or more barriers to access were reported.²⁶ These barriers included difficulty getting through to help over the telephone (occurring in 18.4% of issues where help was sought), delay receiving a response (17.0%) and difficulty getting an appointment or lack of local services (11.0% and 8.1%). Other barriers included the affordability of assistance (6.0%) and an inability to understand advice (4.7%).²⁷

¹⁴ Ibid, 90–91.

¹⁵ Nigel Balmer, Pascoe Pleasence, Alexy Buck and Heather C Walker, 'Worried Sick: The experience of Debt Problems and their Relationship with Health, Illness and Disability' (2005) 5(1) *Social Policy & Society*, 46–47.

¹⁶ Pascoe Pleasence et al, 'Civil Justice in England and Wales: Report of the 2007 English and Welsh Civil and Social Justice Survey' (Research Paper No 22, Legal Services Commission, 2008) Chapter 3.

¹⁷ Pascoe Pleasence, *Causes of Action: Civil Law and Social Justice* (Legal Services Commission, 2nd ed, 2006) 155.

¹⁸ Tom Williams, 'Review of Research into the Impact of Debt Advice' (Report, Legal Services Research Centre, 2004) 19–20, cited in Louis Schetzer, 'Courting Debt: legal needs of people facing civil consumer debt problems' (Report, Department of Justice Victoria, July 2008) 14.

¹⁹ Schetzer, above n 13, 109.

²⁰ Christine Coumarelos, Wei Zhigang and Albert Zhou, 'Justice Made to Measure – A NSW Legal Needs Survey in Disadvantaged Areas' (Report, Law and Justice Foundation Sydney, 2006) 97–100; Hazel Genn, *Paths to Justice – What people do and think about going to law*, (Hart Publishing, 1999) 98.

²¹ Coumarelos, above n 20, 100.

²² IPSOS Australia, 'Telephone Survey of Victorian Magistrate's Court Consumer Default Debtors' (Report, prepared for the Department of Justice Victoria, 26th October 2007).

²³ Ibid, 9.

²⁴ Ibid 11.

²⁵ Ibid, 15.

²⁶ Coumarelos, above n 20, 115.

²⁷ Ibid, 115–116.

2.6 The role of community legal centres and financial counsellors in providing debt advice

Community legal centres and financial counsellors assist people to resolve debt issues by providing free expert advice, tailored to the person's situation. CLC lawyers provide legal advice and representation on debt matters. Financial counsellors, located in CLCs and other community agencies, provide a mix of social, financial and para-legal advice and advocacy on debt matters.

Assistance from CLCs and financial counsellors can include:

- assessing whether or not the debt is legally owed;
- advice around protected income and assets (in broad terms, where a debtor's sole income is social security and they have only basic household assets, a creditor will be unable to enforce a debt against them); and
- advice around budgets, options for reducing expenses and possible debt repayment strategies.

2.7 The importance of early intervention

As set out above, people often don't seek legal or financial counselling assistance for debt matters despite the benefits this might bring. Worse, when they do seek assistance, it is often at a very late stage, typically once the creditor has obtained judgment for the debt in court, legal and court costs have been added to the debt, and the debtor is being compelled to answer questions around their financial position through court judgment debt enforcement action. It is often much harder for a CLC lawyer or financial counsellor to resolve a debt matter satisfactorily when the client approaches them at a very late stage.

The Courting Debt report noted that the receipt of early advice can be enhanced through:

- greater promotion of the availability of debt-related assistance;
- improving information provided by creditors on how to access these services; and
- increasing the capacity and resources of community-based legal and financial counselling services.²⁸

2.8 The importance of prevention

CLC casework often highlights systemic issues concerning the way some creditors seek to collect debts. Often, the most effective way to assist our clients is to tackle these issues on a systemic basis, addressing the underlying system problems and preventing legal issues from arising in the first place or mitigating their impact.

²⁸ Schetzer, above n 13, xi – xii.

3. Background: the business case for responsible hardship practices

In addition to the ethical reasons, there is also a strong business case for adopting responsible hardship practices. Below is a snapshot of the benefits achieved by two private sector organisations – Australia's biggest debt collector, Credit Corp, and Yarra Valley Water – as a result of each organisation's responsible hardship practices.

While the regulatory regimes applicable to councils differ, the experience of these organisations highlights that there can be a strong business case for councils to adopt responsible hardship practices.

3.1 Credit Corp

Credit Corp deals with thousands of people who are experiencing financial hardship, reflected in the fact that 71% of all Credit Corp's debtors are on hardship instalment plans (referred to as 'recurring payment arrangements').²⁹ In its 2011 Annual Report, Credit Corp notes that:

Another key to optimising collection effectiveness is to ensure appropriate focus on creating and maintaining recurring payment arrangements. It is important to locate and enter into a constructive dialogue with as many customers as possible. When we operate effectively, a large proportion of the customers we speak to do not have the capacity to make lump sum repayments. In these instances we work with customers to repay the amounts outstanding over time through recurring payment arrangements. Once established, these arrangements must be actively managed to minimise the impact of delinquency. Over the year the face value of customer accounts on recurring payment arrangements grew by 26% to \$598 million.³⁰

At the 2012 Financial Counselling Australia national conference, the Chief Operating Officer of Credit Corp, Matthew Angell, reported that Credit Corp has experienced a 66% increase in payments under long-term, flexible payment plans over the past three years. He also reported that the number of customers now paying under these plans had grown 28% faster than Credit Corp's loan book since they commenced work with Kildonan Uniting Care in the area of consumer hardship and respectful practice.

Credit Corp is currently commissioning a report on their work in this area, expected to be completed during the 2013 financial year.

3.2 Yarra Valley Water

In 1999, the Financial and Consumer Rights Council undertook a consumer audit of electricity, gas and water industry reforms in Victoria. The audit results are outlined in the report 'An Unfair Deal'.³¹ The research revealed many cases of unacceptable debt collection practices by companies in the utility industries.³² Following the release of this report, Yarra Valley Water undertook a comprehensive internal audit of its customer service practices and worked with Kildonan Child and Family Services to find solutions to the debt spiral of many of its water customers.

Yarra Valley Water confirms that its reformed customer support program was cash flow positive by the end of its second year in 2001–02, and continues to achieve both sustainable outcomes for customers and positive business outcomes. Between the financial years 2002–03 and 2010–11, payment compliance rates have increased from around 82% to nearly 95%.³³

²⁹ Credit Corp 'Media Release H1 of FY2012 Results' (Media release, 2 February 2012) <http://www.creditcorp.com.au/corporate/files/downloads/2012/03/CCP_H1-FY12-Media-Release.pdf>.

³⁰ Credit Corp, '2001 Annual Report' (Annual report, Credit Corp Group, 22 September 2011) 6 <http://www.creditcorp.com.au/corporate/files/downloads/2012/03/CCP_H1-FY12-Media-Release.pdf>.

³¹ See <http://www.changemakers.org.au/success_stories/an_unfair_deal>.

³² Ibid.

³³ Allan Cole, 'Yarra Valley's Water Experience: Helping People on Low Incomes Manage the Cost Of Living Spiral – Policy & Practice' (Paper Presented at QCROSS Conference, 8 August 2011) <http://www.qcross.org.au/sites/default/files/Allan%20Cole%20qcross_aug11v2.pdf>.

4. Why we chose to do this project

4.1 Coalface experience assisting clients who had been sued by their council

Community legal centres have been active in assisting clients with debt problems, and tackling systemic problems around debt, for many years. The specific issue of problems concerning the way Victorian councils respond to ratepayers who owe unpaid rates came to our attention in two principal ways.

Firstly, Footscray CLC conducts a clinic at the Magistrates' Court at Sunshine providing legal advice and financial counselling for clients referred to them by the court with debt issues. Footscray CLC observed many clients who were being pursued by councils for unpaid rates. Many clients were sued for very small amounts, often less than \$1,000, in circumstances where the council and their lawyers knew about their financial or personal hardship.

Clients frequently reported that their council and its lawyers treated them in a highly insensitive and inflexible manner with respect to their difficult personal circumstances. Clients reported being told by their council or its lawyers that they have no other payment plan options and that court proceedings will be issued imminently or cannot be avoided.

The story of our client, Valma, captures the issues and disadvantages inherent in the current debt collection practices of many councils across Victoria.

Valma's story

Valma is 74 years old. She has diabetes and her sole source of income is her pension. She owns a house with her brother. Her daughter and son in law are living at the house with her. Up until 18 months ago, her brother was living with her at the house and between their two pensions, they were able to meet the bills. 18 months ago, her brother moved into a nursing home due to his dementia. Valma found it increasingly difficult to meet all the bills and rates on her sole pension.

Valma's contact with the council

The council's lawyers wrote to Valma telling her she was overdue on her rates. Valma called the lawyers and offered to pay \$50 per fortnight off her rates and was told to speak directly to the council. The council refused her offer and demanded she pay \$120 per fortnight. The council agreed to waive the *interest* on her arrears for about three or four months because she was facing financial hardship; however, the council never informed her that she could make a financial hardship application to have the *arrears* waived or reduced. The council later reinstated the interest charge on the arrears without giving her any notice.

Valma's inability to meet the payment plan

Valma struggled to meet all of her bill repayments and found it increasingly difficult to meet the \$120 per fortnight repayment on her rates arrears. Eventually the council sued her in the Magistrates' Court.

The rates owed, and the costs added by court proceedings

Valma was incredibly stressed in the lead-up to the hearing date because she was afraid of losing her home. She did not defend the court proceedings and default judgment was entered against her. She originally owed \$1153 in unpaid rates. Following the default judgment, the additional amounts were added:

- \$614.10 for costs; and
- \$127.17 for interest.

Valma then received a summons for oral examination. The additional amounts added following the oral examination were:

- \$112.00 for the costs of the summons;
- \$37.90 for the filing fee; and
- \$59.00 for the service fee and \$10.00 for the conduct money.

Accordingly, as a result of the proceedings against her, Valma's debt almost doubled from \$1153 for the unpaid rates, to a total of \$2114.00.

Valma's contact with the financial counsellor

The financial counsellor from Footscray CLC approached Valma to see if she would like some advice on her circumstances. Had the financial counsellor not approached Valma, she would never have known that the service was available to her. Seeing the financial counsellor made her feel less stressed about her circumstances. Having someone listen to her financial concerns and provide advice on how to deal with them, was a great relief.

Emotional impact on Valma

Valma felt like an 'emotional wreck' leading up to the court hearing date. She felt frustrated that no one at the council, nor their lawyers, listened to her when she tried to explain that she couldn't meet their requirements. She felt like they were more concerned with what she was required to do, rather than what she could actually manage. She experienced a great sense of 'helplessness' and felt 'trapped', like there were no options for her. She currently has her daughter and son living with her, and she often cares for grandchildren. She has family visiting all the time and was incredibly worried about losing her home.

4.2 Early data pointed to a real problem with councils

At the same time as Footscray CLC was observing these issues, the Federation was analysing the findings of the Courting Debt report.³⁴ Amongst other things, the report revealed that councils were among the most prolific litigators for small debts in the Victorian Magistrates' Court. During the 2005–06 financial year, councils issued 5,309 proceedings for debts up to \$10,000.³⁵ All of those matters were finalised by default judgment, amounting to 21% of all default judgments under \$10,000 in the Magistrates' Court.³⁶

In Courting Debt, Louis Schetzer made a number of recommendations based on his research, including specific measures aimed at addressing the high representation of councils amongst plaintiff creditors for civil consumer default debt matters. The proposals are extracted below.

Recommendations from Courting Debt

- The development of model litigant guidelines for local government in relation to civil consumer litigation;
- The development and promotion of appropriate hardship schemes by all councils across Victoria. Such schemes could be similar to those provided by energy and water retailers, but could be tailored to be suitable to a local government context. Elements of such a scheme could include requirements for the council to:
 - attempt to make verbal and/or written contact with the debtor resident;
 - provide information to the debtor resident about available concessions and also available advice and assistance services for people facing debt-related problems;
 - not commence legal proceedings for recovery of a debt while a resident/customer is complying with the requirements of an agreed alternative payment arrangement.

Guidelines to assist councils in developing hardship schemes could be developed and distributed by the peak representative and advocacy body for councils, the Municipal Association of Victoria.

It is important to acknowledge that councils are a significant provider of financial counselling services, with many councils employing financial counsellors or providing funding for the delivery of such services in their respective local government areas. Hardship schemes which provide greater opportunity for debtors to local government to engage with their council to negotiate acceptable payment arrangements would complement these council funded financial counselling services.³⁷

The Federation and Footscray CLC identified an opportunity to work together to investigate these issues further.

4.3 Significant opportunity for early intervention and prevention

In our early analysis of issues around unpaid rates, it was clear that there was a significant opportunity to reform the way councils seek to collect unpaid rates, promote earlier resolution of these matters through referrals to community legal and financial counselling help, and prevent issues from escalating into court proceedings.

³⁴ Schetzer, above n 13.

³⁵ Ibid, 46.

³⁶ Ibid.

³⁷ Ibid, 103–104.

5. Methodology

5.1 Research potential factors behind high council sue rates

To investigate why councils are suing at such high rates compared to other sectors with similar stakeholders:

- we researched the statutory obligations on councils to assist people experiencing hardship. We sought pro bono legal advice on these statutory obligations, which was generously provided by commercial law firm, Clayton Utz; and
- we interviewed eight councils from the north and west of Victoria on the existence, availability and application of internal financial hardship policies. The councils were selected on the basis that they were closest to Footscray CLC's service area.

5.2 Investigate the impacts of council litigation against ratepayers in hardship

We undertook 10 in-depth interviews with clients of Footscray CLC as well as with clients referred to us by financial counsellors around the state. Throughout this report we capture some of the troubling experiences of our clients in their own words and stories. We discussed and sought feedback from a Magistrate and Registrar at the Sunshine Magistrates' Court. Both supported the project.

5.3 Review Magistrates' Court data to identify trends in council litigation

We sought updated and expanded Magistrates' Court data to identify trends in council litigation for unpaid rates across the 79 Victorian councils. We received data for each of the 79 councils for financial years 2003–04 to 2010–11. It took us more than six months from our original request to the Magistrates' Court to obtain this data. We thank the Attorney-General, the Hon Robert Clark, for facilitating our request after we were initially informed it would cost us \$11,000 to obtain the data. Nathan Woolhouse, a Senior Business Analyst with the Department of Justice, provided invaluable assistance in interpreting the data.

We received comprehensive Magistrates' Court data for each financial year from 2003–04 to 2010–11, including:

- data broken into the 19 different debt-related matter types litigated, including 'arrears of rates' and 'local government rates and charges';
- data on the claim type, claim amount and how those matters were finalised;
- disaggregated data of the sue rates of each of the 79 councils; and
- the total number of civil complaints of less than \$10,000 finalised by default judgment, by claim type and creditor name (where > 50 total cases) statewide, over the last eight financial years.

Having comprehensive data on all debt matter types meant that we were able to compare sue rates for arrears of rates with all other debt claims. We were also able to compare the sue rates of different councils. We used the Socio Economic Index for Areas ('SEIFA') to compare sue rates of councils of areas with similar socio-economic status. Our analysis of this data is set out below from 9.3.

5.4 Regulatory comparison with utility sector

We compared the hardship regulatory frameworks and practices of councils with the utility sector because a number of correlations can be drawn between these two sectors, including the following:

- any person paying rates on their primary place of residence will necessarily have utility payment obligations also. Thus, utility providers and councils have the same stakeholder base with whom they must negotiate with on financial hardship issues;
- the enforcement of unpaid rates and unpaid utility bills raises similar human rights issues around the right to housing, privacy and the protection of families and children; and
- unlike other areas relevant to debt such as banking, utility providers do not provide credit; rather, claims brought for small debt matters are for the supply of goods and services. This means debtors in the utility sector are not covered by the provisions of the *National Credit Code*, which is also the case for councils. It is therefore useful to consider how the utility sector has responded to people experiencing hardship. The utility sector has recently undergone significant reform in this area.

