

## Brief on Local Government Hardship Policy Guidelines

WEstjustice and Mortgage Stress Victoria  
Submitted to: Essential Services Commission  
January, 2023

**Aim:** To provide information on the experiences and issues of ratepayers in hardship in order to provide consultation and recommendations on the Ministerial guidelines for Local Government Hardship Policy.

### Contents

|  |    |
|--|----|
| Brief on Local Government Hardship Policy Guidelines ..... | 1  |
| <b>About our service</b> .....                             | 2  |
| <b>Council Rates Hardship Data</b> .....                   | 3  |
| <b>Recommendations</b> .....                               | 3  |
| <b>Issues Faced by Council Residents in Hardship</b> ..... | 5  |
| Case studies .....   | 8  |
| <b>Table 1: MSV Clients by Council Area</b> .....          | 11 |
| <b>Table 2: Council Hardship Practices Scorecard</b> ..... | 12 |

## About our service

Mortgage Stress Victoria (MSV) is Australia’s first state-wide program providing free legal, financial counselling and social work support to Victorian mortgagors in hardship.

In our first year, we have supported 224 households with more than 560 matters to:

- Holistically resolve financial hardship including providing compensation, waivers and responsible lending resolutions
- retain their home and afford ongoing mortgage and other payment obligations
- provide wrap around social, legal and financial counselling support.
- Provide ongoing sustainable solutions to social, legal and financial impacts including external referrals for mental health, welfare and family violence ongoing support, family law representation, Workcover and Superannuation legal representation, Victims of Crime and Fines clinic support.

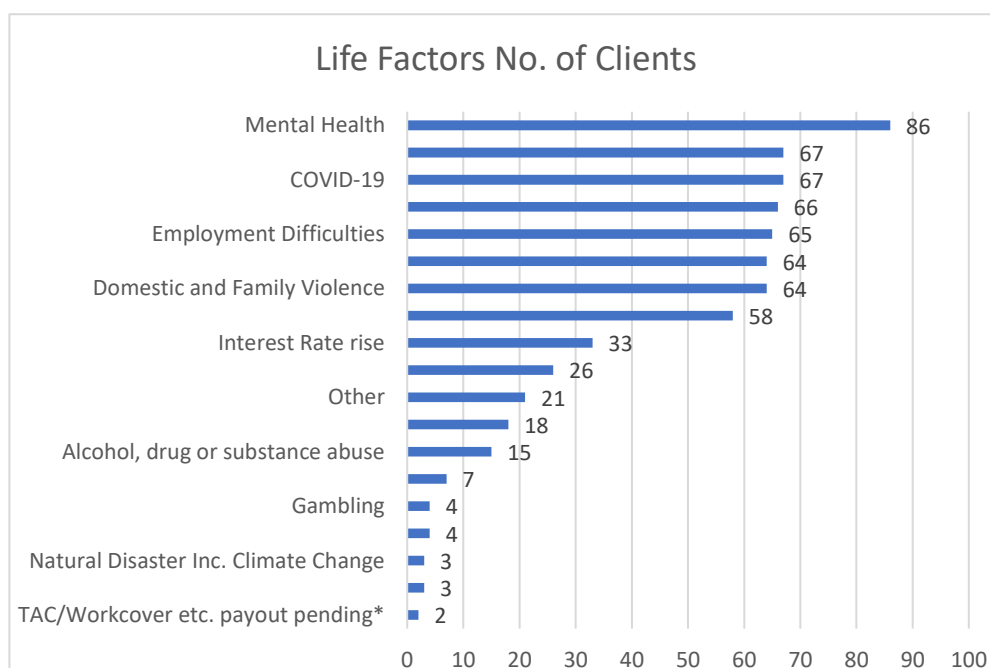
MSV operates as part of Westjustice, a generalist community legal centre which provides free legal advice and financial counselling to people who live, work or study in the cities of Wyndham, Maribyrnong, and Hobsons Bay, in Melbourne’s western suburbs.

Our services include legal information, advice and casework, duty lawyer services, community legal education, community projects, law reform, and advocacy.

