

Deloitte Access Economics

**Review of local  
government rating  
exemption  
provisions**

**Local Government NSW**

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# 1 Introduction

Deloitte Access Economics has been commissioned by Local Government NSW (LGNSW) to conduct an analysis of the current local government rating exemptions in New South Wales and, based on the findings of this analysis, make recommendations for reform.

The need to examine and potentially revise the existing rate exemptions has been highlighted by a number of reviews into the financial capacity of local governments in recent years.

In 2006, an independent inquiry into the financial sustainability of local governments was commissioned by LGNSW (then the Local Government and Shires Associations of NSW). One of the reform options proposed for the NSW rating system was to reduce the level of rate exemption grants, particularly in relation to state government trading enterprises and entities which benefit from local government services and have a capacity to pay (LGI 2006, p. 212).

The 2008 Productivity Commission research report into the revenue raising capacity of local governments found that:

*“Rates exemptions reduce local governments’ rates bases and do so differentially across local governments with different proportions of exempt land. Whether exemptions constrain the overall capacity of local governments to raise revenue from rates depends on the extent to which it is (politically) feasible for them to set rates higher than otherwise would be required on non-exempt land” (Finding 6.3, p. 107).*

The need to revise the current system was also reinforced by Comrie in a working paper recently published for the Australian Centre of Excellence for Local Government, where he argued that:

*“Given that council rates are a tax, it is appropriate that some concessions be available for disadvantaged ratepayers. However, it needs to be borne in mind that local government rates represent only 3.5% of total tax revenue by all Australian governments. Other spheres of government are far better placed to achieve effective income redistribution because they have both more income and a broader base of taxpayers across which to equalise than do individual councils” (2013, p. 37).*

The Local Government Acts Review currently underway in NSW provides an opportunity to consider and, as appropriate, implement reform to the current framework of rating exemptions. The analysis undertaken by Deloitte Access Economics and the findings presented in this report serve as one input to this process.

In conducting its review of the appropriateness of existing rating exemptions, Deloitte Access Economics has relied entirely on desktop information, drawing on comparisons against other jurisdictions together with the principles of local government revenue-raising to critically examine the public policy justification for the current exemptions.

The remainder of this report is structured as follows –

- Chapter 2 overviews the relevant legislation.
- Chapter 3 explores the potentiation justifications for – or objectives of – rate exemptions.
- Chapter 4 examines the key lessons that can be drawn from rate exemptions in other Australian and international jurisdictions.
- Chapter 5 analyses the current rate exemptions in NSW.
- Chapter 6, drawing on the findings of the preceding analysis, puts forward potential recommendations for reform.
- Appendix A describes the provision of rate exemptions interstate and overseas.

## 2 Review of legislation

The manner in which local governments in New South Wales are able to finance their activities is administered by a number of pieces of state government legislation. These include the:

- *Local Government Act 1993*,
- *Local Government (General) Regulation 2005*, and the
- *State Owned Corporations Act 1989*

This section canvasses these to identify existing provisions for council rate exemptions.

### 2.1 NSW - Local Government Act 1993

Within NSW, local governments have the authority to “raise funds for local purposes by the fair imposition of rates, charges and fees” (*Local Government Act 1993*, s 8). A council must make and levy ordinary rates on an annual basis (s 494(1)), and in certain circumstances may also choose to apply special rates to cover the costs of specific activities (s 495(1)). It is also mandatory for councils to impose an annual charge for the purposes of financing domestic waste management services (s 496).

There are four categories of ordinary rates, which correspond with the four categories of rateable land, namely: farmland, residential, mining and business (s 493(1)). Within a local jurisdiction, each parcel of rateable land must be classified into one of these groups (s 514), to indicate which ordinary rate will apply (s 494(2)). In some instances, councils have the power to establish sub-categories to allow for differential ordinary rate treatments (s 493(2), s 529).

The requirement to pay rates does not pertain to every land parcel with a local council area. Rather, the Act grants exemptions to a broad range of land uses (s 554), the majority of which were established by the NSW *Local Government Act 1919*.

Section 555 specifies the types of land which are exempt from all ordinary and special rates. These are listed in Table 2.1. Furthermore, section 556 provides for the exemption of further land types from all rates, apart from special rates relating to water supply and sewerage. These are described in Table 2.2. In addition to the provisions mentioned above, sections 557 and 558 also allow for the exemption of land from water supply and sewerage special rates, under certain circumstances.

**Table 2.1: Land exempt from all rates in NSW**

	Land Type	Other Relevant Legislation
(a)	Crown land not held under a private lease	
(b)	All land within national park, historic site, nature reserve, state game reserve or karst conservation reserve	National Parks and Wildlife Act 1974
(b1)	Land which is the subject of a conservation agreement	National Parks and Wildlife Act 1974  * If a parcel of land is partially subject, a reduced rate should be levied on the whole parcel – LG Act 1993 s 555(3)
(b2)	Land associated with the Nature Conservation Trust of NSW	Nature Conservation Trust Act 2001
(c)	Land within a special or controlled area for Sydney Water Corporation	Water Board (Corporatisation) Act 1994
(c1)	Land within a special area for Hunter Water Corporation	Hunter Water Act 1991
(c2)	Land vested in, or owned by State Water Corporation, for installed water supply works	Water Management Act 2000
(d)	Land within a special area for a water supply authority	Water Management Act 2000 – s 302
(e)	Land that belongs to a religious body, which is used in connection with: <ul style="list-style-type: none"> <li>• A church or other building used or occupied for public worship,</li> <li>• A building used or occupied solely as the residence of a minister of religion in connection with any such church or building,</li> <li>• A building used or occupied for the purpose of religious teaching or training, or,</li> <li>• A building used or occupied solely as the residence of the official head or the assistant official head of any religious body in the State or in any diocese within the State</li> </ul>	* If partially meets conditions, it is to be valued in accordance with s 28A of the Valuation of Land Act 1916 to enable those rates to be levied on the part that is not exempt - LG Act 1993 s 555(5)  * Sections 7B and 28A of the Valuation of Land Act 1916 extend to a stratum for the purpose of carrying out this valuation, regardless of whether the stratum is registered – LG Act 1993 s 555(7)
(f)	Land which belongs to, is occupied and used in connection with a school. Inclusive of: <ul style="list-style-type: none"> <li>• Playgrounds that belong to and are used in connection with a school</li> <li>• Buildings occupied as a residence by school teachers, employees or caretakers, that belongs to and are used in connection with a school</li> </ul>	Education Act 1990

(g)	Land vested in the NSW Aboriginal Land Council, or another local Aboriginal Land Council, which is declared exempt. Specifically:	Aboriginal Land Rights Act 1983 – Division 5 of Part 2
	<ul style="list-style-type: none"> <li>Land that is not being used for a residential or commercial purpose, or</li> <li>Land that is of spiritual or cultural significance that has been declared so by resolution with the approval of the Minister for Aboriginal Affairs. Such land cannot be used for a residential purpose.</li> </ul>	Aboriginal Land Rights Regulation 2002 clause 7
(g1)	Land vested in or owned by a public transport agency, for installed rail infrastructure facilities	Transport Administration Act 1988 – s 3C
(h)	Land below high water mark and used for any aquaculture relating to oyster cultivation	Fisheries Management Act 1994