6. Background and context – rates payment obligations, debt and hardship

6.1 Communities with a lower socio-economic status can pay higher rates compared to wealthier areas

Council rates are charged on property owners in accordance with Part 8 Division 1 of the Local Government Act. The process for calculating the total rates revenue required for a financial year involves determining the shortfall between the council's spending estimate for the year and its non-rates revenue sources, such as government grants, fees, fines and charges. The shortfall between the estimated expenditure on the one hand and non-rates revenue on the other, is primarily made up by rates.³⁸

Residents of local government areas with lower property values do not necessarily pay lower rates. This is because the number used to multiply individual rates due increases as the total value of properties in a local government area decreases. For example, the average rates in the wealthier areas of Glen Eira and Whitehorse are lower than the average rates in the City of Melton.³⁹

6.2 Rates obligations are rising faster than inflation

In each of the financial years between 2005–06 and 2011–12, rates increases imposed by Victorian local governments have consistently outstripped inflation. Across that period council rates have increased by 50.2%.⁴⁰ By comparison the Australian consumer price index has risen by only 21.5%.⁴¹

The table below presents percentage rates increases on the previous financial year as compared with the consumer price index.

Year	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12
CPI Increase	3.09	2.66	3.5	2.82	2.07	3.28	2.31
Average Rates Increase	7.31	6.4	6.07	5.26	4.94	6.1	5.8

Accordingly, rates are likely to comprise a rising share of household expenditure and represent a greater burden on low income households.

³⁸ Victorian Government, *Guide to Local Government: How Rates are Calculated* (9 September 2009) Department of Planning and Community Development <<http://www.dpcd.vic.gov.au/localgovernment/guide-to-local-government/planning-and-finance/how-rates-are-calculated>>.

³⁹ Municipal Association of Victoria, *2011–12 Victorian Local Government Rates Survey* (25 June 2011) <<http://www.mav.asn.au/about-local-government/local-government-finance/More%20rates%20packages/2011%20rates%20package.docx>>.

⁴⁰ Ibid.

⁴¹ We have based our calculations on the Melbourne CPI of all groups. See Australian Bureau of Statistics, *Consumer Price Index, Australia, June 2008*, cat. no. 6401.0 (2008) and Australian Bureau of Statistics, *Consumer Price Index, Australia, June 2012*, cat. no. 6401.0 (2012). See also ABS Household Expenditure Survey 2009–10, catalogue 6530.0 which shows that rates represent a greater burden on low income households.

7. Regulatory framework

Rates constitute the majority of the income of councils. As discussed below, the Local Government Act provides extensive protection to the interests of councils with respect to rates; however, that protection is not balanced by adequate safeguards for people experiencing personal and financial hardship. We elaborate on the statutory protections and duties below.

7.1 Legislation effectively guarantees the payment of unpaid rates debts

The Local Government Act provides that unpaid rates, along with any interest and legal costs associated with the unpaid rates, are a first ranking charge on land.⁴² This charge gives the council preference over all other secured creditors, including mortgagees in any bankruptcy proceedings.

Further, a person who becomes the owner of rateable land must pay:

- any current rates and charges applicable to the land;
- any arrears of rates and charges; and
- if the council has obtained an award for legal costs in relation to a rates charge owing by the previous owner, the amount of legal costs still owing.⁴³

Therefore, if land is sold, the full amount of rates owing to a council, including any interest and enforcement costs, must be paid to the council by the purchaser at the time a property is transferred, irrespective of who the vendor is.⁴⁴ This means that in circumstances where a bank sells the land as a mortgagee in possession, rates must still be paid by the purchaser at the time of sale.

The legislation effectively guarantees that rates debts will be paid to a council when the property is sold before any other debts owing to creditors such as the mortgage. These protections effectively guarantee councils' ability to recover unpaid rates debts and, as set out below, accrue a generous interest rate on the debts while they remain unpaid. Accordingly, this issue is all about *when* the council will get paid, not *if* the council will get paid. Council financial reports reflect this security; unpaid rates are not reported as bad debts and financial reports expressly reference the first-ranking statutory charge over the property given by the legislation.⁴⁵

7.2 Penalty interest accrues on unpaid rates debts

The legislation provides that councils can impose penalty interest on overdue unpaid rates.⁴⁶ The current penalty interest rate is 10.5%, a highly favourable rate compared with current market investment rates⁴⁷

Some councils provide local residents with the choice of either paying their rates in a lump sum or by instalment. If both lump sum and instalment payment options are available, and the first instalment date is missed, penalty interest can be applied from the date the rates were declared.⁴⁸ For example, if the ratepayer misses the first 2012 instalment date on 30 September, and fails to pay in full by 15 February 2013, penalty interest may be backdated to 1 July 2012 (the date rates are declared) until the full amount of the rates due are paid. Other councils only allow payment by instalment, in which case penalty interest applies from the date the relevant instalment was missed.

⁴² *Local Government Act 1989* (Vic) s 156(6).

⁴³ *Ibid*, s 175.

⁴⁴ *Ibid*, s 175(1C).

⁴⁵ See for example Melbourne City Council 'Financial Report for the Financial Year Ended 30 June 2011: Notes to Financial Statements, Note 4 Expenses, Bad and Doubtful Debts' (Financial Report, Melbourne City Council, 30 June 2011) 17 cf Melbourne City Council, 'Financial Report for the Financial Year Ended 30 June 2011: Notes to Financial Statements, Note 3 'Revenues' (Financial Report, Melbourne City Council, 30 June 2011) 14. Rates arrears are only accounted for as a source of income. No 'provision' is made for rates arrears of the type that is made for loss in relation to bad or doubtful debts.

⁴⁶ *Local Government Act 1989* (Vic) s 172.

⁴⁷ Attorney-General, 'Penalty Interest Rates Act 1983' in Victoria, *Victoria Government Gazette*, No G 2, 14 January 2010 <<http://www.gazette.vic.gov.au/gazette/Gazettes2010/GG2010G002.pdf#page=15>>.

⁴⁸ *Local Government Act 1989* (Vic) s 172(2)(iii).

7.3 Councils can sue for unpaid rates and interest

The legislation provides that councils can sue in the Magistrates' Court to recover unpaid rates and/or penalty interest by lodging complaints with the Magistrates' Court.⁴⁹ Legal and court costs associated with suing the ratepayer can be added to the amount due by the ratepayer along with penalty interest on the unpaid rates. Even where a ratepayer has paid off their arrears, a council may seek recovery of any unpaid penalty interest through litigation.⁵⁰

7.4 Councils can force the sale of the land and other assets to recover unpaid rates and interest

If a council successfully sues a ratepayer for unpaid rates, subject to the *Debt Recovery Act 1984* (Vic), it can then immediately apply for enforcement orders from the court, such as a warrant directing the sheriff to seize and sell property. After successfully suing a ratepayer for unpaid rates, a council can also force the sale of the land (or cause it to be transferred to itself) where:

- any amount of the rates and/or enforcement costs and/or penalty interest remain unpaid for a period of more than three years since the order; and
- where there are no current payment arrangements in place.⁵¹

7.5 No mandatory requirement to have financial hardship policy

Unlike the legislation applicable to the utilities sector (discussed in part 11), the Local Government Act does not require councils to have financial hardship policies nor mandate the content of a financial hardship policy. As discussed below at part 10, and as evidenced by our survey findings set out in Appendix 2, it appears that financial hardship policies exist sporadically throughout the local government sector. Policies that exist vary in scope and are not always publicly available, even upon request.

7.6 Broad discretion to defer or waive payment of rates

The Local Government Act confers councils with broad discretion with respect to assisting people experiencing financial or other hardship. Where a ratepayer makes an application satisfying the council of either hardship or financial hardship, a council can:

- defer payment of rates and/or interest, in whole or in part, on the basis of 'hardship' (which is not defined);⁵² and
- waive payment of rates and/or interest, in whole or in part, on the basis of 'financial hardship' (also not defined).⁵³

The response of councils to the devastating impact of the Victorian bushfires on Black Saturday demonstrates the breadth of the discretion to determine whether rates should be deferred or waived in certain circumstances. Murrindindi Shire Council waived five months of rates charges in 2008–09 for ratepayers whose primary residence or business was destroyed or rendered uninhabitable due to the bushfires.⁵⁴ Likewise, the City of Whittlesea waived rates for 2008–09 and discarded council permit fees and animal registration for people affected by the fires.⁵⁵ The City of Greater Bendigo also chose to exempt the payment of rates for properties where the bushfires completely destroyed their property.⁵⁶

⁴⁹ Ibid, s 180 (unpaid rates); s 172(4) (unpaid interest).

⁵⁰ Ibid, s 172(4).

⁵¹ Ibid, s 181.

⁵² Ibid, s 170(1).

⁵³ Ibid, ss 170(1A)(1) and (3).

⁵⁴ 'Council Rate Waiver for Bushfire Victims' *The Granite News* (Hughes Creek) 21 June 2009, 1

<http://highlands.org.au/tgn/2009/GraniteNews_2009_06_21.pdf>

⁵⁵ John Ferguson, 'Black Saturday survivor has been hit with a council rate rise', *the Herald Sun*, August 5 2009

<<http://www.heraldsun.com.au/news/black-saturday-survivor-has-been-hit-with-a-council-rate-rise/story-e6frfjzf-1225757996592>>

⁵⁶ 'Fire survivors' rates waived', *The Bendigo Advertiser* (Bendigo), 20 February 2009

<<http://www.bendigoadvertiser.com.au/news/local/news/general/fire-survivors-rates-waived/1438932.aspx>>

Councils can also waive rates for a class of persons predetermined by the council, with no requirement for that class of persons to make an application.⁵⁷ There is also no obligation on councils to predetermine a class of persons for the purpose of this section. The only mandatory obligation with respect to waiving rates is to provide concession entitlements to 'eligible recipients' within the meaning of the *State Concessions Act 2004* (Vic) where such a person makes an application.⁵⁸

7.7 No requirement to assess financial circumstances prior to suing

The Local Government Act has basic provisions requiring councils to provide notice to ratepayers regarding payment due dates.⁵⁹ Apart from this, the legislation does not require councils to take any action, such as investigating financial hardship, before suing a ratepayer for unpaid rates.

7.8 Council obligations under the Victorian Human Rights Charter

As public authorities, councils have responsibilities under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('the Charter') to consider and act compatibly with Charter rights when making decisions.⁶⁰ Councils are also obliged to interpret legislative obligations in a manner consistent with human rights.⁶¹

Council powers under the Local Government Act to sue and to sell land to recover unpaid rates may in some circumstances engage human rights under the Charter. The most relevant Charter rights are the right to privacy (section 13) and the right to protection of families and children (section 17).

In circumstances where councils are considering suing a resident and selling their home, sections 13 and 17 of the Charter require councils to consider the potential impact this would have on the resident's private life, home and family, and in broad terms whether the council action is a reasonable and proportionate response to the amount of unpaid rates owed.⁶²

It is arguable that a council will breach the Charter where it is aware that a resident is experiencing financial hardship but fails to properly take this into account and sells their home. A breach of the Charter is more likely where:

- the amount of the rates debt owing to council is small;
- the resident has not been offered a payment plan or been referred to financial counselling;
- the resident is unlikely to be able to obtain other equivalent accommodation; or
- commencing proceedings is likely to affect a number of other persons such as dependent children who live at a residence and depend on it for accommodation.

Ratepayers can complain to the Victorian Ombudsman if they believe the council has breached their Charter rights or otherwise acted improperly.⁶³ In some circumstances, a breach of the Charter by a council may create other legal remedies for a ratepayer.⁶⁴

7.9 The role and functions of the Victorian Ombudsman with respect to councils

The *Ombudsman Act 1973* (Vic) ('Ombudsman Act') gives the Victorian Ombudsman the power to investigate complaints made by members of the public against council staff.⁶⁵ These investigation powers include the power to investigate complaints around rates and financial hardship.

⁵⁷ *Local Government Act 1989* (Vic) s 171(1)(b). Councils can also exempt any person from paying the whole or part of any interest either generally or specifically: s 172(3).

⁵⁸ *Local Government Act 1989* (Vic) s 171(4).

⁵⁹ See *Local Government Act 1989* (Vic) s 158.

⁶⁰ *Victorian Charter of Human Rights and Responsibilities Act 2006* ss 6(2) and 38(1).

⁶¹ *Ibid* s 32(1).

⁶² See *PJB v Melbourne Health* [2011] VSC 327.

⁶³ *Ombudsman Act 1973* (Vic) s 13.

⁶⁴ See *Victorian Charter of Human Rights and Responsibilities Act 2006* ss 32(1), 38(1) and 39.

⁶⁵ See *Ombudsman Act 1973* (Vic) ss 13(1), 14.

Ombudsman Investigations comply with the principles of natural justice, allowing each party to remain informed and to provide their perspective.⁶⁶ The Victorian Ombudsman has various powers including to hold a hearing, send for witnesses, examine upon oath, impose a penalty for non-attendance or refusal to give evidence and to issue a summons for continuous attendance.⁶⁷

Where the Victorian Ombudsman finds that the administrative action falls within one of the reportable grounds (for example, where the action was 'unreasonable unjust oppressive or improperly discriminatory'), he must issue a report to the principal officer and Mayor, and can make non-binding recommendations. He can also provide the Premier with a copy of the report.⁶⁸

In addition, the Victorian Ombudsman:

- may request the principal officer to notify him or her of steps proposed or taken to give effect to the recommendations, or reasons for not proposing or taking such steps;⁶⁹
- may provide the report to the Governor in Council and the Mayor, along with comments (if any) made by the council, where no steps are taken by the council within a reasonable time;⁷⁰
- may provide the report to Parliament where it is given to the Governor in Council; and
- must provide the complainant with notification of the outcome and any recommendations, as well as any steps that have been taken by the council to give effect to them.⁷¹

Data from the Victorian Ombudsman's annual report reveal that in 2010–11, 24.8% of all complaints to the Victorian Ombudsman concern councils, of which, around 6.5% concerned rates specifically.⁷²

⁶⁶ See, for example, *Ombudsman Act 1973* (Vic) s 17(4) and s 17(6).

⁶⁷ See *Ombudsman Act 1973* (Vic) s 18 and *Evidence (Miscellaneous provisions) Act 1958* (Vic) ss 17, 18, 19, 20, and 20A.

⁶⁸ *Ombudsman Act 1973* (Vic) s 23(1)–(3).

⁶⁹ *Ibid*, s 23(4).

⁷⁰ *Ibid*, s 23(5).

⁷¹ *Ibid*, s 24.

⁷² Victorian Ombudsman, 2011 Annual Report, Part 2, page 21.

Stacey's story

Stacey is a single mother with five children and her sole source of income is Centrelink and child support payments. Due to her caring responsibilities she has been out of work for over three years. She was previously living in a property in country Victoria with her children, and had lived there for nine years. When her father was diagnosed with cancer, she purchased a second house in outer Melbourne so that she could live with her father and care for him during his illness. Her father passed away in August 2011. She intends to sell the Melbourne house that she currently lives in so that she can move back with her children to the country property. During the final stages of her father's life, Stacey failed to pay the rates on the country property on time.

Stacey's contact with the council's lawyers

In early April 2011, Stacey received a letter from the council's lawyers. It stated that she owed \$658 in rates arrears, including \$75 lawyers' costs (which she agreed to pay).⁷³ Shortly after receiving that letter, she called the lawyers. She agreed to an instalment plan where she would pay \$100 per fortnight. In late May, she made her first instalment payment.

Despite agreeing to the payment plan and making the first payment on that day, Stacey was informed by the lawyers that the council had sued her. Stacey told them that she didn't think court proceedings were necessary because she had already agreed to pay by instalments. She informed them of the circumstances surrounded her father's health. She was told that there was nothing that could be done – proceedings had started and she would have to attend court. The council and its lawyers never informed Stacey she could make a financial hardship application.