Westjustice has also been at the forefront of developing and trialling innovative, integrated, place-based partnerships. Notably, our Restoring Financial Safety partnership with McAuley Community Services to Women and The Orange Door Western Melbourne has provided advice and representation to economic abuse victim-survivors and amplified their experiences to call for systemic form across a range of Victorian and Australian institutions and industries.

### Client impacts

When presenting to our service, clients reported the following impacts were the highest causes of their financial hardship



## Council Rates Hardship Data

**Scope of data:** Mortgage Stress Victoria has clients in 72% of all LGAs in Victoria.

Out of 228 clients across the service:

- 50% of all clients are in rates arrears
- 18% of mortgagors in default on their mortgage are also in rates arrears
- 16.6% of matters Councils have assigned debts to debt collectors

A third of Victoria's population are mortgagors.

Out of this cohort, 35% of mortgagors are in mortgage stress.

Extrapolating from our data, we believe 18% of mortgagors in Victoria are likely in rates arrears.

## Recommendations

### Hardship Policy

#### a. Guideline to include Consistent Hardship Policy across all Councils that includes:

- Broad definition of hardship that includes family violence as defined in *the Family Violence Protection Act 2008 (the FVP Act)*<sup>1</sup>, mental health and employment loss;
- Inclusion of all hardship arrangement options as stated in the *Local Government Act 1989 (Vic) (the Act)*;
- Specific and reasonable information required to consider hardship assistance;
- Specific and reasonable timeframes in which hardship requests are considered, during which no enforcement or recovery action can be taken for rates arrears;
- Limitations on any encouragement or expectation that ratepayers take on additional debt or use any financial product to pay off arrears (ie., provision of equity and refinancing information, or advice that a ratepayer consider these);
- Restrictions on requiring a ratepayer's commitment to a payment plan as part of their hardship request;
- Limitations on the assignment of council debts to debt collectors;
- Guideline should require local councils to comply with the ACCC/ASIC Debt Collection Guideline. The full range of options should continue to be available to ratepayers in financial hardship once a matter has been referred to a debt collector;
- Blanket limitation on Councils consolidating arrears into the mortgage without explicit consent and evidenced communication with the ratepayer, and only then after offering referral to a Financial Counsellor;
- **Enforcement against the use of blanket refusals** to consider requests for a waiver or deferral of rates both in practice and in written hardship policies, which is contrary to the Act.

---

<sup>1</sup> This definition can be summarised as: any behaviour that occurs in family, domestic or intimate relationships that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening or coercive; or is in any other way controlling that causes a person to live in fear for their safety or wellbeing or that of another person. In relation to children, family violence is also defined as behaviour by any person that causes a child to hear or witness or otherwise be exposed to the effects of the above behaviour. This definition includes violence within a broader family context, such as extended families, kinship networks and communities.

- b. **A widened concessions rebate scheme** that includes all Centrelink recipients, low-income Healthcare Card holders, as is widely recognised in the energy and water sectors. Currently concessions are limited solely to Pensioner and DVA Recipients
  - c. **Consistent policy for penalty interest** that includes:
    - Cancellation of penalty interest if any hardship arrangement is in place;
    - All penalty interest accrued from date of default to be retrospectively waived once hardship arrangement is established.
  - d. **Consistent deferral scheme** especially in cases where property is about to be sold pursuant to a mortgage default or repossession, family law property settlement or relationship breakdown, where ratepayer is awaiting WorkCover, Total & Permanent Disablement or other benefit related to health or mental health, or where a ratepayer is moving from their own home into aged care.
- Deferral is available under the Act but has not been applied consistently by councils as a tool to assist ratepayers facing hardship.
  - We note that deferrals should not be overused or seen as the sole option to address arrears, and that in certain instances including family violence or certain unexpected life events some form of waiver will still be appropriate.