Source: NSW *Local Government Act 1993* - s 555(1)

**Table 2.2: Land exempt from most rates in NSW\***

	Land Type	Other Relevant Legislation
(a)	Public places	
(b)	Public reserves, vested in the Crown, a public body, or trustees	
(c)	Land used for a common, vested in the Crown, a public body, or trustees	
(d)	Public cemeteries, vested in the Crown, a public body, or trustees	
(e)	Land used solely for free public libraries, vested in the Crown, a public body, or trustees	
(f)	Land acquired under an environmental planning instrument, not leased for private purposes	
(g)	Land that is the subject of a granted mineral claim, held under a private lease from the Crown, declared not rateable	Mining Act 1992 – Division 4 of Part 2
(h)	Land belonging to a public benevolent institution or public charity and is used or occupied by the institution or charity for its purposes	<p>* The provisions of Charitable Fundraising Act 1991 are irrelevant to this determination – LG Act 1993, s 559</p> <p>* If partially meets conditions, it is to be valued in accordance with s28A of the Valuation of Land Act 1916 to enable those rates to be levied on the part that is not exempt - LG Act 1993 s 556(3)</p> <p>* Sections 7B and 28A of the Valuation of Land Act 1916 extend to a stratum for the purpose of carrying out this valuation, regardless of whether the stratum is registered – LG Act 1993 s 556(5)</p>

(i)	Land belonging to a public hospital	
(j)	Land vested in the Minister for Health, the Health Administration Corporation or the NSW Health Foundation	
(k)	Land vested in a local health district	Health Services Act 1997
(l)	Land vested in a university or university college, and is used or occupied solely for its purposes	
(m)	Land vested in the Crown or the Sydney Cricket and Sports Ground Trust used for specific purposes	Sydney Cricket and Sports Ground Act 1978
(n)	Land vested in the Crown or the Zoological Parks Board and used or occupied by the Board for its purposes	
(o)	Land vested in the mines rescue company and used for a mine rescue station under the company's control	Coal Industry Act 2001
(p)	Land managed by the Teacher Housing Authority, on which a house is erected	
(q)	Land leased to the Crown for cattle dipping	
(r)	Land specified in the regulations	
(s)	Land vested in an Aboriginal Land Council and reserved under the other relevant legislation	National Parks and Wildlife Act 1974 – Part 4A

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\* Not exempt from water supply special rates and sewerage special rates

Source: NSW *Local Government Act 1993* - s 556(1)

## 2.2 NSW - Local Government (General) Regulation 2005

Regulation 123 extends s 556 of the *Local Government Act 1993*. It declares four further categories exempt from all rates, apart from water supply special rates and sewerage special rates. These additional exempt categories are:

- All land leased by the Royal Agricultural Society in Homebush Bay (as defined in the *Olympic Co-ordination Authority Act 1995*, before the repeal of that Act);
- All land occupied by the Museum of Contemporary Art Limited;
- All land comprising the site known as Museum of Sydney, on the site of the first Government House;
- All land that is held by a body corporate on behalf of an Aboriginal person or persons pursuant to an indigenous land use agreement registered under the *Native Title Act 1993*.

## 2.3 NSW - *City of Sydney Act 1988*

At present, the *City of Sydney Act 1988* makes no explicit reference to the provision of rate exemptions based on the manner in which land is utilised.

## 2.4 NSW - *State Owned Corporations Act 1989*

State owned corporations (SOCs) fall into one of two categories, company SOCs and statutory SOCs. For a company or a corporation to be considered an SOC, it must be inserted into Schedule 1 or Schedule 5 of the legislation respectively, through an Act of Parliament (s 4 and s 20A).

The legislation notes specifically that any state owned corporation is “not exempt from any rate, tax, duty or other impost imposed by or under any law of the State”, simply because of its link to the public sector (s 9(b) and s 20F(b)).

Table 2.3 lists the state owned corporations (SOCs) identified within this legislation. At present, there are no company SOCs listed in Schedule 1. Previously, the schedule included Sydney Water and Hunter Water, which have since been corporatised, and listed in Schedule 5.

**Table 2.3: State owned corporations in NSW**

<b>Statutory SOCs listed under Schedule 5</b>
Essential Energy
Delta Electricity
Ausgrid
Eraring Energy
Hunter Water Corporation
Endeavour Energy
Forestry Corporation
Landcom
Macquarie Generation
Newcastle Port Corporation
Port Kembla Port Corporation
State Water Corporation
Superannuation Administration Corporation
Sydney Ports Corporation
Sydney Water Corporation
TransGrid

Source: NSW *State Owned Corporations Act 1989* - Schedule 5

### 3 Rating exemptions and the principles of optimal taxation

Before an evaluation of the appropriateness of existing rate exemptions can be undertaken, it is necessary to make clear the intended objectives of such provisions and to provide a suitable public policy lens through which to assess them. As the single tax instrument available to local governments, rates are a discretionary source of general government revenue. The funds derived from the imposition of ordinary rates are not tied to the provision of certain services; rather, they are used to finance a broad range of community facilities.

Some of the main uses of general revenue at the local level acknowledged by the Productivity Commission (2008, p.98) include:

- Provision of goods and services with public good characteristics, such that it would be impractical and inefficient to impose direct user charges, for instance; roads, bridges, drainage systems, street lighting and parks;
- Subsidising goods and services with positive externalities, whereby private consumption by one individual also generates benefits for the broader community, and
- Funding certain facilities to ensure equity of access, such as libraries and public toilets.

In order to examine the appropriateness of rate exemptions, it is essential to identify the ways in which they accord with the appropriate principles of public policy – which, in light of the points above, are in this case the principles of optimal taxation. The 2009 Henry Review recognised efficiency, simplicity, equity, sustainability and policy consistency as the most important criteria by which to assess tax systems (Commonwealth of Australia 2009, p. 17). In a similar manner, Deloitte Access Economics views the following principles as most significant in the architecture of local government rating systems:

- **Efficiency:** does the rating methodology significantly distort property ownership and development decisions in a way that results in significant efficiency costs?
- **Simplicity:**
  - Is the system practical and cost-effective to administer and enforce?
  - Is the system simple to understand and comply with?
- **Equity:** does the tax burden fall appropriately across different classes of ratepayers?
  - **Capacity to pay:** are those community groups with greater economic capacity in fact contributing more?
  - **Benefit principle:** where the distribution of benefits is not uniform, should those who benefit more contribute more?
- **Sustainability:** does the system generate sustainable, reliable revenues for councils and is it durable and flexible in changing conditions (i.e. can it adequately withstand volatility)?

- **Cross-border competitiveness:** to what extent does the rating system undermine the competitiveness of the council/state as a place to live and/or own a property or operate a business?
- **Competitive neutrality:** are businesses conducting similar activities treated in similar ways?

Simultaneously optimising each of these criteria is not feasible; there are tradeoffs among them. The most efficient system may place an excessive burden on segments of the community where, from an equity point of view, this is not desirable. Alternatively, it may be overly costly for councils to administer, or for ratepayers to understand and comply with. Hence, the design challenge is one of balancing often competing considerations in an economically appropriate fashion.