The rates owed, and the costs added by court proceedings

Stacey did not defend the legal proceedings and judgment was entered against her. The original amount requested by the lawyers was \$658, including \$75 of their costs. However, after she made the first \$100 repayment, she received a receipt stating that she still had \$962.08 owing. The receipt did not include a breakdown of the remaining rates, and how much costs were. Stacey paid off the remainder of the rates arrears directly to the council. She believes she is now just paying off the court and lawyers costs.

Stacey's contact with financial counsellors

Stacey was never referred to financial counselling advice or legal advice in relation to the unpaid rates on her country property. However, when she fell behind on the rates for the Melbourne property, she saw a financial counsellor who was able to prevent legal proceedings being issued against her, which saved her those extra costs.

Personal impact on Stacey

Stacey finds it distressing to talk about what has happened with her rates. She is particularly upset by the lawyers' lack of understanding about the fact that she was late on her rates because she was caring for her father during his final stages of cancer. She was very worried that they were going to sell the farmhouse.

⁷³ The request for \$75 legal fees could constitute misleading and deceptive conduct. See *Australian Competition and Consumer Commission v Sampson* [2011] FCA 1165 (17 October 2011). Tracy J held that, because costs would not be awarded if the plaintiff to whom debt was owed lost at hearing (in that case a Video Rental Retailer), any such demand for costs written in a letter prior to hearing constituted a breach of misleading and deceptive conduct provisions under the Australian Consumer Law. More generally, the award of costs is at the discretion of the independent adjudicator. Any representation that could be interpreted otherwise will be seen to be misleading.

8. Councils as debt litigators – what the casework tells us

8.1 Investigating the experiences of clients who had been sued by their council

As discussed above at 4.1, Footscray CLC runs a drop-in clinic at the Sunshine registry of the Magistrates' Court where their Principal Lawyer and financial counsellor see many clients who have been sued by their councils for unpaid rates. For this project, Footscray CLC's financial counsellor identified a sample of clients who had been sued by their council. With permission from each client, a Policy Officer at the Federation undertook an in-depth interview and a number of follow-up interviews with each client, to get an account of their circumstances and experiences dealing with their council. Additionally, the Financial and Consumer Rights Council asked financial counsellors across Victoria to refer any relevant clients (with their permission) to the Federation for interviews. 10 client interviews were undertaken in total. The following questions were discussed with each client (among other issues that emerged for each client):

- Why couldn't you pay your rates on time?
- When did your council first contact you about your rates arrears, and what was the nature of the contact?
- Did the council ever inform you of your right to make a hardship or financial hardship application?
- If so, explain the hardship process or assistance made available to you. Were you offered a payment plan? Did you experience difficulty negotiating a payment plan that reflected your actual capacity to pay the arrears along with other financial commitments such as the mortgage, bills and weekly food shop?
- If not, at what stage did you first become aware of your right to make a hardship or financial hardship application to the council?
- Did the council refer you to a financial counsellor, prior to instituting proceedings against you?
- If not, at what stage in the process were you referred to or seek financial counselling help? What prompted you to seek that advice?
- Did your council write a letter of demand prior to instituting proceedings against you?
- Did the council have a law firm or debt collectors acting on their behalf?

Below we provide a summary of the findings from our file review and client interviews.

8.2 People in financial stress generally do not seek financial counselling or legal advice without referral

At the Magistrates' Court at Sunshine, Magistrates and Registrars refer many people sued by their council to the drop-in counselling service operated by Footscray CLC. In almost all cases, this is the first time they receive advice on their financial difficulties. Our observations reflect the broader research findings on advice-seeking behavior (discussed further above at 1.4)

8.3 Many councils are far too quick to sue and do not properly explore alternatives to litigation such as payment plans

Our casework demonstrates that some councils frequently sue their residents as an early means of recovering small amounts of unpaid rates, without first adequately exploring the reasons for non-payment and negotiating a sustainable payment plan when the resident is experiencing genuine financial hardship.

Mr and Ms Hamad's story

Mr and Ms Hamad entered into a house and land package for a home to be built by a well-known building company and financed by a major bank. During this time they were renting a property in the west of Melbourne. Unfortunately Mr and Ms Hamad found that they could not afford to meet both the mortgage repayments and rent while their home was being built. Worse, the building company never completed the building of their home and was in fact involved in a scam. The building company was prosecuted, deregistered and bankrupted.

The delay in building was catastrophic for Mr and Ms Hamad. They were making rent and mortgage payments but never gained access to their home. They fell into arrears on the rental property and were evicted by their landlord. For many months the family was housed in emergency accommodation and eventually resettled in Office of Housing rental accommodation. They ceased making payments on the mortgage.

Mr and Ms Hamad's contact with the council's lawyers

In December 2010, the council sued Mr and Ms Hamad for unpaid rates for the 2009–10 financial year for the land where the house was to be built. Mr and Ms Hamad did not understand the concept of rates or the demand for payment. The council had no prior contact with them prior to initiating debt collection and court proceedings. Further, despite Mr and Ms Hamad never taking possession of the property, in January 2011 the council also sued them for failing to maintain the property.

The rates owed, and the costs added by the court proceedings

The council successfully sued for the unpaid rates and legal costs and court fees of \$618.40 were added to the rates arrears of \$849.35. The council also issued a summons for oral examination bringing the total amount owed to the council to \$1763.80.

Mr and Ms Hamad's contact with financial counsellors and community lawyers

Footscray Community Legal Centre assisted a number of families, including Mr and Ms Hamad, who were caught up in the scam organised by the building company. The centre notified the council of the Hamad's circumstances and the council's lawyers agreed to stop the court case relating to the failure to maintain the property and not pursue the legal and court costs relating to that case. However the council insisted on recovering the unpaid rates, court fees, legal costs and interest. These amounts were paid to the council when the property was eventually sold by the mortgagee bank.

Personal impact on Mr and Ms Hamad

The council's actions around the rates debt caused immense stress for Mr and Ms Hamad. It required an enormous amount of time from Footscray Community Legal Centre, pro bono solicitors and barristers to free the family from litigation and debt associated with the mortgage. The bank agreed to write off a significant debt after accepting the family had been caught in a scam which resulted in severe financial hardship. In contrast, the council did very little to help the family and in fact exacerbated their hardship and stress by suing them for the small amount of unpaid rates. The debt owed to the council more than doubled as a result of the litigation.

8.4 Councils are suing even where they are on notice about their local resident's serious hardship

Our casework indicates that court proceedings are being issued against people facing serious personal crises and financial hardship. Cases analysed through this project include people dealing with cancer; the serious illness or death of an immediate family member; redundancy and ongoing unemployment; single motherhood combined with serious personal or family illness; serious and long-term mental illness; and recent separation and divorce.

8.5 Summons for oral examination are being sought unnecessarily

A summons for oral examination is a court procedure which allows a creditor, who has an order from the court that a debtor owes them money, to compel the debtor to attend a meeting at court and answer questions about the debtor's financial position, including information on the debtor's assets and income, so that the creditor can determine an appropriate way to seek payment of the debt due.⁷⁴ If the debtor does not attend the oral examination, they can be arrested and forced to attend.

The legal and court costs connected with the summons for oral examination are added to the total debt owed by the debtor.

In claims for rates arrears, our casework indicates that council lawyers commonly issue summons for oral examination unnecessarily. The council and its lawyers will always know that the debtor owns a house. For some older residents, they will know that the person is receiving a pension concession. Other information about the person's financial position may also already be in the council's possession as a result of negotiations with the ratepayer.

In these circumstances, issuing a summons for oral examination will not provide the council with any further information of use about a person's financial position. However, it will add further court and legal costs to the total debt – making it harder for the person to pay that debt off, and it will exacerbate their stress.

8.6 Legal costs and court fees often add substantially to the overall debt, making it even harder for the ratepayer to pay the rates arrears

Legal costs and court fees for small debt matters typically exceed \$650 and often make up a significant proportion of the original debt of unpaid rates, sometimes exceeding it. Adding these costs and fees to the rates debt makes it even more difficult for ratepayers to repay the original debt. Our casework shows that once the council has a court order for the unpaid rates, its solicitors or debt collectors continue to pursue the arrears, interest, legal costs and court fees – often failing to itemise the bill to distinguish between each. Many of our clients pay off their rates arrears through an instalment plan, and are left paying off the associated legal and court costs, exacerbating their financial hardship.

However, while some councils sue for very small debts, others have policies which provide that they will not sue for debts under a prescribed amount. This helps to ensure that any legal and court costs are not disproportionate to the unpaid rates debt.

8.7 A hard-line, insensitive and inflexible approach to non-payment of rates exacerbates the financial stress and health concerns of their local residents

Our casework indicates that the significant majority of clients were dealing with serious personal and financial crises. Clients told us that they failed to address other financial priorities, including payment of rates, due to their difficult circumstances. They told us that the way some law firms and debt collectors pursued unpaid rates on behalf of councils caused or significantly exacerbated their stress, in turn, exacerbating their financial disadvantage and health concerns.

The table below sets out the experiences of our clients in seeking to deal with their council about their unpaid rates, in their own words.

⁷⁴ Magistrates' Court of Victoria, *Summons for Oral Examination* < www.magistratescourt.vic.gov.au/jurisdictions/civil/enforcement-civil-debt/summons-oral-examination >.

Greg:

'I now understand how being pursued for debts in this way can push people to the limit.'

Hannah:

'My rheumatoid arthritis becomes inflamed with stress and anxiety. When I was attempting to negotiate with the council and their lawyers, my arthritis became so inflamed that I could hardly walk.'

'I have never felt so ridiculed in my life.'

'The council's lawyers made me feel like scum.'

'When the police turned up with a warrant, my children were horrified that I was going to be arrested.'

'I felt like I was begging to be put on a payment plan.'

'I was made to feel like a criminal.'

Paula:

'I ended up in a depression-like state'

Kate:

'I felt like an emotional wreck.'

'I felt like the council was more concerned with what they wanted me to do rather than what I could actually manage.'

'I felt totally helpless and trapped, like there were no other options for me.'

9. Councils as debt litigators – what the Magistrates' Court data tell us

9.1 Analysis of Magistrates' Court data

As set out above, the Courting Debt report⁷⁵ revealed that councils were among the most prolific litigators for small debts in the Victorian Magistrates' Court, showing that during the 2005–06 financial year, councils issued 5,309 proceedings for debts up to \$10,000. As noted above at 5.3, we sought updated and expanded Magistrates' Court data to identify trends in council litigation for unpaid rates across the 79 Victorian councils.

9.2 Limitations of the Magistrates' Court data

The accuracy of the data is limited by the Magistrates' Court classification scheme. Claims for unpaid rates are classified by staff of the Magistrates' Court upon lodgment. Problematically, there are four categories under which Magistrates' Court staff might classify claims for unpaid rates:

- 'LG': standing for 'local government rates and charges';
- 'AR': standing for arrears of rates;
- 'MD': standing for 'monies due'; and
- 'DE': standing for 'debt'.

There is no guide available to Magistrates' Court staff detailing or elaborating the kinds of matters to be classified under each code. No explanation was provided to us on the rationale for having the two separate codes of LG and AR that could potentially encompass the same kind of matter. For the purpose of our analysis, we combined the data for AR and LG matters and considered it against trends for all other matters. We abbreviate the combined AR and LG matters to 'unpaid rates matters'.

During the time in which we have prepared this report, local media have reported on the suing practices of two councils (Melton and Maribyrnong).⁷⁶ In those reports, the councils each identified their sue rate figures for particular financial years; however, those figures do not align with the data we received from the Magistrates' Court. There could be a range of explanations for the divergence and we are unsure of the precise reasons for the different figures. Our project relies on the data provided to us from the Magistrates' Court.

In summary, potential inaccuracies could arise from the fact that:

- there might be some LG matters that are not for unpaid rates, and are thus inadvertently included in our analysis of 'unpaid rates matters'; and
- there might be some claims for unpaid rates that are inadvertently classified as MD or DE by Magistrates' Court staff, and are thus excluded from our analysis of unpaid rates matters.

9.3 Almost all unpaid rates matters are for amounts under \$10,000 and are finalised by default order

The data reveal that, consistently each year, 99% of unpaid rates matters are for amounts under \$10,000. Of all unpaid rates matters under \$10,000, between 97% and 100% of these matters are finalised by default order (i.e. the matter was not defended by the ratepayer). Our analysis therefore focuses on trends in unpaid rates matters for claims under \$10,000 finalised by default order.

9.4 The number of Victorians being sued by their council for unpaid rates has increased significantly

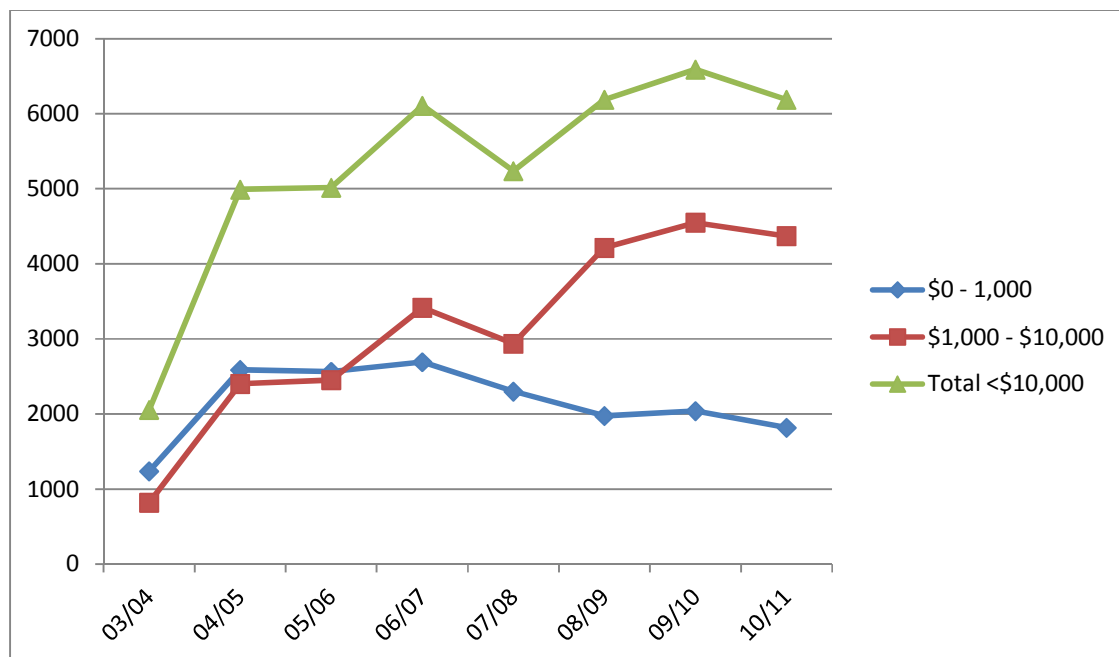
Between 2003–04 and 2010–11, the total number of unpaid rates matters finalised by default order tripled, rising from 2,057 to 6,189. The biggest increase has been for unpaid rates matters between \$1,000 and \$10,000, which rose from 819 matters in 2003–04, to 4371 matters in 2010–11.

⁷⁵ Schetzer, above n 13.

⁷⁶ See Andria Cozza, 'More Melton rate debtors face court', *The Melton Weekly*, 17 September 2012

<www.meltonweekly.com.au/story/340379/more-melton-rate-debtors-face-court/?cs=1476> and Linh Ly, 'Moonee Valley's million dollar debt', *Moonee Valley Leader*, 7 November 2011, <<http://moonee-valley-leader.whereilive.com.au/news/story/moonee-valleys-million-dollar-debt-fbready/>>.