#### Family Violence Considerations

- a. **Requirement for each Council and Local Government to adopt and implement a standalone Family Violence Policy** that:
  - requires the inclusion of specific family violence provisions, including incorporation of economic abuse within the definition of family violence;
  - Recognises the broad forms that family violence takes, consistent with the FVP Act;
  - Requires staff to receive appropriate MARAM Framework Family Violence training that includes how to identify indicators of family violence and responding to ratepayers who have disclosed family violence;
  - Includes methods of ensuring safety such as:
    - non-disclosure to a person using violence if family violence is disclosed;
    - updating safe contact methods across whole-of-council systems. See for example Water Code – *“promote customer safety by providing for the secure handling of information about those who are affected by family violence, including in a manner that maintains confidentiality”*
- b. **Flexibility of payment arrangements**
  - A flexible approach to rates collection when economic abuse has been identified, including considering rates waiver for those who cannot pay rates due to economic abuse and family violence
  - Recognition that rates arrears recovery of joint-owning ratepayers requires payment arrangement flexibility and/or deferral of rates. See Water Code: - *“Specify the water business's approach to debt management and recovery where a customer is affected by family violence, including but not limited to: (1) the recovery of debt from customers with joint accounts; and (2) the circumstances in which debt will be suspended or waived”*
- c. **Council services approach to evidence and disclosure of family violence that:**

- Precludes unnecessary evidence required to be disclosed to Council by victim-survivors of family violence in determining their circumstances;
- Avoids victim-survivors having to repeat disclosure, and provides continuity of service; and
- Provides a means for referring customers who may be affected by family violence to specialist family violence services.

#### *Administration, Engagement and Service Provision*

- a. Better engagement**
  - Genuine and alternative methods of engaging with consumers with intention to provide support and understanding in establishing hardship arrangements.
  - ESC has conducted reviews into engagement with consumers, previous findings should be applied to Councils.
- b. Inclusion of hardship and complaints process and contact information in all rates notices** including:
  - Summary of Council hardship policy;
  - Provision of all hardship options available under the Act;
  - Residents' rights to request hardship arrangements and how;
  - Process and contact information for Council Hardship and Complaints Team and Victorian Ombudsman.

#### *Hardship Policy Enforcement of Guidelines*

- **For transparent implementation of enforcement by Minister** if Council found in breach of the legislated requirements of hardship policies, administration and collection activities.
- **For Councils to produce and publish annual financial reporting** to include rates revenue by Local Government Area including rate bands and ratepaying allotment, proportion of rates in arrears and proportion of hardship arrangements in place by type.
- **For Minister to ensure the production and publication of annual reporting** by all LGAs of the implementation of Hardship practices and collection activities

### **Issues Faced by Council Residents in Hardship**

#### *Engagement and Service Provision*

- a. Repeated contact and potential harassment to ratepayers in hardship**

In some cases, Councils have repeatedly called clients after instruction to cease communication in contravention of debt collection guidelines and laws.
- b. Repeated issuing of notices** without consideration of residents' needs including:
  - languages other than English, rights to translation and interpretation services;
  - consideration of family violence risks or living circumstances.
- c. Debt assignment**

Councils are regularly assigning arrears to debt collectors without knowledge of the ratepayers' circumstances.

Concerningly in some cases without demonstrating efforts to engage the ratepayer to understand their circumstances beforehand.

  - Failing to ensure debt collectors are subject to clear and enforceable standards regarding ratepayers in financial hardship;

- Restricting options available to ratepayers in financial hardship once a matter has been referred to a debt collector.
- d. Harsh enforcement methods**
- Councils are frequently using unnecessary and harsh measures such as suing, creditor's bankruptcy, and lodging caveats on the title of the ratepayer's property. This places unnecessary stress and hardship on ratepayers and it is not a smart use of council resources, as councils have a first statutory right to recover a rates debt from the proceeds when a property is sold. Councils do not need to take such harsh measures and should only take legal action as a genuinely last resort.

*Administration of Hardship Application Process*

- a. Hardship application forms requiring disclosure by resident of a payment plan**  
In most cases, the payment plan is included within the declaration of financial circumstances as a mandatory section of the application. Ratepayers should not be forced into entering unaffordable payment plans.
- b. Councils requiring excessive information before considering requests**  
In multiple matters, MSV has found Councils requiring excessive information from the ratepayer including:
- Declaration of all assets, shares, property equity, trusts, Company Director disclosure, bank account information and total amounts in each, superannuation details and amounts in each;
  - Financial details of all parties in the home, income, ages, and health information.
- c. Unreasonably protracted response times**
- In most cases, matters remain unresolved after 6 months.
  - In some cases, no response was received from multiple Councils within six weeks of initial contact by MSV.