That is, the preferred design of the rating system, and the extent to which it satisfies these criteria, ultimately hinges on the weight that policymakers assign to different criteria. This is true both for rating generally and in considering specific elements of the rating system, such as rating exemptions. For this reason, the analysis presented in this report can not in all cases provide definitive findings regarding whether certain exemptions should be retained or abandoned; an element of discretion remains with policymakers.

The way in which the abovementioned principles relate to the provision of local government rating exemptions is described below.

### 3.1 Efficiency

A tax is inefficient to the extent that it distorts decision making in production and consumption. While all general revenue-raising taxes, including rates, will influence behaviour in some way in practice, attempts should be made to minimise such distortions as much as possible.

Other factors aside, a tax will be most efficient when the base of that tax is as broad as possible. Therefore, to the extent that rate exemptions narrow the tax base upon which local government rates are levied, such provisions have the effect of reducing efficiency. Efficiency is also undermined where taxes or tax exemptions lead to economic decisions which are inconsistent with those that would prevail in the absence of the tax or tax exemption. Only in the case of corrective taxes is such behavioural change a desirable outcome.

In the case of local government rating, the economic efficiencies generated most commonly relate to land use. An exemption will undermine efficiency to the extent that it distorts land use away from that which would prevail in its absence. Examples of this type of behaviour include:

- Higher demand for places in residential or aged care facilities operated by exempt institutions, as opposed to non-exempt private operators, simply due to lower costs;
- Growth of non-core educational activity within the grounds of private schools; and,
- Influences on property ownership and development decisions.

## 3.2 Simplicity

While recognising that taxation systems are complex, policies and legislation should be designed to minimise this complexity – both in the interests of minimising the cost associated with administering the scheme and in order to minimise the regulatory burden on taxpayers. In this vein, rate exemptions should be easy to understand to ensure clarity and cost minimisation on behalf of both local governments and potential ratepayers.

On the administration side, the process of revenue-collection should be cost-effective. Qualification conditions for exemptions should be objective, transparent and appropriately targeted to minimise the burden on local governments when making eligibility determinations and to minimise the scope for ineligible ratepayers to agitate for exemption. At the same time, the conditions under which exemptions are granted should be designed to minimise the cost of monitoring ongoing compliance and eligibility. Fragmented and vague exemptions will cause limited council resources to be absorbed in the administration process.

## 3.3 Equity

The provision of an exemption accepts the notion that it is appropriate for local ratepayers to subsidise the activities of the exempt entity. This is because exemptions ultimately affect the distribution of the burden of revenue-raising within local communities. In considering the appropriateness of this redistribution, two discrete notions of equity warrant consideration: equity in terms of capacity to pay (that is, the concept of socio-economic equity (or vertical equity)) and equity in terms of the accordance between benefits received from council services, the incidence of their costs and the extent to which this is compensated by benefits received by the local community. The ways in which these key concepts relate to the issue of rate exemptions are described below.

*Benefit principle:*

1. *Do exempt institutions benefit from services provided by the local government?*
2. *Do the activities of exempt institutions create additional costs for local government?*
3. *To what extent do exempt institutions generate benefits for the community?*
4. *Overall, can it be considered that the community benefits outweigh the cost to society of allowing exemptions?*
5. *Are these net community benefits mainly concentrated within the local government jurisdiction, or are they spread more widely across broader society?*

*Capacity to pay:*

1. *Do exempt institutions have the capacity to make financial contributions towards local government services which they receive, in the form of rates?*
2. *To what extent does this capacity to pay restrict their ability to provide broader community services?*

When analysing the equity effects of a rate exemptions, it is important to address each of these questions systematically and to balance the considerations of exempt institutions against those of the ratepayers within the relevant local jurisdiction.

Instances where the equity justification of exemptions may be weak include:

- cases where the community benefits of exempt institutions extend broadly beyond the borders of the local jurisdictions;
- cases where the activities of exempt institutions generate additional costs for local governments; and
- cases where exemption institutions are involved in commercial activities, indicating capacity to pay.

In these circumstances, it may be more appropriate to replace exemptions with alternative rate relief instruments, or indeed to withdraw relief entirely. In instances where rate relief is justified on equity grounds, it is important to recognise the efficiency impacts of granting such allowances. This is but one example of the way in which tax relief involves a trade-off between the objectives of optimal taxation.

### 3.4 Sustainability

The principle of sustainability considers the question of whether tax systems allow for reliable revenue streams which adequately withstand volatility in economic conditions. Clearly, the provision of exemptions is somewhat counter to the sustainability of council rate revenue, it establishes circumstances which potentially lead to an erosion of the rate base over time. It is important that local governments have access to secure revenue sources so that they can continue to provide essential services to the community and that they have some certainty of future revenue flows.

It is thus essential that exemptions are appropriately targeted to minimise sustainability risks. As examined in other aspects of this report, there must be a clear and explicit justification for each rating exemption and, equally critically, the specification of the legislation must ensure that eligibility is limited to the intended recipients.

### 3.5 Cross-border competitiveness

As council rating systems are determined locally and vary across jurisdictions, it is possible that variations in the provision of exemptions will affect investment decisions across regions (for example, the choice of head office location for a business). In this context, as well as considering the impacts on – especially – efficiency, councils must also consider the impacts of rating exemptions on their competitiveness with other councils. Highlighting the trade-offs that exist across principles, provision of an exemption which compromises efficiency may be justified by a council if it preserves or creates a competitive edge with/over other councils that leads to employment-enhancing investment in the region.

## 3.6 Competitive neutrality

The principle of competitive neutrality focuses on whether businesses conducting similar activities are treated in similar ways. Generally, the principle is used in the context of competition issues between public and private businesses, which may arise due to preferential treatment in the public sector (Productivity Commission 2012). To the extent that rate exemptions are provided for government land, or land in use by government enterprises, the effect on competitive neutrality must be addressed (Productivity Commission 2008, p. 242). That is, consideration must be given to whether the tax treatment of the land is creating an uneven playing field between the public and private enterprise.

Over the ten years to 2005, governments have made the achievement of competitive neutrality a focus of the COAG National Competition Policy. It remains on the national agenda through the Competitive Neutrality Complaints Office, which sits within the Productivity Commission, and the COAG National Reform Agenda.

## 3.7 Summary of implications

The principles of optimal taxation provide an instructive lens for analysing the justification for local government rating exemptions, highlighting that while exemptions can reasonably be motivated by considerations of equity (both capacity to pay and benefit principle), they can also compromise:

- Efficiency, where they distort land use decisions.
- Simplicity, where they generate significant burdens for administration and compliance.
- Equity, when they are granted where capacity to pay exists or where the recipient is a material beneficiary of council services.
- Fiscal sustainability, where they create scope for revenue bases to be unduly undermined.
- Cross-border competitiveness, where they impact decisions to invest or reside within a particular jurisdiction.
- Competitive neutrality, where they are provided to government-owned enterprises in competition with commercial businesses.

The fact that exemptions may compromise the principles of optimal taxation in these areas is not immediate grounds for their removal; rather, it suggests that close scrutiny should be paid to their justification and impacts. Chapter 5 takes up this task.