Graph 1 – the number of unpaid rates matters per year finalised by default judgment, by claim amount



9.5 The rise in unpaid rates matters contrasts against the trend of decreasing numbers of claims for other debt matters in the Magistrates' Court

For all other debt matters (other than unpaid rates matters), the number of small claims matters finalised by default judgment decreased from 18,250 to 15,049 matters between 2003–04 to 2010–11. So, over the eight financial years of Magistrates' Court data:

- unpaid rates matters under \$10,000 tripled; while
- all other debt matters under \$10,000 decreased 12%.

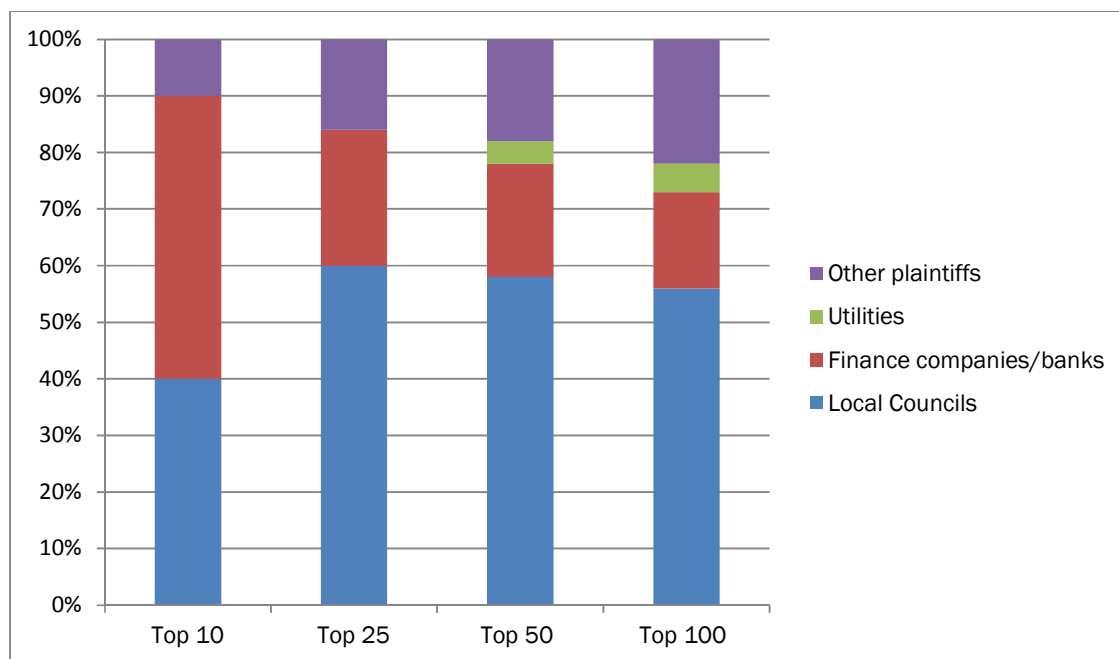
9.6 Councils form a significant proportion of plaintiff creditors for small debt claims

We analysed Magistrates' Court data showing the names of plaintiffs who sued for more than 50 debt claims under \$10,000 over the eight financial years. We broke this data down into the following categories: councils, utility providers, financial providers, and banks and other plaintiffs, and then categorised the top 100 most prolific litigators for small debt claims.

Our analysis, set out in the graph below, shows that:

- of the top 10 plaintiffs for small debt claim matters, approximately 40% were councils;
- of the top 25 plaintiffs for small debt claims, approximately 60% were councils;
- of the top 50 of plaintiffs, approximately 58% were councils; and
- of the top 100 plaintiffs, approximately 56% were councils.

Graph 2 – Top Creditor Plaintiffs (with > 50 matters) for claims under \$10,000 finalised by default order between 2003–04 and 2010–11

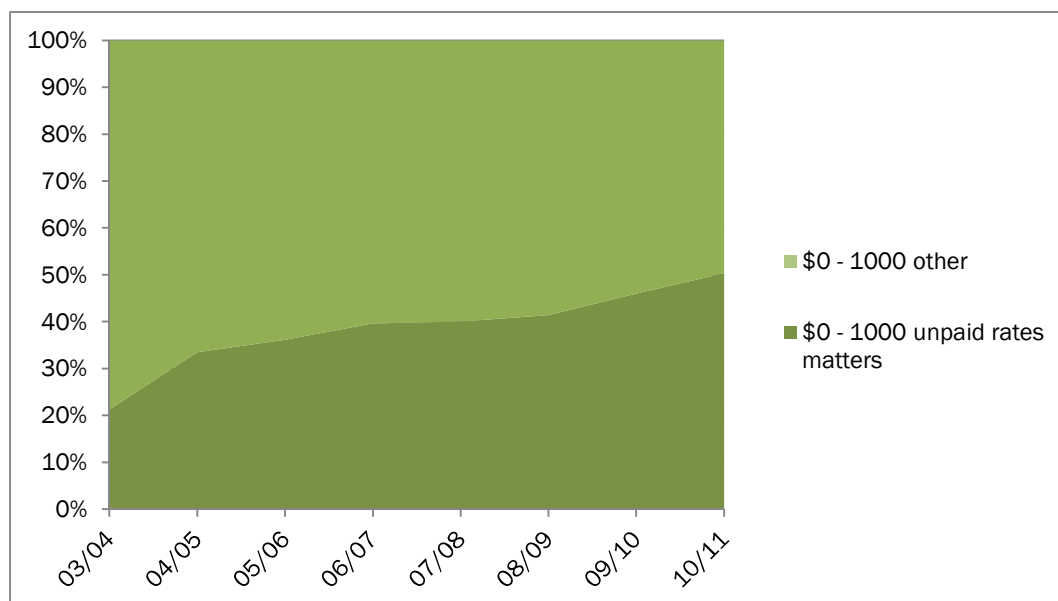


9.7 Unpaid rates matters form a significant proportion of all small claims matters finalised by default order

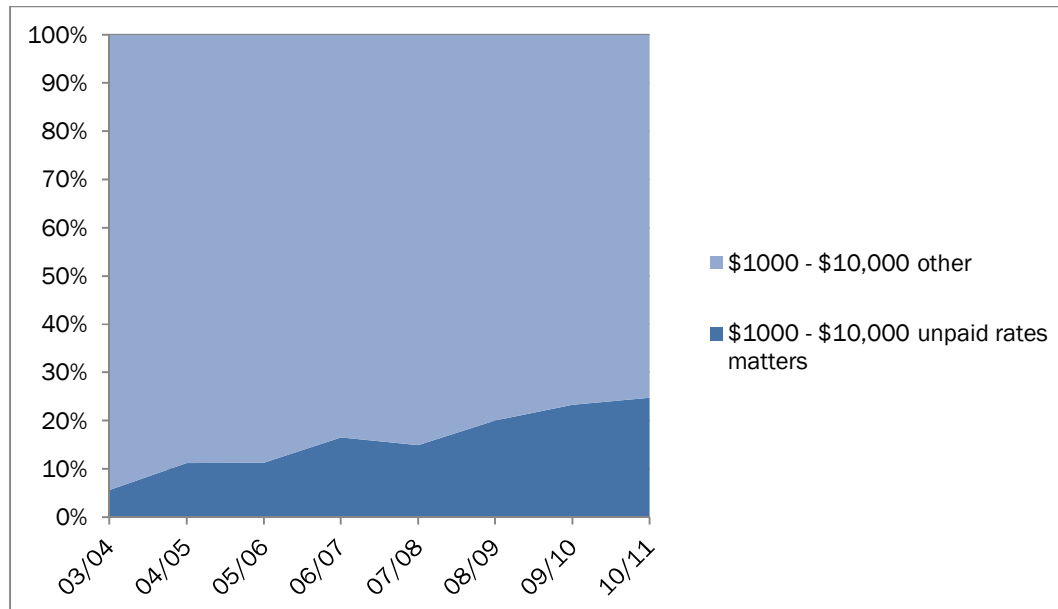
The proportion of all default orders comprising unpaid rates matters under \$10,000 increased from approximately 10% in 2003–04 to approximately 30% in 2010–11. Graphs 3 and 4 below show that unpaid rates matters make up:

- around 50% of all claims up to \$1,000 finalised by default order; and
- around 25% of all claims of between \$1,000 and \$10,000 finalised by default order.

Graph 3– Unpaid rates matters for up to \$1000 finalised by default order compared to all other matters in that category



Graph 4 – Unpaid rates matters for between \$1,000–10,000 finalised by default order compared to all other debt matters between \$1,000–10,000 finalised by default order



9.8 Particular councils sue for unpaid rates matters far in excess of other councils with similar or lower socio-economic ratings

By obtaining the Magistrates' Court litigation data for each of the 79 councils, we could compare the sue rates of different councils. To allow for a more accurate comparison that takes population into account, we generated a ratio comprising the sue rate per 1,000 people of a council's population, based on Australian Bureau Statistics. We also

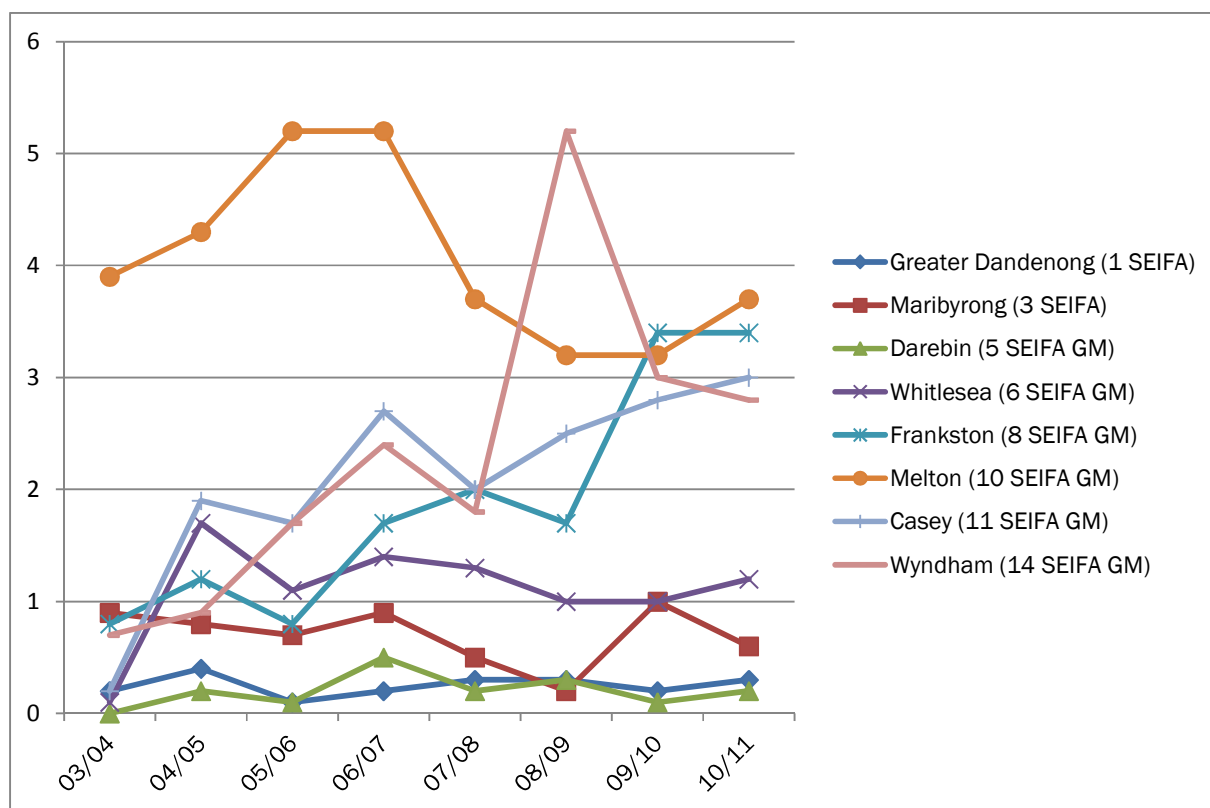
examined a sample of councils with similar lower socio-economic populations to take into account any variations in sue rates which might be explained by a higher frequency of rates non-payment due to the more precarious financial situation of residents of some councils.

Our analysis shows that the rate at which councils sue for unpaid rates varies significantly across the 79 Victorian councils. Some councils sue for unpaid rates far in excess of other councils with similar or higher levels of socio-economic disadvantage. For example, Melton Shire Council sues at 10 times the frequency of Greater Dandenong Council, despite Greater Dandenong having a more disadvantaged population on the Socio Economic Index for Areas ('SEIFA') index.

The high sue rates of particular councils aligns with reports from CLCs and financial counsellors from around the state. We received the highest number of anecdotal reports of high sue rates regarding Melton, Casey, Wyndham and Frankston councils.

The graph below shows the sue rates of 8 councils which are among the 15 most disadvantaged metropolitan Melbourne council areas on the SEIFA index. Appendix 1 to this report sets out the sue rate for each of the 79 councils.

Graph 5 – Rate of suing for unpaid rates per 1,000 people – sample of top 15 disadvantaged councils in greater Melbourne



10. Hardship practices of councils

During August to October 2011, we researched the existence and availability of financial hardship policies of eight councils in the North and West of Melbourne:

- Brimbank City Council;
- Hobsons Bay City Council;
- Hume City Council;
- Maribyrnong City Council;
- Melton Shire Council;
- Moonee Valley City Council;
- Moreland City Council; and
- Wyndham City Council.

These areas were selected on the basis that they fell within or are close to the catchment area of Footscray CLC. Appendix 2 contains a summary of the survey results.

10.1 Variable existence and accessibility of hardship policies

Of the eight councils, three did not have financial hardship policies: Moreland City Council, Brimbank City Council and Moonee Valley City Council. Brimbank City Council and Moonee Valley City Council indicated they were in the process of developing these policies. Each of the councils without financial hardship policies in place indicated that they could be contacted by residents experiencing hardship to make repayment arrangements and these are decided on an individual, ad hoc basis.

The remaining five councils do have written financial hardship policies: Melton City Council, Wyndham City Council, Hume City Council, Hobsons Bay City Council and Maribyrnong City Council.

10.2 Variable and limited scope of financial hardship policies and payment options

The scope of the provisions of existing hardship policies varied widely. The policies of Hume City Council, Wyndham City Council and Hobsons Bay City Council allowed only for a waiver of interest on debt accrued, subject to certain conditions. Maribyrnong City Council's policy allowed for the deferment of payment, with interest continuing to accrue. Melton City Council was the only council whose policy allowed for both the deferral of rates and waiver of interest (under certain conditions).

Each of the councils without formal policies indicated that they were able to arrange repayment plans on an ad hoc basis. They did not indicate whether they would waive interest or defer payments. The payment plan option at Moreland City Council is operated by an external debt collection company and attracts a \$20 plan establishment fee. All other policies and informal payment plans are managed internally by councils.

10.3 Significant lack of transparency

For councils without financial hardship policies, availability of information on payment options, either on websites or notices, varies. The Moreland City Council website noted that payment arrangements can be made with the council. However, Moreland's 2011–12 'Rates Information Notice' states that 'legal action may be commenced without further notice' for rates arrears, and does not provide any information on the possibility of making a financial hardship application or applying for alternative payment arrangements.⁷⁷ None of the other councils without hardship policies had information regarding alternative payment arrangements on their websites, or mentioned them on their rates notice.

Of those councils which did have financial hardship policies, only Hobsons Bay City Council had the full policy displayed on their website, although others mention that those having trouble paying rates should contact the council, or that payment plans can be arranged. Only two of these councils mentioned the policy on information

⁷⁷ See, eg. Moreland City Council, *Late Payments and Payment Arrangements* <<http://www.moreland.vic.gov.au/about-council/rates-and-valuations/rates-late-payments.html>>.

included with the rates notice (Melton City Council and Wyndham City Council). A representative of Hume City Council informed us that its financial hardship policy was 'confidential' and could not be provided to us. We subsequently wrote to the Mayor who provided us with a copy six weeks later.

