

CLAUSE NOTES

Local Government Amendment Bill (No.2) 2011

Clause 1: Short Title

Clause 1 is a formal provision specifying the title of the proposed Act.

Clause 2: Commencement

Clause 2 is a formal provision specifying that the Bill will commence on the day it receives Royal Assent.

Clause 3: Principle Act

Clause 3 identifies that the amendments contained in the Bill relate to the *Local Government Act 1993* (the Act).

Clause 4: Section 86 amended (Interpretation of Part 9)

Clause 4 amends section 86 (interpretation of Part 9) of the Act as follows:

Subclause (a) inserts a definition of ‘averaged area rate’.

Subclause (b) inserts two new definitions – ‘category of rateable land’ and ‘certificate’.

Subclause (c) inserts averaged area rate into the interpretation of ‘rate’ for the purposes of capping rating increases under section 88A.

Subclause (d) inserts averaged area rate into the interpretation of ‘rate’ for the purposes of Division 9 (liability and payment of rates).

Subclause (e) inserts averaged area rate into the interpretation of ‘rate’ for the purposes of Divisions 10 and 11 (recovery of rates and sale of land for unpaid rates).

Subclause (f) inserts averaged area rate into the interpretation of ‘ratepayer’ to establish liability to pay rates.

Clause 5: Sections 86A and 86B inserted

New section 86A inserted.

The new section 86A inserts a new principle statement in Part 9 of the Act to make it clear that rates are a form of taxation, and that councils must take the principle into account when making decisions regarding rating.

Subsection 86A(1)(a) provides that rates are a form of taxation and not a fee for service.

Subsection (86A)(1)(b) clarifies the principle, already inherent in the Act, that, for the purposes of rating, the value of rateable land is an indicator of a ratepayer's capacity to pay.

Subsection (86A)(2) provides that rates cannot be legally challenged on the basis that a council has not taken into account these principles.

New section 86B inserted.

The new section 86B inserts a new requirement for councils to adopt a publicly available rates and charges policy.

Subsection (1) requires a council to adopt a rates and charges policy by 31 August 2012.

Subsection (2)(a) sets out that a council must include a statement of the rates and charges policy that a council intends to apply.

Subsection 2(b) enables the State Government to make regulations in relation to the detail of what the policy must contain.

Subsection (3) provides that a council's policy must consider the principles in section 86A.

Subsection (4) inserts requirements as to when a council must review its rates and charges policy. At a minimum, the council must review the policy every four years and when the council alters its rates and charges structure.

Subsection (5) provides that a council's rates and charges policy must be publicly available, as soon as possible after it has made or altered its policy.

Subsection (6) ensures that a council's rates and charges resolution cannot be legally challenged on the basis that it differs from the council's policy.

Clause 6: Section 87 amended (Exemption from rates)

Clause 6 inserts 'averaged area rate' into section 87 to ensure that organisations or bodies currently exempt from paying rates are also exempt from paying an averaged area rate.

Clause 7: Section 89A amended (values under Valuation of Land Act 2001 to be used as a basis of rates)

Clause 7 amends section 89A(4A) to insert 'averaged area rate' to enable a council to apportion an averaged area rate on a property that has been subdivided if it so determines.

Clause 8: Section 89B inserted

Clause 8 inserts a new section 89B that provides for a limit on the number of rateable properties that can be on a minimum amount set by a council under section 90 or section 107. The limit is 50 percent cent for the 2012-13 financial year, and then 35 percent for subsequent years.

The new section 89B empowers the Minister to make an order authorising a council to set a minimum amount that affects a greater percentage of the properties in the municipal area provided that the order is necessary to avoid unreasonable increases in rates for some ratepayers.

New section 89B inserted.

Subsection 89B(1) provides that for the 2012-13 financial year, 50 per cent is the relevant limit on the number of rateable properties that can on the minimum amount set by a council. Alternatively, a higher percentage may apply if it has been determined by the Minister in an order made under this section.

Subsection 89B(2) provides that, for all years following the 2012-13 financial year, 35 percent is the relevant limit on the number of rateable properties that can be on the minimum amount. Alternatively, a higher percentage may apply if it has been determined by the Minister in an order made under this section.

Subsection 89B(3) provides that a council may apply to the Minister for an order authorising it to set a minimum that will affect a higher percentage of properties than the limit prescribed in this section.

Subsection 89B(4) specifies the details that the council is to include in an application under this section.

Subsection 89B(5) empowers the Minister to request further information from a council making an application.

Subsection 89B(6) empowers the Minister to make an order.

Subsection 89B(7) provides that the Minister may only make an order in respect to a council if the effect of implementing the prescribed minimum amount limit would have significant rates increases for its ratepayers.