## 4 Treatment of rate exemptions in other jurisdictions

The current interstate and overseas treatment of rate exemptions and alternative forms of rate relief provide a useful point of comparison for New South Wales. Appendix A describes these provisions in detail and identifies potential areas for reform. Overall, there are a number of important conclusions which can be drawn from this analysis. This section identifies four key areas which are particularly relevant to the case for reform in New South Wales.

### 4.1 Provision of partial rate relief

In order to better balance the community benefits provided by an exempt institution against the benefits they receive from the provision of council services, partial rate relief instruments may be used. This lessens the burden placed on local ratepayers, particularly in circumstances where organisations that would otherwise be fully exempt from rates payments have some capacity to pay. In addition, the calculations associated with rebates, discounts and reductions expose the rate relief process to greater scrutiny. This has the potential to focus relief on legitimately equitable circumstances, while reducing efficiency losses.

Examples where partial rate relief instruments have been implemented successfully include:

- Provision of 75% rebates to community service organisations, schools and universities in South Australia;
- Existence of a 50% non-rateable class in New Zealand legislation;
- Requirement that all properties pay targeted rates for water supply, sewage or waste services in New Zealand, if imposed, regardless of general rate exempt status;
- Opportunity for 35%, 65% or 90% property tax reductions in New Brunswick, Canada; and
- Provision of business rate relief measures in the United Kingdom, such as the 80% discount for charities and community sporting clubs.

### 4.2 Clearer qualification criteria

Relevant legislative provisions related to local government rating should make the conditions for rate relief easy to understand and should target instances where relief is likely to be justified in accordance with the principles of optimal taxation. Qualification criteria can be designed to reflect the elements of equity, by ensuring that eligible organisations contribute to the local community and are not involved in commercial activities.

On these grounds, consideration could be given to amending legislation in New South Wales to reflect some of the following examples:

- South Australian requirements that community service organisations in receipt of rebates are not for profit, provide service below cost and do not restrict access to members;
- More specific wording focusing on targeted land use demonstrated in South Australian legislation, such as “used for educational purposes” rather than “used in connection with a school”;
- The land size restraint of Queensland law, notwithstanding that the effect of a 20 hectare threshold is practically rather weak;
- The requirement of New Brunswick, Canada, that community service organisations be predominantly funded by voluntary donations;
- The UK condition that community organisations are “not established or conducted for profit”; and
- The emphasis on overall community benefit made by the Tameside Metropolitan Borough, UK.

### 4.3 Linkage of income or rate payments to local government services

Requirements can also be put in place to ensure that income generated or rates paid by an eligible institution are directed towards local government costs which they generate.

For instance:

- The South Australian requirement that those occupying land used for sport and recreational purposes spend all of their income on the maintenance of that land, to qualify for an exemption; and
- The South Australian requirement that at least 50% of Forestry Corporation rates are spent on roads connected with the activities of the corporation.

### 4.4 Authority for council discretion

Many other jurisdictions grant local governments the power to manage which organisations in their community (within certain categories) are able to receive rate relief. This can help to ensure that the financial burden of exemptions or reductions remains equitable, given their local circumstances and the nature of activities undertaken by the institution. In many cases, organisations are required to apply for an exemption, which has the potential to explicitly match relief claims with the equity considerations described in section 3.3.

However, it is important to acknowledge the corresponding requirement that local governments have the capacity to manage such claims. Safeguards should also be put in place to ensure that local governments do not reject relief claims which are in fact legitimate; or, equally, that they are not excessively lobbied to accept claims that are illegitimate. It is possible that a mix of mandatory and discretionary relief provisions can achieve this purpose. In addition, it should also be recognised that the authority for council discretion is likely to compromise the principle of simplicity.

Cases where local governments have discretionary powers include:

- The provision that local governments in Queensland may resolve to exempt land used for charitable purposes;
- The provision that local governments in Alberta, Canada, may grant exemptions to property held by non-profit organisations;
- The permissive exemption allowances in British Columbia, Canada;
- The allowance that, by a two-third vote, municipalities in British Columbia, Canada, may also apply exemptions to land used for public worship, a religious community hall or public athletic and recreational purposes; and
- The range of discretionary relief provisions in the United Kingdom.

## 4.5 Summary of lessons

Overall, there are various meaningful features of interstate and international rate relief legislation which are not currently reflected in New South Wales. There would appear scope for improvement in relation to partial relief instruments, clearer qualification criteria, linking funds to specific purposes and council discretionary powers.

## 5 Impacts of the current exemptions

Combining the principles of optimal taxation with the lessons from interstate and overseas provides a basis for evaluating the continued relevance and appropriateness of rating exemption provisions of the NSW *Local Government Act 1993*. Accordingly, this Chapter draws on the framework established in Chapter 3 and the findings of Chapter 4 and Appendix A to critically examine the impacts of, and justification for, the current rating exemptions. Drawing on the conclusions of this analysis, Chapter 5 then provides some recommendations for reform, systematically evaluating each of the current exemptions.

### 5.1 Inefficiency – the growing commercial activities of exempt institutions

The distinction between social and commercial economic activity has progressively blurred over time, with community-orientated enterprises increasingly engaging in more commercially-focused activity. While a variety of factors have driven this, one potential contributor in NSW is rating exemptions granted by councils. To the extent that these exemptions encourage land to be used and developed in ways contrary to that which would prevail in their absence, economic efficiency is compromised.

The following case study analyses the way in which the rate exemptions allowed by the legislation in NSW can be linked to issues of economic inefficiency. As the subsequent discussion explores in greater detail, to the extent that the capacity to pay of these organisations and/or their draw on council services is expanded as they venture into commercial activities, equity considerations may be compromised also.

#### 5.1.1 Case Study: Retirement villages operated by charitable institutions

Under the existing legislation, council rate exemptions are available for retirement villages or aged care facilities operated by charitable or public benevolent institutions. This is due to the general nature of the legislation, which describes the necessary qualification as “land belonging to a public benevolent institution or public charity and is used or occupied by the institution or charity for its purposes” (NSW Local Government Act 1993, s 556(h)).

The allowance of complete rate exemptions and the lack of specification of what activities can be undertaken acts as an incentive to enterprises within the aged care industry to operate under the banner of a charitable institution. The lower costs associated with rate exemptions may potentially be passed on in some capacity to residents in the form of lower fees; or they may be retained as profits (or operating surplus) by the institution. The competitiveness of the relevant markets and consumers demand characteristics will ultimately determine this economic incidence.

The incidence of the exemption – that is, who ultimately benefits from it – also bears on its equity implications. Under circumstances where rate exemptions are passed on to

retirement village residents, there is a redistribution of the rating burden from other ratepayers (e.g. residents in private dwellings) to these individuals. The characteristics of retirement village residents therefore determine the equity implications. To the extent that they are typically of higher income or wealth than the average ratepayer in the municipality, this redistribution will be equity-diminishing. To the extent that they are typically of lower income or wealth than the average ratepayer in the municipality, this redistribution will be equity-enhancing. The characteristics of retirement village residents has not been analysed as part of this report.

In any case, their impact is to distort land use from its optimum. The magnitude of these distortions is likely to compound over time if the existing provision is not revised, due to our aging population and the associated growth of the aged care industry.