10.4 Lack of communication and engagement

Two of the councils interviewed – Hobsons Bay City Council and Hume City Council – required ratepayers to be assessed by a financial counsellor as part of the hardship application. For Wyndham City Council, financial hardship agreements extending beyond a 12-month limit required the ratepayer to contact a financial counsellor. Other councils mentioned this referral may occur informally by staff if the case appears to be particularly complex. None of the councils researched had a practice of proactively contacting ratepayers who fell into rates arrears for the purpose of checking whether they were experiencing financial difficulty or informing them of alternative payment options. Only three of the councils reported attempting to contact ratepayers in arrears before legal action was to be commenced, either by phone or mail.

Claire's story

Claire is a single mother of three children. She was diagnosed with breast cancer and was no longer able to work. Her small business income decreased as a result of her health problems. She fell behind in a number of financial responsibilities, including her rates.

Claire's contact with the council

The first contact Claire recalls receiving from her council, was a letter of demand for the unpaid rates of around \$600. Claire immediately called the council and explained her circumstances to them, including that she was undergoing treatment for breast cancer. The council accepted her offer to pay \$250 per month of her rates arrears. Claire was never informed of the possibility of making a financial hardship application.

Claire's contact with the debt collectors

Claire then received correspondence from a debt collection firm, first a letter of demand, then a letter titled 'notice of intention to issue a warrant to seize property'. Upon receiving this correspondence, Claire went to see a financial counsellor. Claire was 'self-educated' about the availability of financial counselling assistance. The council never referred her to a financial counsellor.

The financial counsellor wrote to the debt collection firm regarding the misleading nature of the letter, and to explain that Claire had made a payment to the council as required. The council wrote back clarifying that the payment was late because Claire was required to pay on 'a four week rolling period' as opposed to once a month.

Claire is sued by the council

Claire recalls that she was late on making some of the payments. Neither the council nor its debt collection firm demonstrated any compassion about her circumstances. She was sued by the council and believes that a judgment had been made against her but she has never been informed of the details. Her arrears are now completely paid off.

Emotional impact on Claire

Claire describes her dealings with her council and the debt collection agency as having a 'huge emotional impact' on her. It caused her extra stress at a time when she was dealing with a serious health crisis and attempting to care for three young children. She said that other organisations that she owed money to, such as her children's school, demonstrated much more understanding during her illness and supported her through establishing workable payment plans. The fact that the council kept demanding payment without taking account of her personal circumstances was incredibly upsetting during a difficult period.

10.5 Comparison with Greater Dandenong Council

As set out in Part 9 above, the sue rate for unpaid rates varies significantly across councils with populations with similar levels of socio-economic disadvantage. Our analysis shows that councils like Melton, Frankston and Wyndham, sue at a far higher frequency than councils like Greater Dandenong and Darebin, despite the latter councils having similar and sometimes higher levels of socio-economic disadvantage.

Anecdotal reports from CLC and financial counselling casework, and our investigation of the hardship practices of the eight councils set out above, arguably explains the high suing rates of councils like Melton. To explain the relatively low sue rate of a council like Greater Dandenong, we investigated its debt collection practices.

Greater Dandenong Hardship Policy

The *Greater Dandenong Rates and Hardship policy* (which is available online) is reserved for ratepayers who are considered to be experiencing 'severe' financial hardship, justifying a waiver of rates or reduction in interest. The policy includes the following features:

- Debtors are required to provide evidence of 'severe' financial hardship and have that evidence certified by a financial counselor.⁷⁸
- All applicants are encouraged to pay a portion of rates that is affordable 'given their individual circumstances'. The payment amounts will be mutually agreed upon on a case-by-case basis.⁷⁹
- Where a financial hardship application has been made, future rates payments will have interest levied at the market rate as opposed to the penalty interest rate. However, this does not apply to arrears accumulated prior to the hardship application.⁸⁰
- The maximum amount of rates that can be waived is \$500, unless council determines there are exceptional circumstances.⁸¹
- A person can apply to have interest waived on the basis that delay was caused by an administrative error, or on compassionate grounds.⁸²

Greater Dandenong debt collection process

The property revenue administrator of Greater Dandenong informed us that their debt collection process entails the following steps, prior to legal action being commenced:

- 1) The rates notice is sent.
- 2) If the rates are not paid on time, a warning letter is sent from the council.
- 3) If the first warning letter is not complied with, the council's debt collectors send a warning letter.
- 4) If the debt collector's warning letter is not complied with, the council sends a 'mock telegram' – which is another formal looking notice sent in the mail.
- 5) If the 'telegram' is not complied with, the debt collector undertakes a 'field call' – a home visit to the debtor's residential address to determine the reason for non-payment. This costs \$65 which will be added to the debt due. Where necessary, the debt collection agent hands over a sheet about unpaid rates which is translated into three community languages (Chinese, Vietnamese and Cambodian). It is often identified at this stage that the property is rented.
- 6) The debt collection agent generates a report on each property visit for the council which, if relevant, identifies that the property is rented and notes the agent's name and contact details. (Approximately 50% of matters are resolved at this stage).
- 7) If the rates still remain unpaid, the property revenue administrator contacts the debtor by phone (where the contact number is known).

⁷⁸ City of Greater Dandenong, 'Greater Dandenong Policy: Rates and Charges Hardship Policy' (Report, City of Greater Dandenong, 11 May 2009) [6.1(b)].

⁷⁹ Ibid, [6.1].

⁸⁰ Ibid.

⁸¹ Ibid, [6.4].

⁸² Ibid, [6.5].

Legal action is only commenced if the seven steps above do not result in payment of the arrears or a payment arrangement being entered into. Greater Dandenong has approximately 60,000 ratepayers and approximately 800 ratepayers on payment arrangements at any one time.

While it is not noted in the policy, the property revenue administrator confirmed with us that the council does not commence legal action for debts under \$1,000 (excluding legal costs).

11. Hardship obligations and practices – councils and the utility sector compared

11.1 Utility sector regulatory framework on hardship

The framework which regulates how utility providers (water, gas and electricity) deal with customer financial hardship is a useful model to compare with the regulation of council financial hardship regulation.

11.1 Mandatory requirement for financial hardship policy and mandatory policy terms

In 2005, the Victorian Government established the Committee of Inquiry into the Financial Hardship of Energy Consumers. A key recommendation of the Inquiry was that energy retailers develop and implement best practice financial hardship policies. In response, the Victorian State Government introduced legislative amendments that, among other things:

- required each electricity or natural gas retailer in Victoria to have a financial hardship policy;⁸³
- empowered the Essential Services Commission (ESC) to issue guidelines for the development of the retailers' financial hardship policies, and for those policies to be approved against the guidelines;⁸⁴ and
- deemed a licence required to sell electricity or gas to also include a requirement that the licensee enter an approved dispute resolution scheme.⁸⁵

Similarly, the ESC's *Customer Service Code: Metropolitan Retail and Regional Water Businesses* ('Water Code')⁸⁶ requires providers of basic water services to have financial hardship policies.⁸⁷ The *Electricity Industry Act 2000* (Vic), the *Gas Industry Act 2001* (Vic), and the Water Code each specify terms that must be included in a financial hardship policy, including:

- flexible payment options which reflect the ability of the customer to pay;
- processes for the early response by both customers and licensees to payment difficulties.⁸⁸

In addition to specific financial hardship policy terms, the regimes also include the following requirements:

- that financial hardship policies be displayed on the company website; and⁸⁹
- a prohibition on utility providers from taking further steps to disconnect the utility where there is compliance by the debtor with the financial hardship policy.⁹⁰

11.2 Mandatory requirement to enter customer dispute resolution scheme approved by the ESC

Under the *Electricity Industry Act 2000* (Vic),⁹¹ *Gas Industry Act 2001* (Vic),⁹² and *Water Industry Act 1994* (Vic),⁹³ energy, gas and water retailers respectively are required to enter a customer dispute resolution scheme approved by the ESC.⁹⁴ The Energy and Water Ombudsman Victoria ('EWOV') is the scheme approved by the ESC for this

⁸³ Essential Services Commission, 'Summary Report: Compliance Audit – Retailer Financial Hardship Policies' (*Summary Report, Essential Services Commission, October 2008*); See the *Energy Regulation (Hardship, Metering and Other Matters) Act 2006* (Vic) part 2; *Electricity Industry Act 2000* (Vic), s 43(1); *Gas Industry Act 2001* (Vic), s 48G(1). 'Financial Hardship' is defined as involving an individual who has the *intention*, but does not have the *capacity* to pay on the terms or timeframe required by the retailer Essential Services Commission, 'Guideline No. 21: Energy retailers' Financial Hardship Policies' (Guideline, Essential Services Commission, January 2011) s 2.2(b)(i).

⁸⁴ Essential Services Commission, above n 83, [1.1]. See also *Energy Regulation (Hardship, Metering and Other Matters) Act 2006* (Vic)

⁸⁵ *Electricity Industry Act 2000* (Vic) s 43(3); *Gas Industry Act 2001* (Vic) s 48G(3).

⁸⁶ Essential Services Commission, 'Customer Service Code: Metropolitan Retail and Regional Water Businesses' (Service Code, Essential Services Commission, 11 July 2007) s 5.4. The code is made under s 4F of the *Water Industry Act 1994* (Vic).

⁸⁷ 'Basic water services' include those for 'drinking water, reticulated *non-potable* water, recycled water services...and sewerage services': Essential Services Commission, above n 86, 1.

⁸⁸ *Electricity Industry Act 2000* (Vic) ss 43(2)(a) and (d); *Gas Industry Act 2001* (Vic) ss 48G(2)(a) and (d); Essential Services Commission, above n 86, s 5.3(a)(1).

⁸⁹ Essential Services Commission, 'Guideline No. 21: Energy retailers' Financial Hardship Policies' (Guideline, Essential Services Commission, January 2011) s 2.3; Essential Services Commission, above n 86, s 5.4.

⁹⁰ *Electricity Industry Act 2000* (Vic) s 46A(1); *Gas Industry Act 2001* (Vic) s 48K(1).

⁹¹ *Electricity Industry Act 2000* (Vic) s 28(1).

⁹² *Gas Industry Act 2001* (Vic) s 36(1).

⁹³ *Water Industry Act 1994* (Vic) s 9(1).

⁹⁴ Energy and Water Ombudsman, 'Energy and Water Ombudsman Charter' (Charter, Energy and Water Ombudsman Victoria, 30 May 2006) 1.1 <<http://www.ewov.com.au/about-us/charter>>.

purpose.⁹⁵ EWOV has links to each of its member's hardship policies on its website. Other industries, such as the banking and finance, and telecommunications industries, have their own ombudsman schemes.⁹⁶

11.3 Role and functions of EWOV

EWOV deals with a number of issues associated with the provision of utilities, including financial hardship and disconnection issues. EWOV can provide callers with an overview of their rights and responsibilities, suggest questions they should ask of their service provider and can refer them to their company's contact centre. Once a complaint has been lodged with EWOV, a conciliator is assigned to assist the parties to resolve the dispute through facilitated negotiations or a conciliation hearing.⁹⁷

If the parties are unable to reach a settlement, EWOV can continue investigating and has the power to make binding decisions to resolve the complaint, including by making a determination that the service provider pay compensation.⁹⁸ All EWOV decisions are automatically binding on the utility provider. The claimant may elect whether or not to accept the EWOV's decision within 21 days of receiving it. If the complainant does not accept the decision, they can pursue their rights through another forum, including the courts.⁹⁹

When making decisions, EWOV has a wide brief to determine what is fair and reasonable, having regard to a number of factors including:

- hardship policies;
- good industry practice; and
- the law and retail codes.¹⁰⁰ A list of relevant industry codes is provided on EWOV's website.¹⁰¹

If a decision made by EWOV is not complied with by the service provider, EWOV does not have the power to litigate matters in court. However, in such circumstances, EWOV may escalate the matter to the CEO or board of the service provider or refer the matter to the ESC for further action.¹⁰² The ESC has similar powers to EWOV in investigating matters and making recommendations to the service provider.¹⁰³

The EWOV has the power to report on the service provider to the ESC where the policy of the service provider:

- has contributed to a complaint; or
- has been identified as the source of a number of similar complaints; or
- has impeded the investigation or handling of a particular complaint.¹⁰⁴

The EWOV website notes that '[o]f almost 276,000 cases to 30 June 2011, only 36 have required EWOV to make a Binding Decision — and no Binding Decisions have been necessary since 2003'.¹⁰⁵

⁹⁵ Energy and Water Ombudsman Victoria, *Companies*, (5 July 2011) <<http://www.ewov.com.au/AboutEWOV/Schemeparticipants.aspx>>.

⁹⁶ The Financial Ombudsman Service ('FOS') handles disputes between consumers and financial services providers. Financial services include banking and credit, general insurance, life insurance, financial planning, stock broking, managed funds and pooled superannuation trusts. The Credit Ombudsman Service Limited ('COSL') also resolves disputes between consumers and financial services providers. The Telecommunications Industry Ombudsman ('TIO') investigates, conciliates, and makes determinations and directions relating to complaints about telecommunication services made by consumers.

⁹⁷ Energy and Water Ombudsman Victoria, *Process for complaints*, (5 July 2011) <<http://www.ewov.com.au/complaints/process-for-complaints>>.

⁹⁸ Energy and Water Ombudsman Victoria, above n 94, [6.1(a)].

⁹⁹ Ibid [6.1].

¹⁰⁰ Energy and Water Ombudsman Victoria, above n 97. See also Energy and Water Ombudsman Victoria, above n 94, Section 5.

¹⁰¹ Energy and Water Ombudsman Victoria, *Protecting Consumers: EWOV and the legal framework* (11 March 2011)

<<http://www.ewov.com.au/GotaProblem/Thelegalframeworkprotectingconsumers.aspx>>.

¹⁰² Energy and Water Ombudsman Victoria, above n 94, 7.2 (c).

¹⁰³ Essential Services Commission, 'Charter of Consultation and Regulatory Practice' (Charter, Essential Services Commission, December 2009) 9.

¹⁰⁴ Energy and Water Ombudsman Victoria, above n 94, [7.2(b)].

¹⁰⁵ Energy and Water Ombudsman Victoria, *Binding decisions* (5 July 2012) <<http://www.ewov.com.au/publications-and-media/case-studies/binding-decision>>.

11.4 Structured review of hardship performance

In 2008, the Essential Service Commission carried out its statutory compliance audit of energy retailers' compliance with its *Guideline 21: Energy Retailers' Financial Hardship Policies* ('the Guideline'). The audit found that with two exceptions, the retailers audited could demonstrate good compliance with most aspects of the Guideline. Specific findings on positive compliance findings are summarised below.

11.5 Hardship plans are accessible and utilised

The audit found that (with two exceptions), retailers demonstrated a clear commitment to assist customers who are willing to pay but do not have the means to do so. Performance indicator data for the six-month period from January to June 2008 received by the ESC indicated that of those customers participating in financial hardship programs, 6.0% (or 953 customers) successfully exited those programs by agreement with the retailer, with only 15% of participants being excluded from the program in cases of non-compliance. The remaining 79% were meeting agreements made under their respective financial hardship policies.

11.6 Clearly documented hardship policies and staff training

10 out of 12 of the audited retailers were found to have clearly documented procedures to case manage hardship customers.¹⁰⁶ Features included policies in the form of flow charts, checklists, written scripts and voice scripts, and the recording of referrals made by financial counsellors with those customers subsequently being provided with alternative options. Staff were provided training on the organisation's hardship procedures through Powerpoint, video (for remotely located employees), company intranet and printed materials, as well as ongoing support.

11.7 Proactivity in ensuring transparency and access to information amongst customers

The audit found that retailers were proactive in ensuring customer access to information and noted that many organisations had been able to form 'lines of communication' between community assistance groups and financial counsellors.¹⁰⁷ Every retailer had its financial hardship policies published online. Upon entering a financial hardship plan, many retailers provided customers with a 'welcome pack', to inform them of their rights and obligations under the plan.