Subsection 89B(8) provides that the order is to state the relevant percentage limit of properties that can be on the minimum amount for a financial year.

Subsection 89B(9) specifies the details that may be included in the order.

Clause 9: Section 90 amended (General rate)

Clause 9 amends section 90 to limit the number of properties in a municipal area that can be on the minimum amount set for a general rate under that section.

Subsection 90(5)(a) refers to the new section 89B and provides that, in the 2012-13 rating year, a council cannot set a minimum amount that will apply to more than 50 per cent of properties or the relevant percentage provided in an order.

Subsection 90(5)(b) refers to the new section 89B and provides that for any other financial year, the relevant percentage limit of the number of properties on the minimum amount is 35 per cent or the relevant percentage provided in an order.

Clause 10: Section 93 amended (Service rate)

Clause 10 amends section 93 (service rate) of the Act to clarify that the establishment, management, provision or rehabilitation of waste management facilities is part of a waste management service for the purposes of making service rates and charges.

Clause 11: Section 107 amended (Variation in rates)

Clause 11 amends section 107 (variation in rates) of the Act to clarify that a council may vary not only the general rate or a service rate, but the minimum amount where the rate is also varied and a fixed charge has not been set.

Subsection 107(2B) refers to the new section 89B and provides that the percentage of relevant properties that may be on the minimum amount, as varied, is limited to 50 per cent in 2012-13 and, in any subsequent year, to 35 per cent or the percentage as provided in an order.

Subsection 107(2C) provides that the varied minimum amount is the minimum amount payable by the ratepayer.

Clause 12: Section 108 amended (Notification of variation)

Clause 12 amends section 108 (notification of variation) to include the requirement on the general manager to inform ratepayers of the minimum amount if it has been varied under the new section 107(2A).

Clause 13:Part 9, divisions 6A and 6B inserted

Clause 13 inserts two new Divisions into the Act.

Division 6A provides a new rating tool - 'averaged area rate'.

Division 6B provides a new power for councils to apply to the Minister to request an extension of time to remake a rate.

Division 6A – Averaged Area rates

New section 109A inserted.

Section 109A provides that a council may make an averaged area rate that will apply to certain categories of rateable land for a locality within a municipality.

Subsection 109A(1) enables a council to make an averaged area rate on the same day that it makes a general rate.

Subsection 109A(2) provides that the averaged area rate is to apply only to a specified category of rateable land in a locality.

Subsection 109A(3) provides that a council must be authorised by a certificate issued by the Director of Local Government (referred to in subclause 109H) before applying an averaged area rate.

Subsection 109A(4) provides that a council may make an averaged area rate in respect of land even if the council does not provide services to that land.

This subsection is consistent with section 90 of the Act relating to the application of the general rate.

Subsection 109A(5) sets out the categories of land that a council may apply an averaged area rate to.

Land must be used, or predominately used, for residential purposes, may be within a range of values of land, and/or be non-use residential land (i.e. vacant residential land).

Subsection 109A(6) clarifies that at any one time, either the general rate or an averaged area rate can be applied to a property, not both.

New section 109B inserted.

Section 109B provides for the calculation method to be applied to an ‘averaged area rate’, which is the total amount payable on the general rate of the land to which the averaged area rate is to apply, divided by the number of properties in that category.

Subsection 109B(1) inserts the definition of ‘applicable area of land’, which is land that is within the relevant locality and category to which the averaged area rate applies.

Subsection 109B(2) clarifies that an averaged area rate is to be in dollars or dollars and cents.

Subsection 109B(3) provides the method of calculating the averaged area rate – i.e. the total amount of the general rate payable by all the properties in the category divided by the number of properties in that category.

Subsection 109B(4) provides the method of calculating the total amount of the general rate payable.

In this section, the general rate also applies to a rate that is varied under section 107.

Subsection 109B(5) clarifies that the relevant valuation of land to be used when calculating the averaged area rate is the valuation that had effect immediately before the making of the averaged area rate.

Subsection 109B(6) prevents supplementary valuations made after the calculation from having effect to change the calculation.

A property that is subject to a supplementary valuation will either have the averaged area rate applied that has been calculated for that locality, or the general rate will apply if the supplementary valuation assesses the value of that property outside the range of values applied.

Subsection 109B(7) clarifies that the same category of land (that is assessed annual value (AAV), capital value or land value) that is used to set the general rate must be used by the council when calculating the proposed averaged area rate and the range of values of land.

New section 109C inserted.

Section 109C provides that a public notice must be published by a council in a newspaper that specifies prescribed matters of a proposal to apply for certification to make an averaged area rate.