It is important to acknowledge that some progress has been made in recent years. The *Local Government Amendment (General Rate Exemptions) Act 2010* introduced two key changes to the legislation, in an attempt to better target the provision of exemptions towards non-commercial activities. The Parliament recognised that religious bodies and charities could potentially use part of a single land parcel for dual purposes, some of which are legitimately exempt purposes, but others not. Clauses were added to sections 555 and 556 of the *Local Government Act 1993*, to enable local governments to levy rates on the portions of land which used for non-exempt purposes under the Act.

That said, these alterations did not have the effect of generating material additional local government revenue. Rather than cutting existing exemptions to improve efficiency, the changes were intended to increase clarity in certain, more complex circumstances. To date, exemptions remain for uses of land that simply align with the purposes of any public charity or benevolent institution. Further action is required to minimise the distortions of inefficiency within the aged care industry.

*With every form of rate exemption provided by the legislation in New South Wales, there is a corresponding sacrifice in terms of economic efficiency. That is, the exemption serves to skew land use decisions. This alone does not give grounds for their removal; it does, however, create an imperative to identify a countervailing benefit – ideally, one of greater economic value.*

## 5.2 Inequity – the distribution of cost burdens

It has been established that the allowance of a rate exemption for particular uses of land within a local jurisdiction has the effect of re-allocating the burden of revenue-raising to the remainder of the community. In addition, the extent to which councils are able to pass on the costs of exemptions to other ratepayers may be limited and will vary between jurisdictions (Productivity Commission 2008, p. xxxiii).

This issue highlights the need to ensure that the exemptions provided are appropriately justified. Any equity gains for allowing exemptions – from both a capacity to pay and benefit principle perspective – need to be balanced against the considerations of the local communities affected.

The case studies below highlight and analyse equity issues posed by some of the current rate exemptions in NSW, systematically addressing the questions of equity from a capacity to pay and a benefit principle perspective.

### 5.2.1 Case Study: National Parks

The NSW National Parks and Wildlife Service (NPWS) is responsible for the management of more than seven million hectares of land, belonging to more than 860 national parks and reserves across the state (NPWS). Under the existing legislation, this land is exempt from all rates (NSW *Local Government Act 1993*, s 555(1)(b)).

Consider the merit of this exemption in terms of the cost to council (benefits drawn from council services) and the benefits to the community –

1. *Do exempt institutions benefit from services provided by the local government?*

Yes. The capacity of the NPWS to manage and care for the parks and reserves for which it is responsible is likely to be compromised without access to services provided by local governments. In particular, the NPWS is likely to rely on the provision and maintenance of local roads and bridges in many instances to ensure safe and effective access into national parks.

2. *Do the activities of exempt institutions create additional costs for local government?*

Yes. For example, the additional vehicle traffic on local roads into parks caused in part by rangers, maintenance workers, visitors and volunteers, will contribute to the rate of consumption of road assets and the incurring of asset renewal and maintenance costs by local governments. That said, to the extent that light vehicles would be the predominant vehicle type used for national park related activity, these marginal additional costs may not be substantial. At the same time, concerns are periodically raised that national parks generate costs for councils or the community as a result of bushfire risk, noxious weeds and predatory wild animals.

3. *To what extent do exempt institutions generate benefits for the community?*

National parks are important recreational areas for members of the public. They provide the opportunity to partake in camping, bushwalks and hikes, horse riding, picnics and water activities, as well as travel on car and bike trails. The NPWS protects and supports the prosperity of native flora and fauna, particularly in heritage sites and conservation areas. They are also home to a wide variety of striking landscapes, the protection of which most Australian communities would appreciate. In addition, many national parks attract visitors from outside the municipality in which they are located, stimulating economic activity for businesses within the community.

4. *Overall, can it be considered that the community benefits outweigh the cost to society of allowing exemptions?*

This will vary. Where parks are heavily utilised by local residents and attract visitors to the region, they are likely to generate net positive economic benefits for the local community. Where they play a significant role in conservation, they may provide net benefits to the broader community; but not necessarily the local community. At a local level, where the tourism and amenity value to the community is marginal and where negative externalities (e.g. noxious weed spread) are generated, the net impact may in fact be negative.

5. *Are these net community benefits mainly concentrated within the local government jurisdiction, or are they spread more widely across broader society?*

The net benefits for society of maintaining national parks are in no way restricted by the borders of the local government areas in which they sit. In particular, the benefits of conservation accrue not to the local community, but to society broadly. At the municipal level, where parks are well patronised by residents and visitors, economic benefits for local communities in the surrounding area will typically manifest. However, as described in Section 5.6, this may not be the case in all jurisdictions, particularly in rural areas where these tourism benefits are limited. And, in any case, in the absence of specific purpose levies, councils themselves have limited ability to capture these benefits (except, for example, to the extent that the tourism benefits to local business are sufficiently significant to elevate land prices (and even then, only in the absence of binding rate pegging)).

Overall, there will be instances where the localised benefits of national parks justify their exemption from local government rates. However, in most cases, even though net benefits are generated from a society-wide perspective, they are not captured locally to any significant degree. This does not necessarily provide a case for removing their exemption; it does, however, raise questions over which level of government should appropriately bear the costs associated with foregone rate income.

Consider the merit of this exemption in terms of vertical equity or capacity to pay –

1. *Do exempt institutions have the capacity to make financial contributions towards local government services which they receive, in the form of rates?*

This is uncertain. The NPWS is primarily financed by the National Parks and Wildlife Fund and entry payments from visitors. It is also supported by charities, such as the Foundation for National Parks and Wildlife. Although it does benefit from the operation of commercial tours and activities within parks and reserves, it is unclear whether this would be sufficient to cover rates payments. Though not a strict equity consideration, capacity to pay is also enhanced by funding provided through the state budget.

2. *To what extent does this capacity to pay restrict their ability to provide broader community services?*

Due to the magnitude of land under the control of the National Parks and Wildlife Service and its limited sources of revenue, it is likely that a complete removal of the current exemptions would restrict to some extent its ability to carry out the role of protecting native flora and fauna, and conserving the natural environment for the benefit of the state.

However, there is little justification for the current exemption of private leaseholds within national parks. Business operations within national parks are subsidised by local ratepayers, while other commercial activities, including those undertaken on crown land, do not receive this advantage. This provision does not align with the notion of vertical equity (capacity to pay).

Overall, there is evidence to suggest that the current provision of rate exemptions to national parks may be justified on equity grounds. That said, it is important to be aware of

differing circumstances in rural jurisdictions, and the inequitable provision of exemptions to private leaseholds within national parks and reserves.

## 5.2.2 Case Study: State Forests

Across NSW, up to two million hectares of Crown land is dedicated as state forests. In accordance with section 555(1)(a) of the *NSW Local Government Act 1993*, this land is also exempt from all local government rates, provided that it is not held under a private lease or occupation permit for private purposes.

This is despite the recent establishment of the Forestry Corporation of NSW (Forestry Corporation) which is responsible for the management of forests in NSW, in accordance with the *Forestry Act 2012*. As described earlier, section 20F(b) of the *State Owned Corporations Act 1989* states that statutory state-owned corporations (SOCs), including Forestry Corporation are not exempt from rates or taxes. This provision will be overridden as long as state forests are classified as Crown land (NSW Legislative Council Hansard and Papers 2012).

