



**Submission by the
Financial Rights Legal Centre**

IPART

Review of the Local Government Rating System
Local Government Issues Paper – April 2016

May 2016

About the Financial Rights Legal Centre

The Financial Rights Legal Centre (*formerly known as the Consumer Credit Legal Centre (NSW)*) is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2014/2015 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

For Financial Rights Legal Centre submissions and publications go to www.financialrights.org.au/submission/ or www.financialrights.org.au/publication/

Or sign up to our E-flyer at www.financialrights.org.au

Credit & Debt Hotline 1800 007 007
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Introduction

Thank you for the opportunity to comment on the Review of the Local Government Rating System. The Financial Rights Legal Centre (Financial Rights) wishes to respond to one particular section of the Issues Paper being “4.7 How Councils manage overdue rates.”

4.7 How councils manage overdue rates

9. What changes could be made to the rating system to improve councils’ management of overdue rates?

Financial Rights regularly receives calls from consumers in financial hardship. Many of the consumers who present with financial hardship problems have issues with paying their local council rates.

The comments below are based on our extensive advice and casework experience in dealing with local councils in relation to financial hardship requests. Our experience has identified several problems and these are dealt with below.

Councils are litigious

The discussion paper notes that “just over one-third of all civil claims in the Local Court involve councils pursuing overdue rates.” It is our understanding that a number of local councils are in fact in the top 10 issuers of statements of claim in the NSW Local Court. This is a badge of dishonour. There are local councils that are more litigious than big banks and big debt collectors. This strategy of being litigious is inconsistent with best practice standards on model litigation.

Litigation is costly. Litigation is costly because:

- There is a cost to government to run the court system.
- Court costs and solicitor costs are passed on to the ratepayer which causes further financial hardship.
- Ratepayers experiencing financial hardship are in many circumstances forced to access government-funded emergency relief to manage basic living costs.
- Ratepayers seek advice from our service, again funded by the Government.

Case study

Jane (not her real name) has only recently escaped a relationship with severe domestic violence. Jane is severely traumatised and her doctor has said she is unfit for work. Her doctor also believes she will be unfit for full time work for at least the next 6 months. Jane has spent the last 3 months trying to recover and look after her children. In that time, the Council has engaged a debt collector and issued a Statement of Claim. Jane contacted her local financial

counsellor in severe stress and panic about the Council. At no stage, did the Council warn Jane about the legal action or offer any financial hardship options.

Financial hardship

Financial Rights notes that other states have a specific mention of financial hardship in the relevant Local Government Act: for example s. 171A “Waiver by application – financial hardship” *Local Government Act 1989 (Vic)*; s220. NSW does not have a general right to financial hardship arrangements in the *Local Government Act 1993 (NSW)*.¹ This stands in stark contrast to many other sectors that have specific legislative mention of the right to financial hardship and a requirement to develop policies on this point.²

Our experience with NSW local councils is that they believe that if they grant financial hardship arrangements that this in some way disadvantages other ratepayers and the council. This is a misconception. Our experience is that consumers are more likely to pay and pay more often if there are fair and reasonable financial hardship procedures in place.

Through our work with consumers in financial hardship, we see that threats of litigation and actual litigation causes consumers to panic, stop paying and generally give up. In contrast, we find that where there is a culture of being reasonable and working with the consumer on an affordable financial hardship arrangement, the consumer is much more likely to make payments and maintain communication.

There is now a lot of evidence from the credit industry and utilities (for example, electricity and telcos) that working with consumers in financial hardship delivers a better outcome in terms of debt repayment and the ongoing relationship between the parties.

Financial Counselling

There are independent, often government funded, accredited, free financial counsellors available in the community to assist people who are struggling with debt. Major credit providers such as banks and finance companies, telcos and energy providers all refer customers with persistent financial problems to free financial counselling, and the national debt helpline for accessing financial counsellors (for which Financial Rights is the NSW answer point). This number is required to be provided on default notices under the *National Consumer Credit Protection Act 2009*. Energy and water providers voluntarily provide this information to people who are behind on their bills. Councils should be required to inform consumers about their internal hardship policies and tell people about the availability of free financial counselling.

¹ The Act provides a limited set of circumstances where relief may be provided including certain valuation changes (s. 601), writing off accrued interest (s 567) and reductions for eligible pensioners (s.575)

² The National Energy Customer Framework for example introduced a legal obligation on energy retailers to support customers who are experiencing financial difficulties and are unable to pay their energy bills. <http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/consumer-assistance/necf>

It is vital, however, that financial counsellors are not seen as a pre-requisite for accessing a financial hardship arrangements with a council. Many arrangements can be made efficiently between the council and the ratepayer without any need to burden other government funded services.

For-Profit Debt Management Firms

There are many services who advertise debt assistance services and charge fees for their services. Collectively referred to as Debt Management Firms, these services include credit repair, debt negotiation, budgeting and consultants who steer people into options under the bankruptcy act (like debt agreements). ASIC recently released a report on these services which indicated that there are a number of problems with these services including:

- Targeting consumers experiencing financial stress, particularly low-income Australians;
- Failing to provide clear explanations of fees and charges during initial contact by consumers;
- Charging high up-front and ongoing fees for 'services'; and
- Suggesting high cost 'solutions' to debt problems that are not in the consumer's best interests, potentially leaving them in a worse financial position than before—even when there is a free dispute resolution service available to the consumer.

Financial Rights has assisted a number of clients who are in a worse financial situation as a result of the activities of these types of entity. We are aware of one NSW Council that considered requiring ratepayers to consult one of these firms, or a debt agreement administrator under the bankruptcy act, before granting hardship assistance. This would be an extremely poor outcome for consumers

Family violence

Councils need to have hardship policies that also include specific measures to deal with the issues around family violence. These issues can include:

- not getting mail due to homelessness caused by family violence
- severe and ongoing trauma
- limited access to family financial resources

Recommendations

Financial Rights recommends that

- a detailed procedure is required before litigation can be commenced by a local council that is consistent with model litigation best practice and best practice hardship policies. This policy should be compulsory.
- NSW amend the *Local Government Act 1993 (NSW)* to specifically include:
 - a general right to apply for financial hardship
 - a process for that application to be reasonably considered
 - a requirement for Councils to notify ratepayers before legal action is commenced and the ratepayer's right to apply for financial hardship
- A detailed financial hardship policy is published on the Council's website.
- A hardship policy is developed in consultation with all relevant stakeholders that is compulsory and transparent. This hardship policy needs to include specific measures on assisting ratepayers who are the victims of family violence.
- Councils should provide information about their hardship policy and the availability of free financial counselling on overdue notices.
- Councils should never refer customers to for-profit debt management firms.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre on (02) 9212 4216.

Kind Regards,



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