*Hardship Arrangements*

- a. Unaffordable payment plans**  
In multiple matters where MSV has requested hardship assistance for our clients, the Council has stated a payment plan based on amount owing must be met, in some cases requiring \$200 per fortnight.
- b. Precluding information on hardship options available**
- Most Councils will only canvas the availability of a payment plan where someone expresses financial or other hardship.
  - Councils rarely reference waivers or other alternative hardship arrangements provided in hardship policies.
- c. Blanket refusal to consider any waivers in breach of the Act**

When responding to requests on hardship or family violence grounds, in some cases the Council has stated that under no circumstances do they consider waiver requests.

Further, their hardship policies only include the option to arrange a payment plan, and require extensive financial and personal information in the application.

*Family Violence*

The context of relationship breakdown and joint property ownership exposes Councils to higher instances of family violence matters experienced by their ratepayers.

Further, the knowledge of a home address and the potential for the perpetrator to utilise rates arrears accrual as part of economic abuse should be of concern to all Councils.

**Issues found:**

- a. Only 9 of 78 Councils have demonstrated to us their Family Violence Policy in 2022.
- b. Councils disclosing information of the victim-survivor to the perpetrator in cases of joint ownership or residence.
- c. Lack of transparency that Council staff are adequately trained in MARAM Framework and assessment in identifying indicators of family violence to ensure adequate and best practice response to disclosures by victim-survivor residents.

## Case studies

### Sarah's case study:

- Client inherited property with brother after parents passed away.
- Client on Centrelink income only and unlikely to gain employment.
- Client has lived in property with parents almost all his life.
- Hardship request for waiver of rates arrears in September to Hobson's Bay City Council.
- Council has not provided resolution to our request since September. They initially asked us to resubmit our request in a month's time (allegedly because they were updating their policies). They then asked for three years of payslips.
- Have not responded to waiver request. Client is currently on \$50 per month payment plan.

### *"Samuel" – Wodonga City Council*

**Client's story:** Samuel is a recently separated father with shared custody of their teenage son. Over the last three years since his divorce he has struggled with mental health. Consequently, he has struggled to retain employment, with the additional stress of COVID-19 impacting any sole contract work.

Samuel was not receiving any income for two years and had been living on a tin of beans every couple of days whilst still providing for his son every fortnight.

Samuel engaged with our service in 2022 due to severe hardship, and at severe risk of losing his home due to mortgage and council rates arrears.

**Support from MSV:** MSV contacted Wodonga City Council with considerable information on our client's situation, including:

- Statement of Financial Position including assets, property equity and financial deficit of \$378 per fortnight, before debts.

### **Our client's request:**

- the current total incurred debt to be waived on compassionate grounds;
- a hold on payments to be placed on his account for three months;
- reassessment in 3 months' time, and commitment to a payment plan moving forward.

In response, Wodonga City Council requested extensive information, which MSV provided within one week each time, with as much detail as possible to Council's questions regarding:

- Whether he had a pet;
- Information about his son and his living situation, and how his father (our client) is supporting him;
- Information on the equity of our client's home, and whether he had applied to redraw or refinance his mortgage in order to resolve his rates debt;
- Information about the state of repair of the home;
- If our client was owed money from the Australian Tax Office;
- Details of our client's superannuation, when information had previously been supplied.

### **Outcome to date:**

- a. Council has not provided its hardship policy, despite explicit requests;
- b. The matter has remained unresolved for six months;



- c. Council has stated it requires information on the equity of the home before considering a waiver request, despite having received this information in our client's Statement of Financial Position provided in our initial request;
- d. Victorian Ombudsman required internal complaint to be lodged first with the Council and closed our complaint within three days of lodgement, without contacting Wodonga City Council;
- e. Council has remained unresponsive from October to date.