Subsection 109C(1) provides that the council must publish a notice of the proposal to make an averaged area rate in a daily newspaper.

Subsection 109C(2) sets out the details that must be included in the public notice.

The notice must refer to the proposal and specify details of the locality; the category of land; the reasons why the council intends to impose an averaged area rate; a statement of how the averaged area rate is calculated; and invite interested persons to make written submissions within 21 days of the notice and to attend a public meeting.

Subsection 109C(3) provides that the public meeting specified in the notice must be held at least 21 days after the public notice is issued and the giving of notice to individual ratepayers under subsection 109D.

Subsection 109C(4) provides that the notice must be made publicly available at the council office and on the council's website. The notice must be available for 12 months.

New section 109D inserted.

Section 109D provides that the general manager is to send written notice to ratepayers likely to be affected by the proposed averaged area rate, and that the notice is to contain specified details.

Subsection 109D(1) provides that the council's general manager is to ensure that the notice is sent to each relevant ratepayer.

Subsection 109D(2) clarifies that a relevant ratepayer is a person whose property is likely to be affected by the application of an averaged area rate.

Subsection 109D(3) states that the notice to ratepayers is to contain the same information provided in the public newspaper notice and additional calculations specified in the following subclause.

Subsection 109D(4) states that the calculations that are to be in the notice to relevant ratepayers are the amount of general rates the ratepayer paid in the current financial year based on their value of land, and the amount that the ratepayer would have paid had an averaged area rate been applied in the current year. (The calculations will provide an indication of how an individual ratepayer will be affected by a proposed averaged area rate.)

Subsection 109D(5) clarifies that, for the purposes of the calculations in the subsection above, the relevant financial year is the year in which the notice is issued.

Subsection 109D(6) provides that the Brighton, George Town and Glamorgan-Spring Bay Councils are exempted from the requirement to provide relevant ratepayers with the additional calculations in respect to the making of an averaged area rate for the 2012-13 financial year.

Subsection 109E provides that a person may make written submissions to the council regarding the proposed averaged area rate and the general manager is to summarise the submissions and make the summary available to the public.

Subsection 109E(1) states that a person can make a written submission regarding the proposal.

Subsection 109E(2) clarifies that written submissions must be made within 21 days of the public notice in the newspaper.

Subsection 109E(3) provides that the general manager is to summarise the submissions and make the summary publicly available for a period of at least three months.

New section 109F inserted.

Section 109F provides for the conduct of the public meeting held in respect of a council's proposal to impose an averaged area rate.

Subsection 109F(1) clarifies that a council must hold a public meeting to discuss the proposal to implement an averaged area rate.

Subsection 109F(2) clarifies that the public meeting must be held on the day and at the time stated in the newspaper and ratepayer notice.

Subsection 109F(3) sets out that the summary of the public written submissions and any relevant issues raised at the public meeting are to be contained in the minutes of the council's next ordinary meeting.

New section 109G inserted.

Section 109G provides the process by which a council may apply to the Director of Local Government for a certificate in respect of the proposal to apply an averaged area rate.

Subsection 109G(1) empowers a council to apply to the Director for a certificate.

Subsection 109G(2) provides the details that an application is to include.

Subsection 109G(3) provides that a council must consider the record of the public submission summary and issues raised at the public meeting before deciding whether or not to apply for a certificate to introduce an averaged area rate to a specific locality and range of values.

New section 109H inserted.

Section 109H empowers the Director of Local Government to issue or not issue a certificate, prescribes the matters that the Director is to consider before determining whether to issue a certificate, and prescribes the content of the certificate.

Subsection 109H(1) empowers the Director to either issue or refuse to issue a certificate.

Subsection 109H(2) empowers the Director to request further information from a council in relation to an application for a certificate.

Subsection 109H(3) provides that the Director has 21 days to make a determination in relation to an application for a certificate. If the Director requires further information from a council, the 21 days will start from the date that the further information is received.

Subsection 109H(4) prescribes the details that the certificate must specify, including: the relevant council; the relevant locality; any range of values of land that has been applied; and the Director's authorisation for the council to make an averaged area rate.

Subsection 109H(5) provides that the Director is to be satisfied that the public consultation requirements have been substantially complied with prior to issuing a certificate.

Subsection 109H(6) provides a degree of flexibility by allowing a council to apply for a certificate for an area and/or range of values that is slightly different to those that were contained in the notices. This is to allow a council to make minor adjustments to localities or range of values as a result of issues raised during the public consultation.

Subsection 109H(7) empowers a council to apply an averaged area rate to the specific category of land in the locality that is stated in the certificate.