The application of the benefit principle and notion of capacity to pay highlights the inequitable nature of this arrangement.

Consider the merit of this exemption in terms of the cost to council (benefits drawn from council services) and the benefits to the community –

1. *Do exempt institutions benefit from services provided by the local government?*  
Yes. Forestry Corporation benefits from local government services, much like the National Parks and Wildlife Service. The provision and maintenance of local roads and bridges by local councils are particularly important for the management of state forests.
2. *Do the activities of exempt institutions create additional costs for local government?*  
Yes. Again, the rate of consumption of local road assets will be higher as a result of vehicle traffic caused by foresters, visitors, volunteers and contractors associated with harvesting and haulage procedures. The supply of log products from state forest plantations requires considerable heavy vehicle activity. Any addition in such traffic is likely to adversely impact on annualised costs associated with the provision and maintenance of local roads.
3. *To what extent do exempt institutions generate benefits for the community?*  
Like national parks, state forests provide important areas for public recreational activity, and are abundant in scenes of natural beauty. Forestry Corporation is responsible for ensuring sustainable methods of forestry and timber cultivation, which is also important for society more broadly (though not necessarily locally). It also generates state-wide employment opportunities, while visitors to forests are likely to stimulate economic activity at a local level. However, the primary purpose of Forestry Corporation, to manage native and plantation forests, is essentially commercial.
4. *Overall, can it be considered that the community benefits outweigh the cost to society of allowing exemptions?*

Forestry Corporation benefits from the provision of council services, while also generating expenses incurred by councils. It is unclear whether the community benefits are sufficiently large to justify the subsidies imposed on local ratepayers by the provision of rate exemptions, however at a localised level, they are unlikely to be. At a macro level, given the nature of the community benefits described above, it is likely that these are typically sufficiently large to offset additional costs borne by local governments as a result of rate exemptions. However, the fact that in many instances they do not accrue locally again raises questions over who should appropriately bear the cost of exemptions. To the extent that the benefits are in the form of conservation rather than local economic stimulus or resident amenity, it is appropriate that these costs fall to other – non local – levels of government.

Consider the merit of this exemption in terms of vertical equity or capacity to pay –

1. *Do exempt institutions have the capacity to make financial contributions towards local government services which they receive, in the form of rates?*

The corporate status of Forestry Corporation suggests a legitimate capacity to pay. It manages commercial native and plantation forests for the main purpose of yielding timber to satisfy demand, posting operating profits of \$33.7 million in 2010-11 and \$14 million in 2011-12 (Forests NSW 2011& 2012). Although its native forest operations have performed poorly in recent years, substantial profits have been raised through its plantation segment.

2. *To what extent does this capacity to pay restrict their ability to provide broader community services?*

Given the commercial focus of Forestry Corporation, it would seem that this capacity to pay would have very little impact on its ability to provide broader community services.

On balance the exemption for land under the administration of Forestry Corporation may be unwarranted on equity grounds. The benefits of the operations of Forestry Corporation are not predominantly concentrated within local jurisdictions, and there is no clear demonstration of the corporation's limited capacity to pay.

To remedy this inequity, the New South Wales government could follow the lead of South Australia, as described at Appendix A. The *South Australian Forestry Corporation Act 2000* requires that the SA equivalent of Forestry Corporation pay rates for land that is managed for commercial purposes (s 17(1)). Section 17(2) of the legislation mandates that 50% of the revenue generated by these rates are to be invested into the roads specifically affected by the Corporation's activities.

*The cases of rate exemptions for the National Parks and Wildlife Service and Forestry Corporation are but two examples where the current legislation in NSW regarding liability for the payment of council rates is arguably consistent in the case of the former and inconsistent in the case of the latter with equity considerations – that is, where the principles of capacity to pay and/or benefit principle are either satisfied or compromised, in general. Other instances where an equitable distribution of the burden of revenue raising is not ensured by the legislation include the provision of complete exemptions to land used for the residence of teachers and other school staff, some land associated with water corporations, granted mineral claims held under a private lease, and land used for oyster cultivation or cattle dipping.*

## 5.3 Complexities – local government administration

The provision of council rate exemptions can also establish additional administration costs for local governments. In some cases, the structure of the legislation obligates councils to undertake property inspections to ascertain the manner in which land parcels are utilised. This involves meeting with owners and discussing their exemption application. This process can be time consuming and resource intensive, reinforcing the burden shouldered by remaining ratepayers as a result of exemption allowances.

For instance, the NSW legislation grants exemptions for Aboriginal Land Council (ALC) land under certain circumstances. Under the *Aboriginal Land Rights Regulations* of 2002 and 2003, the provision applies to:

- Land that is not being used for a commercial or residential purpose, or
- Land that is not being used for a residential purpose, and has been declared to be of spiritual or cultural significance with the approval of the Minister for Aboriginal Affairs.

It is the responsibility of local governments to determine whether land vested in an ALC is eligible in accordance with the first condition. This involves keeping in contact with ALC representatives, arranging and undertaking inspections and documenting all steps in the process. Other instances involving similar administrative costs include expansions of land used for educational, charitable or religious purposes.

To justify the cost of these additional administration procedures, it is essential that exemption allowances are sufficiently consistent with the remaining economic principles. That is, they must be justifiable against notions of equity.

*The provision of exemptions which require an element of council discretion will always result in some sacrifice of administrative simplicity. As a consequence, there is a need ensure that such exemptions are thoroughly evaluated and that the basis for their assessment is as an objective and transparent as practical.*

## 5.4 Uncertainty surrounding long term sustainability

The sustainability of local government revenue is a function of the volatility of the underlying tax base – land values/yields – and the stability of the breadth of the ratepayer tax base; the latter of which is influenced, among other things, by the extent of rate exemptions. At present, the rate exemptions within the legislation pose a number of risks for sustainability. These are described in further detail below.

Firstly, full rate exemptions are granted for Crown land, not held under a private lease. The risk to council revenue associated with this exemption is not a new concept. The 2006 Allan Inquiry into the Financial Sustainability of NSW Local Government recognised the way in which the allowance for Crown land can limit the tax base for small jurisdictions, such as the Dungog and Urana Shire Councils (LGI 2006, p. 140).

The provision of exemptions for national parks and conservation areas poses an even greater potential risk to sustainability. These categories of land qualify for exemptions under sections 555(1)(b) and (b1) of the *Local Government Act 1993*. Each year, the National Parks and Wildlife Service receives offers to purchase private landholdings for conservation purposes (Department of Environment and Heritage 2012a). Once accepted and processed, these transfers reduce the tax base of local governments.

A similar effect occurs as a result of voluntary conservation agreements and other land donations. Under Division 12 of the *National Parks and Wildlife Act 1974*, certain landowners are able to apply to enter into a conservation agreement with the NSW Government. If successful, they benefit from a council rate exemption which is unavailable to many other members of the local community. The approval process for these agreements is undertaken by the NSW Office of Environment and Heritage (2013) and does not involve consultation with local councils. Furthermore, income tax laws bestow advantages on individuals who donate land to the Foundation for National Parks and Wildlife, which also ultimately reduces the base for local government rates (FNPW n.d.).