*"Cassandra" - Brimbank City Council*

**Client's story:** Cassandra is a migrant woman over 65 years of age living alone on the pension. Cassandra requires an interpreter, is unable to read English, and doesn't have an email address or computer access. Over the last five years Cassandra has developed significant health issues, leading to severe risk of suicide during the COVID-19 period, relying on sleeping medication. Cassandra had stated she was struggling to eat or sleep due to the anxiety of losing her home, and "just wanted to fall asleep and never wake up."

**Support from MSV:** Cassandra engaged with our service and was in a deficit of \$1,054 per fortnight after repayments. Due to her extreme health circumstances, she had fallen into significant arrears on all her accounts.

Brimbank City Council had been calling our client daily regarding her outstanding rates without an interpreter provided, and had begun issuing legal notices.

We supported Cassandra to request:

- An immediate hold on any collections or legal proceedings;
- A debt waiver on the outstanding balance and any interest accrued on compassionate grounds;
- Concession to be applied retrospectively;
- An affordable payment plan moving forward;
- For Council to communicate directly with MSV in regard to our client's matter

Within the same week Council declined the waiver request, however provided two application forms: for concession rebate and hardship application. Council stated that its hardship policy *is unable to waive levies such as rates, fire services levy, environmental charges etc.* However, it is able to *review interest charges to a maximum of the past 12 months, and hold future interest upon successful application.*

Brimbank City Council's hardship application form requires information including:

- Applicant to include amount per fortnight or month in a payment plan for rates arrears;
- Declaration of all assets, shares, property equity, trusts, Company Director disclosure, bank account information and total amounts in each, superannuation details and amounts in each;
- Financial details of all parties in the home, income, ages and health information.

After three months, Brimbank City Council was unable to process our client's concession rebate and had contacted her repeatedly via phone despite our request to communicate solely with MSV. MSV lodged a complaint with the Victorian Ombudsman.

**To date:**

- No resolution for client for six months and continuing, contact with client has continued;
- No communication received since October from Council to date;
- No concession rebate applied;

- Interest and payments placed on hold;
- January 2023: Victorian Ombudsman outcome letter stating that Council will be updating its hardship policy in February 2023, at which point they will review client's request.

*Melissa Langan - Ballarat City Council*

Note: Client has provided full consent to share their -identified story.

**Client story:** Melissa is a single mum recently separated after experiencing lengthy family violence. Melissa had begun moving all accounts into her name, after her perpetrating ex-partner had brought all accounts into debt including the mortgage and rates for the family home. Melissa had continued to work part time yet was still in a deficit of \$103 per fortnight after repayments.

**Support from MSV:**

We supported Melissa in arranging for hardship and waiver requests for all accounts and contacted Council to inform it of her circumstances.

Our client requested a compassionate waiver, and any associated default listings and negative repayment history information removed from her credit report.

**Ballarat City Council's response:**

- Responded via phone and email within 14 days, providing concession application forms, and immediately ceased contact with our client;
- Within one month, contacted Department of Families, Fairness and Housing for waiver and rebates to be retrospectively applied for the prior 2-3 years as a Single Parent Concession entitlement;
- Deferred all payments and interest from initial contact;
- Provided Council's hardship policy;
- Within two months, successfully confirmed the full waiver of all arrears and interest, applied a Single Parent Concession rebate, and confirmed a payment plan for future charges with no penalty interest.

Table 1: MSV Clients by Council Area

| Local Government Area | Households |
|-----------------------|------------|
| Ballarat              | 4          |
| Bayside               | 2          |
| Bendigo               | 2          |
| Cardinia              | 3          |
| Casey                 | 11         |
| Darebin               | 3          |
| Frankston             | 4          |
| Geelong               | 5          |
| Glen Eira             | 3          |
| Hobson's Bay          | 3          |
| Horsham               | 1          |
| Indigo                | 2          |
| Kingston              | 6          |
| Knox                  | 4          |
| Latrobe               | 2          |
| Manningham            | 3          |
| Maribyrnong City      | 2          |
| Melbourne             | 3          |
| Melton                | 15         |
| Mildura               | 1          |
| Mitchell              | 2          |
| Moira                 | 1          |
| Monash                | 7          |
| Moonee Valley         | 1          |