Subsection 109H(8) provides that a certificate will cease to have effect if a council does not apply an averaged area rate for the relevant category of land in a financial year after the certificate is issued.

Division 6B – Re-making of rates

Clause 13 inserts the new Division 6B (re-making of rates) to provide a mechanism by which the Minister may authorise a council to re-make a rate where a council's rates and charges resolution contains an error or may be invalid.

Section 109I inserted (interpretation of Division 6B). The definition of 'rate' includes an averaged area rate, charge, variation of a rate and a minimum amount.

New section 109J inserted.

Section 109J (rectification orders) provides that a council may apply in writing to the Minister for an order to rectify a rate invalidly made or made in error.

Subsection 109J(2) provides that the Minister may request such information from the council as may be necessary to consider an application for an order, and the Minister needs to be satisfied that there is an error or invalidity in the rate before making a rectification order.

Subsection 109J(4) provides the grounds upon which the Minister will make a rectification order.

Subsection 109J(5) provides that the Minister can make a rectification order even if legal proceedings have commenced. This will ensure that a council will be able to remedy an error within a rates resolution and prevent the potential loss of rates revenue.

Subsection 109J(6) sets out what the rectification order must contain, including the rate that the order relates to, authorisation to make another rate and the notice that a council must provide.

New section 109K inserted.

Section 109K provides for the procedure by which a council may, following the making of a rectification order by the Minister, revoke the rate and make a new rate.

Subsection 109K(1) provides that the rate may be revoked by simple majority and a new rate may be made in accordance with the rating provisions under Part 9 of the Act.

Subsection 109K(2) permits the council to remake a rate even though the time for making such a rate has expired. (Part 9 of the Act provides that a general rate must be made by 31 August of the relevant rating year.)

Subsection 109K(3) permits the council to remake a different type of rate ('substituted rate') than the rate being replaced ('previous rate').

Subsection 109K(4) clarifies that this new section does not prevent a council from re-making a rate within the period provided in the Act for making rates (1 June to 31 August of the relevant rating year).

New section 109L inserted.

Section 109L provides for the validity of previous rate notices when a rectification order has been made by the Minister and the council has made a new rate ('substituted rate').

This means that a council will only have to re-calculate rates payable by ratepayers and send out new rates notices only if necessary.

Subsection 109L(2) clarifies that this section does not validate a rates notice if the rates notice itself was invalid for example due to incorrect information.

New section 109M inserted.

Section 109M requires the general manager to recalculate rates payable under the new rate ('substituted rate').

New section 109N inserted.

Section 109N requires the general manager to send a supplementary rates notice under section 122 of the Act if the amount owing under the substituted rate exceeds that amount under the previous rate.

New section 109O inserted.

Section 109O provides the ratepayer to be refunded or credited with any overpaid amount where the amount payable under the substituted rate is less than the amount paid under the previous rate.

The general manager is required to send the ratepayer a 'notice of overcharging' if necessary.

Clause 14:Section 110 amended (Record of rates)

Clause 14 amends section 110 (record of rates) to require the general manager to include an applicable averaged area rate on the rates record of land.

Clause 15:Section 348 amended (Orders to be Statutory Rules)

Clause 15 amends section 348 (Orders to be Statutory Rules) so that a rectification order, and any order made under the Act, is a statutory rule for the purposes of the Rules Publication Act 1953.

Clause 16:Section 350A inserted

Clause 16 inserts new section 350A, which provides that new Schedule 10 has effect.

Clause 17:Schedule 10 inserted

Schedule 10 validates rates or charges made under Part 9 before the introduction day of this Bill. Validation does not apply to rates or charges that are currently subject to legal proceedings disputing the validity of rates or charges made.

Section 1(interpretation of Schedule 10) provides that the definitions of ‘charge’, ‘rate’ and ‘rates notice’ have the same meaning as provided in Part 9 of the Act.

Section 2 validates rates and charges made by councils before the date of introduction of this Bill. The validation includes any variation of a rate or charge and minimum amount set.

Section 3 (effect of validation on current proceedings) provides that the validation does not affect relevant court proceedings commenced before the introduction day of this Bill or any order or determination made by a court before the validation comes into effect.

For the purposes of the exemption to the validation, relevant court proceedings are claims to the effect that a rate or a charge, or a variation of a rate or a charge, or a minimum amount, was invalidly made.

Subsection 3(5) states that a council may not issue a new rates notice in relation to a rate or charge to a ratepayer who has made a relevant court claim if, but for the validation of the rate or charge, the council could not impose the rate or charge in respect to that ratepayer’s land.

Clause 18:Repeal of Act

Clause 18 (repeal of Act) is a formal provision that repeals this Amendment Act on the ninetieth day from Royal Assent.