Without disregarding the importance of conservation efforts, the impact on the sustainability of local government revenue should also be acknowledged. In its submission to the Productivity Commission, the NSW Farmers' Association noted that the incidence of such donations of agricultural land holdings in rural areas is rising (NSW Farmers' Association 2008, p. 2). This suggests that the implications of this sustainability issue will grow over time.

Finally, additional vulnerabilities are posed by increases in commercial activity undertaken by exempt institutions. For example, if the proportion of aged care facilities or nursing homes operated by exempt charitable institutions continues to increase, this will also have the effect of reducing the ratepayer base in future years.

*To ensure that council revenue bases are sustainable into the long term, it is essential that rate exemptions or alternative forms of rate relief are appropriately targeted to only capture legitimate land use purposes.*

## 5.5 Competitive imbalances

This section analyses the issues that arise under the principles of cross-border competitiveness and competitive neutrality.

### 5.5.1 Cross-border competitiveness

To the extent that there are inter-state or inter-jurisdiction differences between exemption provisions, cross-border competitiveness may be compromised as a result of distorted investment decisions.

Given the nature of the legislation in NSW, there is generally very little use of council discretionary power in relation to provision of exemptions. Therefore, the extent of any competitive imbalances between local government areas within NSW is limited. Issues of cross-border competitiveness are therefore more likely to arise for councils situated adjacent to Queensland, South Australian and Victorian state borders.

However, taking into account the manner in which the exemptions of South Australia and Queensland vary from those of New South Wales, it appears that such distortions would be minimal. While it is difficult to determine the extent of this issue, it is important to note that if there were any effects, they would be likely to encourage additional investment in New South Wales. This is because, in general, the exemptions in NSW are slightly broader in terms of qualification criteria and deeper in terms of the extent of relief provided.

Within this context, it is important to note that local government rates are generally modest in comparison with the aggregate costs of obtaining and holding property. Consequently, their direct impact on the allocation of capital across regions is likely to be marginal. For example, the decision of an investor to build or purchase a commercial property in one locality or another will be influenced by their expectations of risks, costs and revenue generating potential in both localities.

*Any difference in council rates payable is likely to be a relatively minor influence on investment decisions. It follows that differences in exemption provisions are unlikely to impact the level of cross-border competitiveness.*

## 5.5.2 Competitive neutrality and government exemptions

Section 555(1)(a) of the *Local Government Act 1993* grants an exemption from all rates to land owned by the Crown, that is not being held under a lease for private purposes. Section 555(2) provides a justification for this allowance, stating that “land is not rateable under subsection (1) (a) only because the land is leased by the Crown to a caretaker at a nominal rent”. This implies that caretakers of Crown land, often NSW government businesses, utilise land for an overriding public purpose, rather than for private benefit.

However, the broad nature of the allowance has provided the opportunity to pursue exempt status based on differing interpretations and circumstances. This highlights the need for a more specific revision of the legislation.

For instance, in the 1992 case, *Goulburn City Council v Haines*, the NSW Court of Appeal held that two residential parcels of land, owned by the Crown and used as residences for two senior police officers and their families were exempt from rating (Henningham 2008). The officers worked locally and resided under the conditions of informal leases. It was found that the housing of the two families was not a private purpose, as is the case for the majority of other Australian households, but rather part of a public purpose, namely having officers located nearby so as to promote administrative efficiency. This is an example of public services benefiting from the legislation, in a way which is not generally accessible for the rest of society.

The group of NSW Government businesses which receive exemptions from council rates is broad. TransGrid, Landcom, the Department of Housing, the Sydney Harbour Foreshores Authority, Forestry Corporation, State Transit Authority, Land and Property Information, and the Department of Public Works are but a few examples of government agencies which benefit from complete rate exemptions (LGSA 2007, pp. 16-17). It is noted that despite this provision, the Department of Housing has made voluntary payments to local governments in lieu of rates for social housing. However, the ongoing transfer of management of social housing to non-government, not-for-profit Community Housing Providers limits the extent to which these payments can provide financial assistance to local governments.

In certain cases, these government bodies compete with private providers in the same industry. For example, Forestry Corporation competes with many private native forestry property vegetation plans (PVPs). In 2012 alone, approval was granted for 419 new PVPs, spanning over 64,000 hectares (Department of Environment and Heritage 2012b). The unequal distribution of exemptions thus creates a competitive advantage for government providers which is at odds with the endeavours of National Competition Policy.

For the purposes of competitive neutrality, government trading enterprises are required to make tax-equivalent payments to state governments, through the National Competition Policy (Productivity Commission 2008, p. 202). Nevertheless, the issue of an additional burden for local governments and communities arises when these payments are not passed on to compensate for the loss of rates. According to the Local Government Managers Australia (LGMA), the NSW State Government was withholding such funds as at July 2007 (p. 1).

It is, however, important to note that local governments do receive reciprocal benefits from the NSW Government which at least partially offset the revenue losses due to rate exemptions (Productivity Commission 2008, pp. 107-108). For example, local governments are not required to pay payroll tax, income tax or stamp duty<sup>1</sup>.

The Productivity Commission noted the difficulty in determining the net effect of these concessions, describing existing estimates as “incomplete and inconclusive” (2008, p. 108). In its submission to the Inquiry, North Sydney Council simply stated that “there is a clear disadvantage to local government”, however evidence provided to support this claim was limited (2007, p. 5).

Comrie (2013, p. 37) warns that the overall impact of any change to the current system would be likely to affect different councils in different ways. Therefore, it is extremely important that a comprehensive analysis of the interactions between inter-government advantages and exemptions is conducted before local governments form a position on total abolition of reciprocal taxation.

*In sum, there remains a burden for local governments in NSW as a result of the exemption of Crown land, despite policy measures undertaken to restore competitive-neutrality. While it is not within the scope of this report to measure the net effect of reciprocal taxation arrangements between the NSW Government and local councils, the fact that government commercial enterprises are treated differently to other private operators emphasises the need for systematic clarification of efficiency and equity justifications.*

## 5.6 Variation in impacts across jurisdictions

Due to the diverse landscape, concentration of industry and demographic variation across New South Wales, the degree to which the issues described above impact the revenue raising capacity of individual councils will vary. That is, their impacts are not uniform and the challenges that arise will be experienced more acutely by some councils than others. This issue was noted in the case study on National Parks in Section 5.2.1.

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<sup>1</sup> Income Assessment Act 1997, Division 50-25, NSW Payroll Tax Act 2007 s58, Duties Act 1997 s277

Councils and communities that are likely to be particularly affected by the existing exemptions are those with low rate bases, such as those in rural and remote areas and those with high Indigenous populations, as well as those with large tracts of exempt land. For example, the financial capacity of Bega Valley Shire Council is particularly limited, as three quarters of its jurisdiction comprises of national park, state forest, or public reserve (Bega Valley Shire Council 2012, p. 48).

