

FACT SHEET

Local Government Amendment Bill (No.2) 2011

The Local Government Amendment Bill (No. 2) 2011 (the Bill) ensures that councils have legislative certainty in regard to rating and provides additional rating tools and clarifications.

Principles of taxation

Understanding the principles upon which rates are made is critical to achieving a consistent approach to how councils determine their rates and charges.

The Local Government Amendment Bill (No. 2) 2011 includes a key principle statement clarifying that rates are a tax. The Bill provides that capacity to pay, which is a foundation principle of taxation, must be taken into consideration by councils when making decisions concerning rates.

The Bill includes another key principle statement that the value of a ratepayer's land is an appropriate indicator of a ratepayer's capacity to pay.

To avoid increased legal uncertainty, the Act provides that the exercise of a council's powers cannot be challenged on the basis that the principles have not been taken into account.

Rates and charges policy

Openness and transparency in how councils set their rating policies and balancing the principles of equity and transparency is fundamental to achieving a framework of accountable decision-making.

The Bill provides a new requirement for councils to develop and publish a rates and charges policy. These policies must take into account the principle statements introduced in this Bill. The policies are to be implemented by 31 August 2012 and will be reviewed every four years, or when a council makes a significant change in how it applies rates and charges, whichever is earlier.

The Bill enables the State Government to make regulations which may be used to provide further direction to councils on the content of its rates and charges policy.

Clarification of the use of the minimum amount

The Bill provides councils with a clear legislative basis to vary the minimum amount payable with respect to a general rate if a council varies the general rate under Section 107 of the *Local Government Act 1993*.

However, to ensure that the minimum amount is used appropriately, the Bill limits the number of properties that can be on the minimum amount to 35 per cent (50 per cent in the 2012-13 financial year).

The Bill provides further flexibility by allowing a council to apply to the Minister for an order authorising an alternate transition to 35 per cent. These provisions allow a council that is currently highly dependent on the minimum amount to have more time to transition to the limit of 35 per cent and avoid significant rate fluctuations that might otherwise be caused by transitioning within two years.

Waste Management services

The Bill clarifies that councils may apply service rates and charges for services broadly related to waste management. Councils are expressly permitted to apply a service rate or charge for the establishment, management, provision or rehabilitation of waste management facilities.

Averaged area rates

The Bill provides councils with a new, optional rating method to apply an averaged area rate to residential localities. ('Locality' can be any residential area as defined by the council).

There are three major components of the averaged area rate provisions:

1. *Calculation* - The calculation of the averaged area rate for residential ratepayers within a locality.
2. *Consultation* - Consultation with the public concerning the council's intention to apply an averaged area rate to residential ratepayers within a locality.
3. *Certification* - Certification by the Director of Local Government that the communication process has been undertaken in accordance with the legislation.

Calculation

The averaged area rate is the calculation of the total revenue that would be raised by applying the general (or varied under section 107 of the Local Government Act) rate for residential land within a locality and dividing the amount equally by the total number of residential land assessments within that locality.

The averaged area rate is limited to areas of rateable land that are used, or predominantly used, for residential purposes. A council may apply an averaged area rate to residential land within a specified band of values. A council may calculate a separate averaged area rate in respect to vacant ('non-use') residential land.

Consultation

The Bill requires a council to undertake extensive public consultation prior to implementing an averaged area rate. This will enable the community to be informed and have an opportunity to make submissions regarding the proposal to make an averaged area rate.

The following steps must be undertaken before an ‘averaged area rate’ can be set by a council:

- i. A council must advertise in a daily newspaper its proposal to make an averaged area rate for a locality and the details of the proposal.
- ii. A council must send a notice to affected ratepayers in the locality or localities to inform of its intention to make an averaged area rate and include advice on how this will affect the rates paid by the individual ratepayer.
- iii. A council must invite public submissions from the community.
- iv. A council must then hold a public meeting and allow the public to discuss the issue.
- v. If the council decides to proceed with the proposal in the method advertised, the council must apply to the Director of Local Government for approval.
- vi. If the Director issues a certificate approving the proposal, the council may make its rates and charges resolution to include an averaged area rate.

Certification

Before an averaged area rate can be made by a council, the council must apply to the Director of Local Government for certification that an averaged area rate may be made for a specified locality or localities.

The purpose of the certification is to ensure that a council has adequately complied with the public consultation process as required under the new Division 6A.

A certificate issued by the Director under this section will continue to have effect for the following rating years for the localities referred to in the certificate. If a council changes the localities that it proposes to rate by averaged area rate, or does not rate by averaged area rate for a rating year for a specified locality, the certificate will no longer apply.

Rectification of errors

The Bill provides councils with a new ability to apply to the Minister for Local Government for a Rectification Order to allow the council to remake a rate or charge if a rate or charge is found to have been made in error, or is invalid under the Local Government Act.

The Bill does not empower the Minister to set a new rate or charge, rather to essentially allow an extension of time outside the period allowed within the Local Government Act (1 June to 31 August) for a council to remake its rates resolution, in its entirety or in part.

Validation of previous rates and charges resolutions

The Bill provides validation for all rates and charges resolutions made prior to the introduction of the Bill into Parliament. However, the Bill will not affect proceedings that have already been commenced or determined in a court that relate to the validity of a council’s rates. Any proceedings already commenced will continue to be dealt with in the ordinary way.