

## Big Win for Councils: District Court dismisses challenge to rating debt recovery action

This week the District Court delivered its judgment in *Honner v Yorke Peninsula Council* [2015] SADC 117.

This judgment is of importance to all councils in the State as it limits the ability for ratepayers to defend debt recovery actions for outstanding rates in the Magistrates Court.

The relevant facts and findings are set out below.

### The Background

The Council, represented by KelliedyJones Lawyers, commenced a debt recovery action in the Minor Civil Claims division of the Magistrates Court to recover outstanding rates in the amount of \$988.42 from the defendant, Mr Honner.

The debt had arisen out of the defendant's refusal to pay a waste collection service charge which was levied by the Council in the 09/10, 10/11 and 11/12 financial years.

The relevant charge was imposed by the Council prior to the amendments to section 155 of the *Local Government Act 1999* and the then *Local Government (General) Regulations 1999* (now contained within regulation 13 of the *Local Government (General) Regulations 2013*) which provides a sliding scale to be applied to such charges in respect of land which is between 500 metres and 5 kilometres from a waste collection point, and requires that no charge be imposed for land which is more than 5 kilometres from the collection point.

Mr Honner lived a considerable distance from his nearest waste collection point. He claimed that he did not use the waste collection service as a result and objected to paying the service charge. He paid his rates each year, less the amount of the service charge. Outstanding rates arose as a result.

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### The Magistrates Court claim

The claim filed in the Magistrates Court by the Council required payment of the outstanding amount owed to the Council, in addition to the costs of filing the claim – a total amount of approximately \$1,200.00.

Mr Honner filed a defence to the claim which (amongst other things) contained a challenge to the Council's ability to validly impose the service charge under section 155 of the *Local Government Act 1999*.

The Council applied to the Magistrates Court to have Mr Honner's defence dismissed on grounds that the Magistrates Court did not have jurisdiction to hear the challenge to the validity of the service charge. The reason for this argument was that section 276 of the *Local Government Act 1999* limits

the jurisdiction of the Magistrates Court because challenges to the imposition of a service charge must be heard by the District Court, and such challenges cannot be raised as a defence to a debt recovery action in another Court.

Accordingly, the Magistrate granted the Council's application, dismissed the defence and made orders in favour of the Council.

### The District Court challenge

Mr Honner then applied to the District Court for a review of the Magistrate's decision.

The District Court agreed with the decision of the Magistrate.

*"provides a precedent...and can be relied upon to assist in ensuring that any defences against outstanding rates which challenge the validity of the rate or service charge are dismissed."*

In doing so, the Court recognised the importance of limiting challenges to the imposition of rates and service charges, stating at [44] that the object of section 276 of the *Local Government Act 1999* "is to obviate budgetary uncertainty for councils...and to prevent forum shopping, multiplicity of actions and potentially inconsistent decisions".

A further win was that the District Court also awarded the Council its costs of the District Court action. This is significant as there are several decisions of the District Court where it has declined to award costs, or has only awarded a minimal amount of costs upon a review from the Minor Civil Claims division of the Magistrates Court on grounds that the award of costs is contrary to the "spirit" of the jurisdiction.

The District Court in this matter has found that these previous decisions were not correct and has made a formal costs order which will allow for the recovery of a significant amount of legal fees incurred as a result of the review.

### Why is this decision important to Councils?

This decision is of significance to councils as it provides a precedent which is binding on the Magistrates Court, and can be relied upon to assist in ensuring that any defences against outstanding rates which challenge the validity of the rate or service charge are dismissed.

The decision also provides reassurance to councils that the rating powers relied upon in imposing an annual service charge under (the then) section 155 were valid, even if the ratepayer chose not to utilise the service provided.

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