

Recovering unpaid rates and charges	
What change has been made?	The Government has amended the <i>Local Government Act 1993</i> to provide certainty for the many individuals, families and businesses struggling in the community. The change provides that a local council will not commence proceedings for the recovery of rates or charges against a person without first considering specific matters that relate to that person’s individual circumstances.
What does the new amendment say exactly?	Section 747AB has been added to the <i>Local Government Act 1993</i> which will have effect for a temporary, prescribed period. The amendment requires that proceedings for the recovery of a rate or charge may not be commenced against a person by or on behalf of a council under section 712 unless the council has considered each of the following: <ul style="list-style-type: none"> (a) whether the payment of the rate or charge could be made in instalments or by way of some other financial arrangement (b) whether the person should be referred to a financial counsellor (c) whether mediation or alternative dispute resolution should be attempted first, and (d) whether interest on the unpaid amount should be deferred or waived.
Why has it been made?	The Government recognises that many individuals, families and businesses in our community are experiencing severe financial hardship due to the pandemic. For many this follows an horrendous bushfire season and long-term drought in many regional and rural areas. These people deserve additional support, respect and compassion at this time as they struggle to make ends meet and pay bills - including council rates and charges during the pandemic. This change is a simple, yet important action the Government has taken to immediately remove unnecessary stress and cost to local communities. This will help to ease the burden and support the health and welfare of residents, ratepayers and businesses across the State during this difficult time. <p>The amendment temporarily enshrines in legislation the procedures in the Debt Management and Hardship Guidelines that many – but not all - councils already undertake. It helps to minimise overall costs to individual</p>

	ratepayers and residents, who may already be facing difficulties, and the cost of expensive court and other recovery action.
Why do those specific matters need to be considered?	<p>The matters councils need to consider are consistent with the NSW Government’s 2018 Debt Management and Hardship Guidelines for local councils, which have already been adopted by many councils across NSW.</p> <p>It is consistent with the NSW Commonwealth Government’s hardship model for households and small businesses struggling to pay water rates and energy bills during the COVID-19 pandemic, agreed at a National Cabinet meeting of Federal and state leaders in April 2020. It is also consistent with the NSW Government’s Model Litigant Policy which provides guidelines for best practice for State agencies taking legal action.</p>
How will councils apply the new measure?	<p>This should not be difficult for councils as they should already have policies in place that seek to recover outstanding payments using a fair and effective process. These policies should enable councils to promptly determine how each debt will be paid off outside a formal legal process. If applying that policy would not be consistent with the new legislation, council must comply with the legislation first, and, not apply their own policy to the extent of any inconsistency.</p> <p>This amendment simply steps out the requirements councils need to undertake before undertaking proceedings to recover rates and charges during the COVID-19 pandemic. These steps include whether the person could instead be pay by way of instalments, or some other financial arrangement, whether they should be referred to a financial counsellor, whether mediation or alternative dispute resolution should be attempted first, and, whether interest should be deferred or waived.</p>
What rates and charges does this apply to?	This amendment applies to any unpaid rates and charges (including water and sewer charges), and interest accrued on such debts, this year (2019-20) and any continuing difficulty in meeting payment of rates and charges in 2020-21 as a result of the COVID-19 pandemic.
When does this change begin?	This takes effect from the commencement of the amendment Act, which was on 13 May 2020.

<p>What is the prescribed period that this temporary measure applies for?</p>	<p>The prescribed period is for six months. It applies until 26 September 2020.</p>
<p>Do councils need to change their hardship and debt recovery policies?</p>	<p>Councils are required to follow the steps in the new provision, during the prescribed period, whether or not that is consistent with their current policies for hardship and recovering rates and charges. Councils should therefore consider making appropriate changes to their policies and delegations and should also change relevant procedures.</p>
<p>How will councils implement this change to their policies?</p>	<p>Councils should consider the need to amend their rating hardship and debt recovery policies that require them, by law, to ascertain whether any ratepayer seeking financial assistance on the grounds of hardship, or who has been unable to meet scheduled payments, has been impacted by COVID-19 and is experiencing hardship and difficulty with paying rates and/or other charges at this time.</p> <p>Councils cannot undertake legal action to recover outstanding debt until individual assessments of the matters set out in the new provision have been completed and council has considered each matter.</p>
<p>Does this only apply where a person is facing hardship?</p>	<p>The provision is not expressly limited to those people facing hardship. Having said that, in deciding whether to commence proceedings, and considering each of the matters set out in s.747AB(a)-(d), councils may apply their own policies as long as they are not inconsistent with the new provisions. These policies usually provide for councils to take into account whether or not a person is facing hardship in all of the circumstances.</p>
<p>What happens to ratepayers who already owe unpaid rates and charges?</p>	<p>This provision applies to all existing debts that a council is in the process of recovering during the COVID-19 outbreak, as well as any new ones accrued during this time.</p> <p>Residents and ratepayers in an active debt agreement whose circumstances have changed as a result of COVID-19 should contact their council debt agreement administrator to discuss options, which may include extending the debt agreement or payment plan for a specific period.</p>