11.8 Proactive community engagement

Origin Energy and Neighborhood Energy were noted for their community education undertaken in partnership with community groups. For example, Origin Energy undertook a number of community education forums and energy efficiency roadshows in partnership with Kildonan Child and Family Services, and funded financial counsellor positions at three Victorian hospitals and at the Aborigines Advancement League.¹⁰⁸ Similarly, Neighborhood Energy established lines of communication between a number of financial counsellors including the Yarra Community Health Casework/Counselling, the Family Mediation Centre and the Salvation Army.¹⁰⁹

11.9 Procedures for ensuring ongoing customer participation in a hardship plan

The audit found that most retailers placed emphasis on the customer's ability to pay when making payment plan arrangements.¹¹⁰ Where customers were facing long-term financial hardship, retailers monitor payment plans, individually case manage plans where payment became a problem, and encourage as far as possible participation in the plan.¹¹¹ Other features used to ensure ongoing participation include payment incentives including debt waivers and clear processes in place for removing customers from a payment plan where they failed to meet their obligations, with options for re-entering a payment plan subject to clear criteria. Some retailers undertook audits of customers' energy consumption and organised appliance replacement, and made referrals to other community support agencies where appropriate.

11.10 Shortcomings and areas for improvement

¹⁰⁶ Essential Services Commission, above n 89, 12.

¹⁰⁷ Ibid, 17.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid, 13.

¹¹¹ Ibid, 12.

The auditor identified a limited number of areas where evidence of full compliance was either not provided or was unclear. These included the processes and systems used by retailers to proactively identify potential hardship customers (as opposed to relying on customers to self-identify their hardship status); evidence to support retailers' assertions that no customer requesting access to the program had subsequently been denied access; and, evidence to show that there were no barriers imposed by retailers on customers either seeking an energy audit or appliance replacement.¹¹²

11.11 Summary comparison between councils and utilities

Financial hardship protections	Council	Utilities
Mandatory requirement to have a hardship policy	Not required	Required by the <i>Electricity Industry Act</i>
Mandatory requirement for flexible payment options reflecting actual capacity to pay	Not required	Required by the <i>Electricity Industry Act 2000</i> (Vic), the <i>Gas Industry Act 2001</i> (Vic), and the Water Code
Processes for the early response to payment difficulties	Not required	Required by the <i>Electricity Industry Act 2000</i> (Vic), the <i>Gas Industry Act 2001</i> (Vic), and the Water Code
Mandatory requirement to display financial hardship policies online	Not required	Required by the <i>Energy retailers' Financial Hardship Policies</i>
Mandatory requirement to enter a customer dispute resolution scheme	Not required – but councils are subject to the jurisdiction of the Victorian Ombudsman. However, unlike industry schemes, the Victorian Ombudsman does not have a specific jurisdiction to deal with financial hardship and cannot make binding determinations.	Required by the <i>Electricity Industry Act 2000</i> (Vic) and the <i>Gas Industry Act 2001</i>

¹¹² Ibid, 20.

Debt recovery protections	Council	Utilities
Statutory charge?	Councils automatically receive a statutory charge over a property for any unpaid rates, interest and associated legal costs and court fees.	An outstanding debt due to a water company can be a charge on the land, allowing water companies to recover the debt when the property is sold. ¹¹³ Debts due to other utility providers do not create a charge on the land meaning they remain unsecured creditors and receive no priority in respect of the recovery of debts.
Penalty interest accrues on unpaid debt?	Councils can impose penalty interest on overdue unpaid rates (current rate is 10.5%).	<i>Water bills:</i> At the time of writing this report, interim measures provide that no hardship customer is to be charged interest. ¹¹⁴ <i>Energy bills:</i> Energy retailers must negotiate a payment plan with people experiencing financial hardship. The plan must be affordable and appropriate in the current circumstances. ¹¹⁵ The <i>Energy Retail Code</i> ¹¹⁶ does not prohibit charging interest on outstanding bills. However, energy retailers have to date refrained from the practice. ¹¹⁷
Sue for unpaid debt?	Councils can sue in the Magistrates' Court to recover unpaid rates and/or penalty interest at any time, with no mandated prerequisite steps in cases of hardship. Further, entry into financial hardship process offers no protection against court proceedings.	Utility companies can sue for unpaid debt, however, only after all the requirements of the hardship policy have been complied with. ¹¹⁸ The jurisdiction of all EDR schemes, including EWOV, provide that once consumers have lodged a complaint, the provider must not start court proceedings for the debt.
Force the sale of land to recover debt?	Three years from the date of a court order for the recovery of rates, the council can force the sale of land to recover unpaid rates and/or penalty interest, if 'no current arrangement exists' for payment.	Utility companies can force the sale of land if they have a court order for the debt owed.

¹¹³ See *Water Industry Act 1994* s 140(2).

¹¹⁴ Essential Services Commission, 'Water Customer Service Codes Review 2012 – Consequential and transitional amendments 2012: Final Decision (June 2012)' < <http://www.esc.vic.gov.au/Water/Water-Customer-Service-Codes-amendments-2012/publications> >.

¹¹⁵ State Government Victoria, *Energy and Water Debt* (April 2012) Money Help <<http://www.moneyhelp.org.au/tools-tips/fact-sheets/energy-and-water-debt/>>.

¹¹⁶ See *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic).

¹¹⁷ This was reinforced by a conversation with the office of the Energy and Water Ombudsman Victoria.

¹¹⁸ Essential Services Commission, 'Energy Retail Code Version 10' (Code, Essential Services Code, May 2012) s 11.4(a) <<http://www.esc.vic.gov.au/getattachment/06661f37-494a-4f8c-8604-7fdf33a27dd2/Energy-Retail-Code-Version-10.pdf>>.

12 Promoting responsible council practices: principles and a code

12.1 This project has evidenced an urgent need for reform

Our work on this project has highlighted that:

- Victorians are being sued by councils at alarming and increasing frequency, for small amounts of unpaid rates;
- there is little rational basis behind the decision to sue, as legislation gives councils substantial protections meaning that they will effectively always recover unpaid rates and can charge above market interest on the unpaid amounts;
- many councils are far too quick to sue, and do not adequately explore alternatives to litigation such as referring the person to community legal or financial counselling assistance, or negotiating a sustainable payment plan;
- the legal and court costs which are added to the rates debt when a council sues, makes it harder for a person to pay off the debt;
- the manner in which councils sue exacerbates the financial and health concerns of residents;
- there is little or no regulation of the debt collection practices of councils;
- the lack of regulation contrasts significantly with other sectors such as the utility sector; and
- this lack of regulation is a key structural driver of the practice of some councils suing ratepayers at an early stage for small amounts, without adequately exploring the reasons for non-payment and options for payment plans.

Clearly, this area is in need of urgent reform.

12.2 Promoting responsible hardship practice among councils

Awareness raising

There are a number of ways to promote more responsible council practices. The first is to raise awareness of the problem and highlight the differing practices across councils, both the poor practices and the positive practices. This is exactly what this project has sought to do. Through this project we have worked collaboratively with the MAV and the VLGA to respond to this problem. We thank them for their assistance. The MAV provided us with an opportunity to present the findings of our work to its regular meeting of council CEOs in May 2012. We have also discussed the project with the Department of Justice, the Magistrates' Court, the Attorney-General Robert Clark and have written to the Local Government Minister, the Hon Jeanette Powell, MP.

By publishing this report and disseminating it widely amongst councils, including councillors, CEOs and revenue managers, we hope to further highlight the problem and encourage positive change.

Improved regulation

We think however, that more is needed than simply awareness raising. The experience of the utility sector highlights what can be achieved through improved regulation. To this end, with pro bono assistance from Clayton Utz, we researched existing financial hardship codes and policies, and with input from the MAV, the VLGA and the Victorian Ombudsman, we drafted:

- a set of principles to underpin council financial hardship practices; and
- a Local Government Hardship Code of Practice (the Code).

We are continuing to consult with the MAV and the VLGA on obtaining their formal endorsement of the Code.

The principles and the terms of the Code have been adapted from existing codes and policies in the utility sector. The Code provides organisations with flexibility to determine financial hardship applications, and to account for individuals' differing and changing circumstances. However, the Code provides that this discretion must be underpinned by a clear duty to proactively identify and consider financial and personal hardship, and to establish alternative payment options that reflect a person's actual capacity to pay.

12.3 Objectives of the Code

The Code has been drafted with a number of objectives in mind, including the following:

Transparency and accessibility

- a requirement to have a best practice hardship policy in place, accompanied by staff training;
- ensuring consistent practices of providing ratepayers with the council's hardship policy, including in the ratepayer's preferred language;

Proactivity

- the proactive identification of ratepayers who could potentially be experiencing hardship, including where the records of a council indicate that a ratepayer may be experiencing hardship;
- ensuring consistent practices of requesting further evidence of hardship, including from an independent financial counsellor, where the council is not satisfied on a ratepayer's hardship status;

Awareness

- establishing an understanding of hardship that takes account of the complex combination of factors that can underpin disadvantage, including family member illness or injury, redundancy and unemployment, legal disputes, relationship breakdown, family violence, addiction, and mental illness;
- establishing an understanding of circumstances where it may be appropriate to waive or defer rates payment obligations, including where the ratepayer would experience difficulty paying other essential bills if they were required to immediately pay their rates;
- encouraging an understanding that, due to the difficulties that can arise from hardship, people facing hardship often fail to engage in legal processes until the matter has progressed to court or the enforcement stage. The Code requires court proceedings to be stayed before judgment has been entered, where a ratepayer engages with either the council or Victorian Ombudsman (this is consistent with various ombudsman schemes)¹¹⁹;

Fairness and effectiveness

- ensuring that councils negotiate with ratepayers on the terms of a hardship plan that reflects the ratepayer's actual capacity to pay. 'Actual capacity to pay' refers to a payment plan that takes account of the ratepayer's total disposable income and current financial commitments, the number of children or dependants, and if necessary the advice of an independent financial counsellor or other representative of the ratepayer;
- allowing Centrelink recipients to pay their rates via Centrepay.¹²⁰
- establishing procedures to evaluate the effectiveness of the code.

Procedural fairness

- ensuring that, where hardship is not found, the ratepayer is provided with the opportunity for that decision to be reassessed, or reviewed by the Victorian Ombudsman;
- transparency in the steps to be taken where a ratepayer fails to comply with the terms of a hardship plan, aimed at encouraging ongoing participation in the plan;
- ensuring that penalty interest is stayed until a number of key steps have been taken;
- placing an onus on a council to take reasonable steps in circumstances where the council is experiencing difficulty contacting a ratepayer.

¹¹⁹ If a person lodges a complaint with the Financial Ombudsman Service or the Credit Services Ombudsman Limited, his or her service provider must not commence or pursue legal action until the complaint has been dealt with by the industry scheme. See Financial Ombudsman Service 'Terms of Reference – 1 January 2010' (Terms of Reference, 1 July 2010) [13.1] <http://www.fos.org.au/centric/home_page/about_us/terms_of_reference_b.jsp>; Credit Ombudsman Service, 'COSL Rules' (Edition 7, July 2010) <<http://www.cosl.com.au/rules-and-guidelines>> [17.2].

¹²⁰ Centrepay is a free service that allows customers to pay bills via regular deductions from their Centrelink payments. See Department of Human Services, *Centrepay* (17 August 2012) <<http://www.humanservices.gov.au/customer/services/centrelink/centrepay>>.

Status of the Code, sector ownership and buy-in

At this stage, we do not propose that compliance with the Code be mandated through legislation. Rather, we propose that the Code be overseen by the Victorian Ombudsman under his existing jurisdiction to investigate complaints about council rates decisions.

Under this proposal:

- we will work with the MAV and the VLGA to seek their formal endorsement of the Code;
- the MAV and VLGA will then promote adoption of the Code by councils; and
- councils will voluntarily implement the Code.

If a council does not agree to the Code, a ratepayer can still complain to the Victorian Ombudsman about rates matters. We expect that the Victorian Ombudsman would take the Code into account in relevant matters in assessing a council's actions regardless of whether or not the council had agreed to the Code.

We expect that this report, and the Code, will have a significant positive impact leading to a substantial drop in the volume of litigation being brought by councils for unpaid rates. We will continue to monitor the Magistrates' Court data over the next few years. If data, and the profile of complaints to the Victorian Ombudsman, indicate that practices are not changing, we will advocate for stronger legislative regulation.

The principles underpinning the Code are set out at Appendix 3 while the Code is set out at Appendix 4 together with a Flow Chart outlining the process under the Code.

Appendix 1 – Sue rates of all 79 councils in Victoria

Limitations of data

We based our analysis on the population figures released by the Australian Bureau of Statistics ('ABS'). For most financial years, the ABS reports figures on the estimated populations of each local government area. These predictions come with a number of limitations, which are set out at www.abs.gov.au.¹²¹

Table

Sue rates of councils, 2003–04 and 2010–11, broken down by number of Magistrates' Court proceedings and sue rate per 1,000 of population.

Key

SS	SEIFA status
*	sue rate of the council per 1,000 of population
#	number of proceedings brought by the council
	sue rate between 3.0–4.0 per 1,000 of population
	sue rate of 4.0 + per 1,000 of population

Table

		03/04		04/05		05/06		06/07		07/08		08/09		09/10		10/11	
Council	SS	#	*	#	*	#	*	#	*	#	*	#	*	#	*	#	*
Alpine	28	34	2.7	22	1.7	25	2.0	38	3.0	23	1.8	29	2.3	58	4.5	35	2.7
Ararat	10	6	0.5	18	1.5	15	1.3	15	1.3	2	0.2	33	2.8	15	1.3	19	1.6
Ballarat	37	32	0.4	134	1.6	93	1.1	136	1.5	151	1.7	132	1.4	155	1.6	136	1.4
Banyule	69	8	0.1	3	0.0	5	0.0	34	0.3	42	0.3	40	0.3	53	0.4	28	0.2
Bass Coast	24	12	0.5	54	2.0	41	1.5	49	1.8	32	1.1	60	2.1	45	1.5	31	1.0
Baw Baw	41	27	0.7	41	1.1	37	1.0	60	1.6	59	1.5	51	1.3	46	1.1	58	1.4
Bayside	79	1	0.0	36	0.4	36	0.4	29	0.3	34	0.4	44	0.5	37	0.4	31	0.3
Benalla	22	6	0.4	9	0.6	9	0.6	11	0.8	8	0.6	7	0.5	9	0.6	8	0.6
Boroondara	80		0.0	74	0.5	11	0.1	45	0.3	32	0.2	93	0.6	81	0.5	65	0.4
Borough Of Queenscliffe	0	1	0.3	0	0.0	1	0.3	2	0.6	0	0.0	1	0.3	1	0.3	1	0.3
Brimbank	21	76	0.4	236	1.4	4	0.0	2	0.0	23	0.1	212	1.2	255	1.4	159	0.8
Buloke	8	5	0.7	3	0.4	43	6.0	0	0.0	16	2.3	20	2.8	25	3.5	19	2.7
Campaspe	20	38	1.0	62	1.7	74	2.0	65	1.7	55	1.5	61	1.6	78	2.0	49	1.3
Cardinia	55	3	0.1	102	1.9	78	1.4	120	2.0	89	1.5	165	2.6	138	2.0	143	2.0
Casey	54	37	0.2	393	1.9	376	1.7	603	2.7	467	2.0	601	2.5	689	2.8	760	3.0
Central Goldfields	1	6	0.5	65	5.1	21	1.7	23	1.8	39	3.1	16	1.3	48	3.7	33	2.6
Colac Otway	19	1	0.0	17	0.8	31	1.5	3	0.1	11	0.5	9	0.4	22	1.0	25	1.1
Corangamite	23	15	0.9	30	1.7	35	2.0	27	1.6	16	0.9	34	2.0	22	1.3	28	1.6
Darebin	53	0	0.0	28	0.2	19	0.1	61	0.5	33	0.2	37	0.3	18	0.1	32	0.2

¹²¹ See Australian Bureau of Statistics, *Regional Population Growth, Australia 2010–2011: Explanatory Notes* (29 March 2012) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3218.0Explanatory%20Notes12010-11?OpenDocument>>.