|                               |    |
|-------------------------------|----|
| Moorabool                     | 2  |
| Mornington Peninsula          | 3  |
| Mount Alexander               | 2  |
| Murray River                  | 1  |
| Nillumbik                     | 1  |
| Port Phillip                  | 2  |
| South Gippsland shire Council | 1  |
| Whitehorse                    | 1  |
| Whittlesea                    | 8  |
| Wodonga City Council          | 1  |
| Wyndham                       | 27 |
| Yanyean                       | 1  |
| Yarra                         | 3  |
| Yarra Ranges                  | 5  |

Council Hardship Policy Recommendations

Table 2: Council Hardship Practices Scorecard

Good
  Neutral
  Bad

| Council           | Hardship Application form req'd | Payment plan required | Requires disclosure equity, refinancing | Deferral accepted? | Waived accrued Penalty interest | Consolidates debt into mortgage | Blanket refusal of waivers | Penalty interest waiver limit of 12 months | Assignment to Debt collectors pre 2 yr | Judgment Order sought | More than 3 months before resolution |
|-------------------|---------------------------------|-----------------------|---|--------------------|---------------------------------|---------------------------------|----------------------------|--|--|-----------------------|--------------------------------------|
| Ballarat Council  | Y                               | N                     | N                                       | Y                  | Y                               | N                               | N                          | N  | N                                      | N                     | N                                    |
| Brimbank          | Y                               | Y                     | Y                                       | Y                  | N                               | Y                               | Y                          | Y  | Y                                      | N                     | Y                                    |
| Corangamite Shire |                                 |                       |   | Y                  |                                 |                                 |                            |  | Y                                      | Y                     |                                      |
| Frankston         | Y                               | Y                     |   |                    |                                 | Y                               | Y                          | Y  | Y                                      |                       | Y                                    |
| Geelong           | N                               | N                     | N                                       | -                  | N                               | N                               | -                          | -  | N                                      | N                     | N                                    |
| Glen Eira         | N                               | Y                     | N                                       | Y                  | N                               | N                               | -                          | N  | N                                      | N                     | N                                    |
| Horsham           | -                               | -                     | -                                       | -                  | -                               | -                               | -                          | -  | -                                      | -                     | -                                    |
| Hume              | N                               | N                     | -                                       | Y                  | -                               | -                               | -                          | -  | -                                      | -                     | -                                    |
| Knox              |                                 | Y                     | N                                       | Y                  | Y                               | N                               | N                          | Y  | Y                                      |                       | Y                                    |
| La Trobe          | Y                               | Y                     | Y                                       | N                  | N                               | Unknown                         | Y                          | Y  | Y                                      |                       | Y                                    |
| Melton            | Y                               | Y                     | Unknown                                 | Y                  | N                               | Unknown                         | Y                          | Y  | Unknown                                |                       | Y                                    |
| Moira             | Y                               | Y                     | Y                                       | N                  | N                               | Unknown                         | Y                          | Y  | Y                                      | Y                     | Y                                    |
| Mount Alexander   | Y                               | Y                     | Unknown                                 | N                  | N                               | N                               | Y                          | N  | Y                                      | Y                     | Y                                    |
| Stonnington City  | N                               | N                     | N                                       | Y                  | N                               | N                               | Unknown                    | Unknown                                    |  |                       |                                      |
| Warrnambool       |                                 |                       |   | Y                  |                                 |                                 |                            |  | Y                                      | Y                     |                                      |
| Wodonga           | Y                               | Y                     | Y                                       | N                  | N                               | Y                               | Y                          | Y  | Y                                      |                       | Y                                    |
| Baw Baw Shire     | Y                               | N                     | N                                       | Y                  | -                               | -                               | -                          | -  | Y                                      | N                     | -                                    |
| Melbourne         | Y                               | Y                     | N                                       | Y                  | Y                               | Unknown                         | N                          | Y  | Unknown                                |                       | N                                    |
| Wyndham           | Y                               | Y                     | N                                       | N                  | N                               | Unknown                         | N                          | N  | Y                                      |                       | Y                                    |