<p>Do councils need to cease existing recovery processes?</p>	<p>No. This provision applies to the commencement of proceedings for the recovery of rates and charges that a council is in the process of recovering during the COVID-19 outbreak, as well as any new ones accrued during this time. However, councils can continue recovery processes provided that the new considerations in the new provisions have been considered before further recovery action is taken. Councils, however, may choose to temporarily cease formal recovery actions during this time.</p>
<p>Where can residents and ratepayers go to seek help in communicating with their council about hardship?</p>	<p>The Government understands that difficulty paying rates and charges is often a stressful topic to discuss for many people. A number of free Government and not-for-profit services are available to support NSW residents experiencing financial difficulty, including helping them to talk to others, such as councils about it. These include:</p> <ul style="list-style-type: none"> • National Debt Helpline - Phone: 1800 007 007 • Community Legal Centre in different local government areas across NSW • LawAccess NSW line on 1300 888 529, and • Local community financial counselling services.
<p>Flexibility in applying the rate peg</p>	
<p>What is this change?</p>	<p>Section 511 of the <i>Local Government Act 1993</i> has been amended so that, where a council does not apply the full percentage increase of the rate peg (or any applicable Special Variation) in a year, within the following 10-year period, the council can set rates in a subsequent year to return it to the original rating trajectory for that subsequent year.</p> <p>For example:</p> <p>A council that had a shortfall referred to in subsection (1) of \$100,000 in a particular year could recover that amount by increasing the amount of rates and charges:</p> <p>(a) in 1 of the next 10 years to recover an additional \$100,000 in that year, or</p> <p>(b) in 4 of the next 10 years to recover an additional \$25,000 in each of those years, or</p>

	(c) in each of the next 10 years to recover an additional \$10,000 in each of those years.
Why has it been made?	It provides councils with flexibility in their rating collection reflective of local and Statewide circumstances, and to manage the fluctuations that occur from time to time. By providing councils with greater options when making long-term decisions regarding their rates, local communities can be protected from the full impact of difficult circumstances such as the current COVID-19 pandemic. To ensure councils remain sustainable, however, and can continue to deliver vital services and infrastructure, the provision enables councils to choose to catch-up the value of those rates in future years when economic circumstances improve.
When does this change begin?	This amendment came effect on commencement of the amending Act, on 13 May 2020. It is a continuing amendment that does not have any expiry or 'sunset' clause.
What is rate-pegging	The rate-pegging system protects households and property owners from excessive rate rises yet allows councils to deliver the services and infrastructure communities expect. It ensures local council rate revenue cannot increase by more than the approved percentage increase unless separate approval is sought from the independent regulator. Under the <i>Local Government Act 1993</i> , the Independent Pricing and Regulatory Tribunal (IPART) determines the rate peg annually. The 2020-21 rate peg for NSW councils was set independently by IPART at 2.6% on 12 September 2019.
How is this different to existing provisions?	<p>Currently, councils have limited flexibility to set rates below the rate peg. Under the current provisions of the <i>Local Government Act 1993</i>, a council that sets general income below the rate peg amount has only two years to return to the same rates trajectory.</p> <p>This new provision increases the ability of councils to protect ratepayers if the community experiences short-term economic difficulties, such as due to drought, bushfires or the current COVID-19 pandemic while providing more time for councils to return to their sustainable long-term rates trajectory. When these difficulties subside, councils can then return to the normal level of rating to ensure they remain able to deliver vital community services and infrastructure.</p>

<p>How will councils implement this change to their financial planning?</p>	<p>Councils need to be able to adapt pricing policies to short-term changes in their community’s capacity to pay, while ensuring the long-term financial sustainability of councils. This is consistent with the Integrated Planning and Reporting (IP&R) framework which requires NSW councils to prepare a 10-year Long Term Financial Plan that estimates the rates revenue a council expects to generate over this period.</p> <p>This change allows councils to plan for long-term infrastructure spending aligned to its long-term rating trajectory required to fund this spending, in consultation with their community and the requirements of the IP&R framework.</p>
<p>What does council need to know before using this provision?</p>	<p>Councils should seek their own independent financial advice and understand the long-term implications of changing their revenue collection approaches during a specific period, including circumstances in which the intention of utilising this provision is to return to the same rating trajectory in future. Specifically, they should examine the cumulative impacts to their finances of adopting these flexible arrangements.</p>
<p>What if a council doesn’t take up its rate peg, can it apply the missed rate pegs and current year rate peg in one go?</p>	<p>Yes. This provision would allow a council to return to the original rating trajectory from the year for which the shortfall occurred. This means that a council could set its rates and charges and apply any shortfall from previous years to return to that trajectory.</p>
<p>Does the amendment apply to Section 511A – catching up of income lost due to the reduction in valuation?</p>	<p>No. Section 511A of the <i>Local Government Act 1993</i> has not been amended by this change.</p>
<p>Do councils need to consider any long-term financial implications of</p>	<p>Yes. If a council decides to limit the application of the full general income available in a given year due to extraordinary circumstances, they must do so in accordance with the broader guiding principles for councils and sound financial management principles. These principles are outlined in sections 8A and 8B of the <i>Local Government Act 1993</i> and the Integrated Planning and Reporting (IP&R) framework. Councils still have to carry</p>

choosing to use this flexibility?	out community consultation and then formally resolve to catch up the increase. Further community consultation would need to be taken during the year or years of the catch up to remind the community of that resolution and the reasons for the resolution at the time it was made.
Will this change affect regional and rural communities?	While the provision is of benefit to all councils, it would particularly benefit councils with regional and rural communities with substantial levels of farmland and natural resources. The communities in their areas are most exposed to environmental effects such as drought and to changes in commodity prices. The change allows councils to play a more active role in working with their community, and better set rates and services based on local conditions.
Was this amendment recommended as part of the IPART rating review?	The Government consulted with key stakeholders and the public about this amendment through extensive consultations by the Independent Pricing and Regulatory Tribunal (IPART) in 2015-2016 and public consultation in 2019. Stakeholders were almost unanimous in their support of the amendment.