		03/04		04/05		05/06		06/07		07/08		08/09		09/10		10/11	
Council	SS	#	*	#	*	#	*	#	*	#	*	#	*	#	*	#	*
East Gippsland	18	45	1.1	25	0.6	48	1.2	79	1.9	72	1.7	77	1.8	82	1.9	55	1.2
Frankston	50	90	0.8	142	1.2	101	0.8	205	1.7	253	2.0	211	1.7	432	3.4	442	3.4
Gannawarra	9		0.0	11	0.9	36	3.1	51	4.4	36	3.1	26	2.2	35	3.0	26	2.2
Glen Eira	73	18	0.1	37	0.3	25	0.2	44	0.3	28	0.2	35	0.3	36	0.3	17	0.1
Glenelg	14	30	1.5	46	2.3	51	2.5	60	2.9	74	3.6	59	2.8	44	2.1	52	2.4
Golden Plains	48	22	1.4	34	2.1	21	1.3	32	1.9	41	2.4	46	2.6	46	2.5	41	2.2
Greater Bendigo	36	87	0.9	113	1.2	104	1.1	166	1.7	200	2.0	172	1.7	223	2.2	203	1.9
Greater Dandenong	7	21	0.2	56	0.4	14	0.1	31	0.2	37	0.3	38	0.3	27	0.2	45	0.3
Greater Geelong	46	85	0.4	79	0.4	313	1.5	302	1.5	187	0.9	196	0.9	240	1.1	201	0.9
Greater Shepparton	25	15	0.3	88	1.5	118	2.0	80	1.3	122	2.0	168	2.7	139	2.2	117	1.8
Hepburn	29	3	0.2	43	3.0	10	0.7	59	4.2	52	3.6	40	2.8	38	2.6	42	2.8
Hindmarsh	4	11	1.7	12	1.9	16	2.5	19	3.0	0	0.0	0	0.0	17	2.7	0	0.0
Hobsons Bay	57	83	1.0	49	0.6	87	1.0	98	1.2	0	0.0	0	0.0	42	0.5	39	0.4
Horsham	30	16	0.9	18	1.0	19	1.0	26	1.4	22	1.1	23	1.2	12	0.6	16	0.8
Hume	35	0	0.0	0	0.0	0	0.0	4	0.0	7	0.0	195	1.2	120	0.7	81	0.5
Indigo	51	28	1.9	18	1.2	31	2.0	30	2.0	33	2.1	29	1.8	12	0.8	38	2.4
Kingston	62	54	0.4	58	0.4	131	0.9	113	0.8	67	0.5	1	0.0	0	0.0	63	0.4
Knox	66	0	0.0	0	0.0	42	0.3	0	0.0	0	0.0	64	0.4	93	0.6	52	0.3
Latrobe	16	49	0.7	104	1.5	60	0.8	109	1.5	131	1.8	126	1.7	121	1.6	97	1.3
Loddon	2	19	2.3	52	6.3	30	3.7	45	5.6	26	3.2	25	3.1	25	3.1	17	2.1
Macedon Ranges	64	104	2.7	109	2.8	131	3.3	98	2.5	84	2.1	138	3.4	84	2.0	93	2.2
Manningham City Council	74	0	0.0	13	0.1	81	0.7	71	0.6	35	0.3	50	0.4	56	0.5	8	0.1
Mansfield	40	6	0.9	24	3.4	13	1.8	27	3.6	18	2.4	25	3.2	32	4.1	20	2.5
Maribyrnong	49	57	0.9	54	0.8	45	0.7	61	0.9	37	0.5	13	0.2	69	1.0	41	0.6
Maroondah	65	17	0.2	152	1.5	114	1.1	161	1.6	112	1.1	128	1.2	127	1.2	119	1.1
Melbourne	77	8	0.1	84	1.2	74	1.0	54	0.7	96	1.1	57	0.6	71	0.8	55	0.6
Melton Shire	52	254	4.0	300	4.3	387	5.2	421	5.2	321	3.7	297	3.2	325	3.2	394	3.7
Mildura Rural City Council	17	0	0.0	85	1.7	24	0.5	192	3.7	127	2.4	75	1.4	44	0.8	0	0.0
Mitchell Shire	43	31	1.0	104	3.4	123	4.0	71	2.2	97	3.0	118	3.5	98	2.9	126	3.6
Moira Shire	13	66	2.5	60	2.2	88	3.2	57	2.0	82	2.9	104	3.6	79	2.7	140	4.8
Monash City	71	1	0.0	74	0.4	0	0.0	1	0.0	52	0.3	44	0.3	32	0.2	38	0.2
Moonee Valley	63	18	0.2	77	0.7	100	0.9	113	1.1	67	0.6	101	0.9	73	0.7	81	0.7
Moorabool	47	2	0.1	40	1.6	48	1.8	63	2.4	59	2.2	78	2.9	47	1.7	45	1.6
Moreland	56	22	0.2	30	0.2	58	0.4	89	0.6	26	0.2	13	0.1	148	1.0	51	0.3
Mornington Peninsula	59	82	0.6	83	0.6	157	1.1	95	0.7	103	0.7	49	0.3	207	1.4	229	1.5
Mount Alexander	34	9	0.5	43	2.5	73	4.2	51	2.9	22	1.2	51	2.8	71	4.0	24	1.3
Moyne	38	51	3.2	54	3.4	42	2.6	43	2.7	52	3.2	41	2.5	35	2.1	46	2.7
Murrindindi	44	46	3.4	46	3.3	46	3.3	51	3.6	57	4.0	14	1.0	26	1.9	14	1.0

		03/04		04/05		05/06		06/07		07/08		08/09		09/10		10/11	
Council	SS	#	*	#	*	#	*	#	*	#	*	#	*	#	*	#	*
Nillumbik	75	11	0.2	14	0.2	8	0.1	54	0.9	36	0.6	34	0.5	52	0.8	34	0.5
Northern Grampians	6	44	3.4	32	2.5	25	2.0	18	1.5	29	2.3	22	1.8	25	2.0	11	0.9
Port Phillip	76	42	0.5	175	2.0	211	2.4	78	0.9	43	0.5	65	0.7	85	0.9	21	0.2
Pyrenees	3	0	0.0	11	1.7	11	1.6	30	4.4	35	5.1	12	1.8	15	2.2	18	2.6
South Gippsland	32	42	1.6	41	1.6	90	3.4	90	3.4	90	3.3	84	3.1	64	2.3	92	3.3
Southern Grampians	31	0	0.0	18	1.1	21	1.2	15	0.9	13	0.7	9	0.5	19	1.1	15	0.9
Stonnington	78	4	0.0	116	1.2	99	1.1	130	1.4	100	1.0	68	0.7	73	0.7	59	0.6
Strathbogie	15	12	1.3	26	2.7	39	4.1	33	3.4	3	0.3	50	5.1	28	2.8	29	2.9
Surf Coast	68	0	0.0	16	0.7	5	0.2	21	0.9	27	1.1	38	1.6	56	2.2	47	1.8
Swan Hill	12	25	1.2	70	3.3	41	1.9	67	3.1	52	2.4	41	1.9	48	2.2	56	2.5
Towong	33	14	2.3	16	2.6	19	3.1	12	1.9	12	1.9	12	1.9	19	3.0	13	2.0
Wangaratta	27	20	0.7	13	0.5	27	1.0	27	1.0	19	0.7	32	1.1	28	1.0	24	0.8
Warrnambool	39	33	1.1	53	1.7	43	1.4	38	1.2	52	1.6	49	1.5	47	1.4	40	1.2
Wellington	26	16	0.4	66	1.6	18	0.4	127	3.1	101	2.4	73	1.7	92	2.1	70	1.6
West Wimmera	11	13	2.7	14	3.0	14	3.0	6	1.3	12	2.6	11	2.4	5	1.1	14	3.0
Whitehorse	70	1	0.0	113	0.8	69	0.5	75	0.5	68	0.4	76	0.5	67	0.4	38	0.2
Whittlesea	42	9	0.1	215	1.7	145	1.1	178	1.4	169	1.3	146	1.0	150	1.0	192	1.2
Wodonga	45	1	0.0	36	1.1	15	0.4	33	1.0	25	0.7	29	0.8	15	0.4	24	0.7
Wyndham	58	72	0.7	90	0.9	191	1.7	274	2.4	227	1.8	690	5.2	436	3.0	435	2.8
Yarra City	72	15	0.2	1	0.0	17	0.2	111	1.5	39	0.5	4	0.1	64	0.8	45	0.6
Yarra Ranges	61	1	0.0	223	1.5	189	1.3	206	1.4	191	1.3	224	1.5	164	1.1	224	1.5
Yarriambiack	5	0	0.0	24	3.0	3	0.4	3	0.4	6	0.8	0	0.0	0	0.0	0	0.0

Appendix 2 – Survey results of councils regarding financial hardship policies

Limitations of our council survey

We researched the existence and availability of financial hardship policies of eight councils in the North and West of Melbourne: Brimbank City Council; Hobsons Bay City Council; Hume City Council; Maribyrnong City Council; Melton Shire Council; Moonee Valley City Council; Moreland City Council and Wyndham City Council. These councils were selected because of their proximity to Footscray CLC.

The website of each council was considered, and each of their rates departments contacted for a telephone interview for further information. A number of questions were asked of council representatives in the rates department. The questions fell into three areas:

- the existence of a financial hardship policy;
- the details of that policy or any informal arrangements which the council used; and
- the referral practices of the council.

Councils were asked to provide a copy of their financial hardship policy document if they had one.

Given the manner in which this information was collected, there are some limitations as to data reliability. In some cases (in particular for councils without formal financial hardship policies) responses may reflect the subject experience of the particular staff member, rather than the overall view or strategy of the council on this issue. In almost all cases, however, those who were interviewed were the respective heads of the rates departments of the councils, who had a detailed and broad understanding of the council's practices and policies.

In some cases, the data are incomplete as there were questions which council representatives did not know the responses to, or questions which they chose not to answer. This was particularly the case in relation to the level of use of the policy or informal arrangements.

Phone interview questions

Existence and advertisement of a financial hardship policy

1. Does a financial hardship policy exist?
2. Is the financial hardship policy/information about informal arrangements mentioned on the website rates page or in conjunction with information about rates?
3. Is the financial hardship policy/information about informal arrangements mentioned on the rates notice?
4. Are there other locations in which the policy is mentioned (rates brochures, other council publications, etc)?

Details of the financial hardship policy/any informal arrangements

5. Is use of the policy common? What percentage of ratepayers would use the policy per annum?
6. Does the policy allow for payment plans, waiver of rates, deferral of rates, and does interest continue to accrue in these scenarios?
 - o Does this depend on any category of the applicant (eg. Pensioner, Health Care Card holder)?
7. What is the process involved in making the application?
 - o Does it occur within, or external, to the council?
 - o Are there any costs involved?

Referral practices of the council

8. Does the council automatically refer information of this policy to those with unpaid accounts, or do individuals need to seek this information out?
9. Does the council seek to contact ratepayers who have debts owing before referring them for legal action, or seek to investigate any possible financial hardship?
10. Does the council automatically refer clients onto legal advice or financial counselling?

Table 1 – Summary – existence of Hardship Policies

Council	Existence of Financial Hardship Policy	Policy available on website?	Hardship Info available on website?	Info included with the rates notice?	Allow payment plan/deferral of rates and charges?	Automatic referral of those with rates in arrears to policy?	Contact ratepayer before referral to legal action?	Automatic referral to legal advice or financial counselling?
Melton Shire Council	Yes	Form available to download, but no information on the policy.	No	Yes	Allows deferral of payment and waiver of interest (if experiencing undue hardship and can prove low income).	No	No	Yes, to financial counselling.
Wyndham City Council	Yes	Website mentions council can be contacted to make a payment plan.	Yes	Yes	No payment plan. Allows waiver of interest/legal costs.	No	Yes (by mail)	No (but applications longer than 12 months need approval of a financial counsellor)
Hume City Council	Yes	No	No	N/A	Waiver of interest only, up to 45%.	No	Yes	No. Informal referrals only, no policy to do so.
Brimbank City Council	No (in development)	N/A	N/A	N/A	Repayment plans exist currently although no formal policy	No	No	No. Informal referrals only, no policy to do so.
Hobsons Bay City Council	Yes	Yes	Yes	No	Policy allows only for waiver of interest in the case of financial hardship.	No	Yes	Yes – must be assessed by financial counsellor to be eligible. No legal referrals.
Maribyrnong City Council	Yes	No	Yes	No	Deferred arrangements, with interest paid at the statutory penalty rate.	No	Yes	No

Council	Existence of Financial Hardship Policy	Policy available on website?	Hardship Info available on website?	Info included with the rates notice?	Allow payment plan/deferral of rates and charges?	Automatic referral of those with rates in arrears to policy?	Contact ratepayer before referral to legal action?	Automatic referral to legal advice or financial counselling?
Moonee Valley City Council	No	N/A	N/A	N/A	Repayment plans exist currently although no formal policy.	No	No	No
Moreland City Council	No	N/A	Information relating to alternative payment options.	N/A	Payment plans currently exist although no policy. Incur a fee of \$20.00 upon establishment	No	No	No

Table 2 – Practice of referring ratepayers to financial counsellors or for legal advice

Council	Automatic referral of those with rates in arrears to policy	Contact ratepayer to investigate before referral to legal action	Automatic referral to legal advice or financial counselling
Melton Shire Council	No.	No.	Yes, to financial counselling.
Wyndham City Council	No.	Yes (by mail).	No. (However applications longer than 12 months duration need approval of a financial counsellor)
Hume City Council	No.	Yes.	No. Informal referrals to financial counsellors only, no policy to do so.
Brimbank City Council	No.	No.	No. Informal referrals to financial counsellors only, no policy to do so.
Hobsons Bay City Council	No.	Yes.	Yes. Must be assessed by independent financial counsellor to be eligible. No legal referrals.
Maribyrnong City Council	No.	Yes.	No.
Moonee Valley City Council	No.	No.	No.
Moreland City Council	No.	No.	No.

Appendix 3 – Financial hardship principles

1. Rates constitute the majority of the income of councils. Therefore, the payment of rates by residents is crucial to the effective operation of local government.
2. Many industries in the private sector, including utilities and banking, are required to comply with industry codes of conduct which regulate responses to customers experiencing financial hardship. The *Local Government Act 1989* (Vic) gives councils discretion to waive unpaid rates and interest or pursue legal action over rates debts. It is appropriate that a Code of Practice regulates how councils exercise this discretion and respond to ratepayers experiencing financial hardship.
3. As government agencies, councils should exercise best practice debt collection with respect to unpaid rates. Best practice debt collection includes the implementation of policies and practices on collection of rates arrears that comply with a Code of Practice (mentioned above) on addressing the particular needs of ratepayers experiencing, or at risk of experiencing, financial or personal hardship.
4. People facing financial hardship also experience significant personal stress, which can have a number of adverse consequences including on mental and physical health. Councils have a duty to promote the collection of rates, and this must be done in a way which seeks to achieve the best outcomes for local residents as well as improving the overall quality of life of people in local communities.
5. People experiencing financial or personal hardship often fail to engage with regulatory processes regarding their personal legal and debt issues due to a number of factors, including their often unstable and chaotic life circumstances, other pressing priorities such as meeting the basic needs of their family, fear of the consequences of engagement and perceived lack of options available for dealing with legal and debt issues, and an incapacity to do so due to mental or physical illness often resulting from financial stress. Councils recognise their important role in seeking to overcome these barriers to engagement when developing policies and practices on collection of rates arrears.
6. Councils have responsibilities under the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Any decisions regarding the deferral or waiver of rates must be considered in light of, and be compatible with, relevant Charter rights, in particular, the rights to privacy and the right to protection of families and children.
7. An effective Code of Practice requires a body to oversee compliance and dispute resolution.
8. Best practice debt collection includes the following features:
 - (a) taking a proactive approach to determine whether a resident is or is at risk of experiencing financial or personal hardship, prior to taking any further action regarding the non-payment of rates;
 - (b) consistent and flexible application of internal debt collection and hardship policies;
 - (c) transparent assessment of hardship that accords with principles of natural justice, including the public availability and direct provision of policies and criteria applied when determining a resident's hardship status;
 - (d) the sensitive and equitable treatment of people experiencing financial or personal hardship;
 - (e) the provision of fair and reasonable assistance to people experiencing financial or personal hardship, including referrals to independent financial counselling;
 - (f) clearly stated procedures that follow non-compliance with a hardship payment plan, including circumstances in which assistance may cease;
 - (g) clearly stated dispute resolution procedures applicable where a resident and council disagree with the outcome of their hardship application;
 - (h) clearly stated circumstances in which a council may commence debt collection or legal action against a resident for non-payment of rates;
 - (i) collection of relevant data including on non-payment of rates, hardship applications and hardship status related disputes.

Local Government Hardship Code of Practice



6 December 2012

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1. Purpose

This Code specifies procedures for assisting ratepayers who are unable to pay rates and charges due to Hardship. The Code sets minimum standards, including for:

- (1) internal policies and practices of Councils dealing with Hardship or potential Hardship;
- (2) staff training on this Code;
- (3) informing ratepayers of their rights and obligations under this Code.

2. Relevant legislation

This Code sets minimum standards for the proper and consistent discharge of obligations under:

- (1) the *Local Government Act 1989* (Vic) ('Local Government Act'), in particular, sections:
 - (a) 170 (deferred payment);
 - (b) 171 (waiver);
 - (c) 171A (waiver by application – financial hardship);
 - (d) 172 (Council may charge interest on unpaid rates and charges);
 - (e) 180 (unpaid rate or charge); and
 - (f) 181 (Council may sell land to recover unpaid rates or charges); and
- (2) the *Victorian Charter of Human Rights and Responsibilities Act 2006* ('Charter'), in particular, the rights to:
 - (a) Recognition of equality before the law (s 8);
 - (b) Privacy and reputation (s 13);
 - (c) Protection of families and children (s 17); and
 - (d) Property rights.

3. Related documents

This Code should be read in conjunction with the Australian Securities and Investments Commission ('ASIC') and the Australian Competition and Consumer Commission ('ACCC') *Debt collection guideline for collectors and creditors*, which provides practical guidance on what collectors and creditors should and should not do to minimise the risk of breaching the laws administered by ASIC and the ACCC.

4. Commencement

This Code takes effect from 1 March 2013.

5. Definitions

- (1) **actual capacity to pay** refers to a payment amount or plan that takes account of and reflects the ratepayer's personal circumstances, including, but not limited to:
 - (a) the ratepayer's total disposable income and current financial commitments, including current debts;
 - (b) the number of children and/or dependents of the ratepayer; and
 - (c) any advice from an independent financial counsellor or other representative of the ratepayer.
- (2) **Concession Card** refers to a pensioner concession card, a health care card, or seniors health care card within the meaning of the *Social Security Act 1991* (Cth).
- (3) **Council** refers to municipal Council within the meaning of the *Local Government Act 1989* (Vic).
- (4) **Gold Card** has the meaning referred to in the *Veterans' Entitlement Act 1986* (Cth).
- (5) **Hardship** has the meaning provided in clause 7.
- (6) **Hardship Plan** is an agreement between a Council and a ratepayer for the payment of rate arrears.
- (7) **Hardship Status** refers to the outcome of the ratepayer's Hardship assessment undertaken by the Council under clause 6 or a reassessment under clause 13.
- (8) **independent financial counsellor** is a financial counsellor, who is not employed by the relevant Council, and whose services are available free of charge, that the parties mutually agree on providing an opinion on the ratepayer's Hardship status or the terms of the Hardship Plan.
- (9) **relevant property** refers to a property with rate arrears due by a ratepayer subject to a Hardship assessment under this Code.
- (10) **representative** refers to a representative of the ratepayer under a signed authority, which may include (but is not limited to) a family member, lawyer or financial counsellor.
- (11) **Victorian Ombudsman** refers to the Ombudsman appointed under the *Ombudsman Act 1973* (Vic).

6. Duty to assess Hardship

A Council must offer to assess, and assess on request, whether a ratepayer is experiencing Hardship where:

- (1) a ratepayer or their representative informs the Council that they are experiencing difficulty paying their rates; or
- (2) the Council believes or the ratepayer's account history indicates that a ratepayer is experiencing difficulty paying their rates and the ratepayer confirms this upon inquiry by the Council.

7. Hardship

Hardship exists where:

- (1) a ratepayer is genuinely experiencing difficulty paying their rates and charges;
- (2) a ratepayer would experience difficulty paying other essential bills or finances if the ratepayer paid the full amount of the rate or charge due; or
- (3) a ratepayer's sole source of income is Centrelink, including a pension recipient, except where two or more pension recipients share the rate payment obligations.

[Note: common situations where hardship may exist include:

- *The ratepayer or ratepayer's family member suffers an injury or illness and as a result the ratepayer has competing medical expenses and/or reduced residential or household income.*
- *A ratepayer loses their job or has reduced employment hours.*
- *A ratepayer is in a situation of mortgage default.*
- *A ratepayer is the subject of a legal dispute.*
- *A ratepayer is separating from their spouse.*
- *A ratepayer is experiencing family violence (one element of which is often a lack of control over finances).*
- *A ratepayer has an addiction to drugs, alcohol and/or gambling.*
- *The ratepayer has a mental illness.*
- *The ratepayer is the holder of a Concession Card or a Gold Card.]*

8. Provision of information

- (1) Where any of the circumstances in clause 6 arise, the Council must provide the ratepayer with the Council's Hardship Policy in their preferred language, in a way that suits the ratepayer, including by:
 - (a) e-mailing the ratepayer a link to or copy of the Hardship Policy; or
 - (b) post.
- (2) If the Council attempts but is unable to get in contact by telephone to determine the ratepayer's preferred method of correspondence, the Council must send the Hardship Policy to the ratepayer's known residential address, or, if the residential address is unknown, to the address of the relevant property.

9. Requests for evidence of Hardship

- (1) In assessing Hardship, the Council may request evidence of Hardship, including, but not limited to:
 - (a) an assessment by an independent financial counsellor;
 - (b) a copy of an application for financial hardship in relation to the relevant property to either the Financial Ombudsman Service or the Credit Ombudsman Service; or
 - (c) evidence of Centrelink or other concession status.
- (2) Where a Council requests further information under clause 9(1), no further action may be taken against the ratepayer until:
 - (a) that evidence is received; or
 - (b) the ratepayer has not provided the evidence after the Council has made reasonable attempts to contact the ratepayer.

10. Duties where Hardship is found

- (1) Where a ratepayer is assessed by the Council as experiencing Hardship, the Council must:
 - (a) negotiate a Hardship Plan with the ratepayer that reflects the ratepayer's actual capacity to pay;
 - (b) provide the ratepayer with a referral to other support agencies, including a financial counselor, as appropriate; and
 - (c) inform the ratepayer of potential concession options and assess whether those concessions apply to the ratepayer.
- (2) Example of Hardship Plan terms include (but are not limited to) the following:
 - a) an installment plan;
 - b) installment payments through Centrepay;
 - c) freezing and/or waiving interest on unpaid rates in part or in full;
 - d) waiving or deferring interest or arrears in part or in full; and
 - e) a stay of payment of rates and arrears of rates pending the sale of the relevant property or an agreement on the date for the sale of the relevant property.

[Note: where the Council and the ratepayer are unable to reach agreement on the terms of a Hardship Plan, see clause 13.]

11. Where Hardship is not found

- (1) Where a Council determines that the ratepayer is not experiencing Hardship, the Council must:
 - (a) provide the ratepayer with written reasons for their decision; and
 - (b) inform the ratepayer of their right to and options for challenging this finding.
- (2) Where the ratepayer:
 - (a) does not pay their rates; and
 - (b) does not exercise their right to request a reassessment of the Council's finding or lodge a complaint with the Ombudsman within 28 days then –the Council may issue proceedings once clause 18 (final letter of demand), 20 (reasonable attempts to contact) and clause 21 have been complied with.

[Note: the ratepayer's options for seeking a review of or challenging the Council's finding on their Hardship Status are set out in clauses 13 and 14 respectively.]

12. Failure to meet Hardship Plan obligations

Where a ratepayer fails to meet an obligation under their Hardship Plan (for example, the ratepayer fails to pay an installment by the due date), the Council must make reasonable attempts to contact the ratepayer to check why the ratepayer failed to meet that obligation.

A ratepayer who fails to meet an obligation under their Hardship Plan can request a reassessment of the plan under clause 13.

Where the ratepayer:

- (a) persistently does not comply with their Hardship Plan; and
- (b) does not exercise their right to request a reassessment of the plan, then –

the Council may issue proceedings once clause 18 (final letter of demand), 20 (reasonable attempts to contact) and clause 22 have been complied with.

13. Reassessment of Hardship Status and/or Hardship Plan

- (1) Where a ratepayer disagrees with the Council's assessment of their Hardship Status and/or the terms of their Hardship Plan, the ratepayer can request, verbally or in writing, that the Council undertake a reassessment of their Hardship Status and/or Hardship Plan.
- (2) The Council can refuse to carry out a reassessment but in exercising its discretion, the Council must consider:
 - (a) the period of time that has elapsed between the most recent assessment and the request for a reassessment; and
 - (b) the view of the ratepayer as to whether their personal circumstances have changed since the most recent assessment.

14. Victorian Ombudsman

- (1) A ratepayer may lodge a complaint with the Victorian Ombudsman for an alleged breach of this Code including in relation to reassessment under clause 13.
- (2) Where the:
 - (a) Council has not reassessed the ratepayer as being in Hardship or reassessed the terms of Hardship Plan (whichever is relevant); and
 - (b) the ratepayer has not lodged a complaint with the Victorian Ombudsman within 28 days of the date they received notice of the outcome of their reassessment request, then –the Council may issue proceedings once clause 18 (final letter of demand), 20 (reasonable attempts to contact) and clause 22 have been complied with.

15. Proceedings to be stayed

- (1) After a Council has issued proceedings but before judgment has been entered, the Council must request those proceedings to be stayed where:
 - (a) the ratepayer lodges a complaint with the Victorian Ombudsman; or
 - (b) the ratepayer provides the Council with a copy of a financial hardship application to either the Financial Ombudsman Service or the Credit Ombudsman Service Limited.

(2) Those proceedings may only be recommenced:

- (a) 28 days after the Victorian Ombudsman makes recommendations; or
- (b) where the Financial Ombudsman Service or the Credit Ombudsman Service (whichever is relevant) determines the application against the ratepayer.

[Note: in the event that a Council declines to implement the Victorian Ombudsman's recommendations, the Victorian Ombudsman may provide a report to the Mayor, the Minister and the Parliament (see section 23 of the Ombudsman Act 1973 (Vic).]

16. Interest to be stayed

- (1) Where the ratepayer requests a reassessment of their Hardship Status or terms of their Hardship Plan, all interest on the rate arrears must be stayed until the reassessment has been completed and the decision has been provided to the ratepayer.
- (2) Where a ratepayer lodges a complaint concerning rates with the Victorian Ombudsman, all interest on the rate arrears must be stayed until the Victorian Ombudsman issues its recommendations, including a recommendation that it is appropriate for interest to be applied in the circumstances.

17. No restriction of administrative law rights

Nothing in this Code restricts a ratepayer's rights under administrative law.

18. Final letter of demand

- (1) Before issuing proceedings to recover rates or charges, a Council must write to the ratepayer indicating the Council's intention to issue proceedings unless, within a further 28 days the ratepayer complies with the Hardship Plan or the Council's demands (whichever is relevant).
- (2) The letter referred to in clause 18(1) must provide information on financial counseling and community legal services available in the ratepayer's area.

19. Ceasing assistance

A Council can only cease a Hardship Plan where:

- (1) the ratepayer requests to be taken off the Hardship Plan; or
- (2) any arrears owing on the rates have been paid off and the ratepayer agrees to be taken off the Hardship Plan and commence paying rates in the usual way; and
- (3) the ratepayer's financial circumstances change so that their actual capacity allows them to commence paying rates in the usual way.

20. Reasonable attempts to contact the ratepayer

A Council must make reasonable attempts to contact a ratepayer for the purposes of fulfilling its obligations under this Code and before commencing any legal proceedings including:

- (1) attempting telephone contact; and
- (2) attempting to ascertain if the relevant property is tenanted and if so attempting to contact the ratepayer via any relevant real estate agent.

21. Debt collection and legal action

A Council must not commence debt recovery or legal proceedings unless and until the Council has complied with all relevant requirements of clauses 6 – 20 of this Code. Further, a Council must not commence legal proceedings for rates or charges debts where the legal costs and courts fees are likely to exceed the amount of the debt.

22. Hardship Policy

A Council must have a policy ('Hardship Policy') in place which details the processes it will go through for the purpose of complying with this Code.

23. Staff training

A Council must organise or conduct training on the content and application of its Hardship Policy, including:

- (1) the nature, causes and signs of Hardship;
- (2) necessary skills to sensitively engage with ratepayers about their payment difficulties and in offering assistance;
- (3) how to identify that someone is potentially experiencing Hardship;
- (4) how to assess whether someone is experiencing Hardship;
- (5) how to determine the best options for assisting people experiencing Hardship;
- (6) informing ratepayers of their rights and obligations with respect to the payment of rates;
- (7) informing ratepayers of the Hardship Plan options available;
- (8) informing ratepayers of their rights and obligations under the relevant Hardship Plan that is entered into, including the circumstances in which that plan will cease; and
- (9) how to refer ratepayers experiencing Hardship to other support agencies and schemes where appropriate.

24. Publication of Hardship Policy

A Council must publish its Hardship Policy on its website in a way that is easy for a ratepayer to access and provide details of the policy to a ratepayer or their representative upon request.

25. Publication in languages other than English

A Council must publish its Hardship Policy in languages assessed by the Council to be relevant to its constituency.

[Note: A Council must also provide a copy of its Hardship Policy in the preferred language of a ratepayer upon request - see clause 8]

26. Ratepayer privacy

All information provided by the ratepayer with respect to their Hardship Status will be treated in accordance with the *Information Privacy Act 2000* (Vic).

27. Review of Hardship Policy

A Council must periodically review its Hardship Policy for the purpose of improving its operation.

28. Reporting obligations







A Council must publically report on an annual basis:

- (1) the total number of ratepayers assessed for Hardship and the number of ratepayers determined by the Council to be experiencing Hardship;
- (2) the total number of legal proceedings commenced for unpaid rates, broken down by the number of claims for:
 - (a) \$0 - \$1000;
 - (b) \$1000 - \$10,000; and
 - (c) Over \$10,000.

29. Non compliance by the Council

Compliance of this Code will be monitored by the Victorian Ombudsman through the exercise of any of his or her relevant discretions under the *Ombudsman Act 1973* (Vic).

**VICTORIAN LOCAL GOVERNMENT HARDSHIP CODE OF PRACTICE
FLOW CHART KEY**

-  **Core council duties**
-  **Key council decisions**
-  **Ratepayer actions that can directly result in legal proceedings**
-  **Key ratepayer rights**
-  **Finalisation of matter**
-  **Final step before legal proceedings can be lodged**