*While is impractical to allow local governments to grant exemptions on their own terms in every case, it is important to recognise that their circumstances and experiences differ. The opportunity to ease the burden on those particularly disadvantaged is a further justification to revise the existing exemption provisions.*

## 6 Findings and conclusions

Exemptions from local government rating in New South Wales have typically been motivated by notions of equity, concession for charitable activities or public good/service provision. Over time, these exemptions have evolved and, when analysed against an appropriate public policy framework, it is apparent that the principles of optimal taxation are compromised in a variety of respects –

- Efficiency, to the extent that land use decisions are distorted from their socio-economic optimum.
- Simplicity, to the extent that councils are obligated to undertake additional and burdensome administrative activities.
- Equity, to the extent that exemptions are granted where capacity to pay exists or where the recipient is a material beneficiary of council services.
- Fiscal sustainability, to the extent that they generate material revenue losses and/or generate scope for revenue bases to be unduly eroded over time.
- Cross-border competitiveness, where they impact decisions to invest or reside within a particular jurisdiction.
- Competitive neutrality, where they are provided to government-owned enterprises in competition with commercial businesses.

Regardless of the original intent, the use and application of exemptions provided in the New South Wales legislation has over time expanded to a point where their eligibility cannot universally be justified. It is apparent that there is a need for reform, either via the abolition of prescribed exemptions or via the clearer specification of eligibility criteria. Legislation from other states provide examples of how the unintended consequences of rating exemptions observed in New South Wales can be systematically curbed such that their original intent is restored.

Specific areas recommended for reform include are outlined in Section 6.1.2 and are motivated principally by issues of equity. Either exempt entities are undertaking commercial activity which provides sufficient basis for capacity to pay; or the extent that exempt entities draw on council services, relative to any countervailing community contribution, justifies a contribution toward the cost of their provision.

As a guide to future exemption considerations, for rating exemption to be justified it must be demonstrated, firstly, that there is a legitimate case for rate relief of some form; secondly, that exemption is the most appropriate form for this relief to take; and, thirdly, that an exemption can be specified in legislation in a manner that upholds its intent.

- In relation to the former, the critical considerations continue to be in relation to equity; especially capacity to pay. In this respect, genuine charitable activities; activities with a public, social or community contribution; and intergovernmental agreements will provide the primary bases.
- In relation to the second point, consideration should be given to rebates over exemptions. Rebates are more transparent and receive greater, continued levels of scrutiny, helping ensure their original intent is retained.

- In relation to the latter, clear specification in legislation regarding the conditions and purposes under which exemptions will be granted is imperative to their intent being upheld and their scope not unduly expanding.

### 6.1.1 Assessment of current exemptions

The existing rate exemptions in NSW have been categorised into thirteen groups for the purposes of presenting comprehensive yet straightforward recommendations for reform. Table 6.1 below presents these groupings.

**Table 6.1: Categorisation of exemptions**

Group	Land Use Category	Legislative Reference	Description
1	Crown land not held under a private lease	s 555(1)(a)	Inclusive of state forest land
2	National parks and conservation areas	s 555(1)(b)	Land within national parks, historic sites, reserves
		s 555(1)(b1)	Land subject to conservation agreements
		s 555(1)(b2)	Land associated with Nature Conservation Trust of NSW
		s 556(1)(f)	Land acquired under environmental planning instruments*
3	Water corporation land	s 555(1)(c)	Special or controlled areas for Sydney Water Corporation
		s 555(1)(c1)	Special areas for Hunter Water Corporation
		s 555(1)(c2)	Land with water supply works for State Water Corporation
		s 555(1)(d)	Special areas for any water supply authority
4	Land used for certain religious purposes	s 555(1)(e)	Belonging to a religious body and meeting qualification criteria
5	Land used for charitable purposes	s 556(1)(h)	Belonging to a public benevolent institution or public charity, used for its purposes*
6	Land used in connection with education	s 555(1)(f)	Belonging to a school, including staff residences
		s 556(1)(l)	Used solely for purposes of a university/college*
		s 556(1)(p)	Houses managed by Teacher Housing Authority*
7	Land vested in an Aboriginal land council	s 555(1)(g)	Land declared exempt in accordance with regulations
		s 556(1)(s)	Land reserved under further legislation*
		Reg. 123(d)	Land held by body corporate under a land use agreement*
8	Land occupying rail infrastructure facilities	s 555(1)(g1)	Land owned by a public transport agency
9	Oyster cultivation and cattle dipping areas	s 555(1)(h)	Used for any aquaculture relating to oyster cultivation
		s 556(1)(q)	Leased to the Crown for cattle dipping*

10	Public places, cemeteries or libraries	s 556(1)(a)	Public places*
		s 556(1)(b)	Public reserves*
		s 556(1)(c)	Commons*
		s 556(1)(d)	Public cemeteries*
		s 556(1)(e)	Free public libraries*
11	Land leased for granted mineral claims	s 556(1)(g)	Held under a private lease from the Crown*
12	Land used for health or safety purposes	s 556(1)(i)	Land belonging to a public hospital
		s 556(1)(j)	Vested in the Minister for Health, Health Administration Corporation or NSW Health Foundation*
		s 556(1)(k)	Vested in a local health district*
		s 556(1)(o)	Vested in the mines rescue company for a rescue station*
13	Land assigned to listed groups and societies	s 556(1)(m)	Sydney Cricket and Sports Ground Trust*
		s 556(1)(n)	Zoological Parks Board*
		Reg. 123(a)	Royal Agricultural Society*
		Reg. 123(b)	Museum of Contemporary Art Limited*
		Reg. 123(c)	Museum of Sydney*

\*Not exempt from water supply special rates and sewerage special rates

Utilising the 13 categories described above, Table 6.2 provides an indicative assessment of the extent to which the exemptions captured in each of these categories compromises the principles of efficiency and equity. The choice of these two principles as the focus of the analysis reflects a judgement that, for the evaluation of the exemptions current in the New South Wales system, these are the most pertinent considerations. In applying the principle of equity, both capacity to pay and benefit principle have been assessed. In the case of the latter, the benefit has been considered in *net* terms – that is, considering any social or economic benefit accruing to the local community, net of any cost to councils (that is, utilisation of council services). The broader benefits enjoyed beyond the borders of the council jurisdiction are not of primary interest in this evaluation, as they do not justify subsidisation at a municipal level. This is the domain of other levels of government.

The assignment of the four classifications used in Table 6.2 – not compromised; minimally compromised; partly compromised; compromised – is necessarily imprecise. No empirical analysis had been conducted to assess the magnitude of the economic implications of each exemption. As such, the evaluation should be interpreted as a broad indication of the adherence of each exemption with the principles of optimal taxation – rather than a definitive assessment – and should be interpreted by decision makers as such. Exemptions highlighted represent those where a strong case for consideration of reform has been identified.

**Table 6.2: Multi-criteria analysis**

Group	Land Use Category	Efficiency	Equity	
			Net Benefit Principle	Capacity to Pay
1	Crown land not held under a private lease	Minimally compromised	Partly compromised	Partly compromised
2	National parks and conservation areas	Minimally compromised	Partly compromised <sup>^</sup>	Partly compromised <sup>^</sup>
3	Water corporation land	Partly compromised	Minimally compromised	Partly compromised
4	Land used for certain religious purposes	Partly compromised	Partly compromised	Partly compromised
5	Land used for charitable purposes	Partly compromised	Partly compromised	Compromised
6	Land used in connection with education	Partly compromised	Partly compromised	Partly compromised
7	Land vested in an Aboriginal land council	Partly compromised	Partly compromised	Not compromised
8	Land occupying rail infrastructure facilities	Partly compromised	Minimally compromised	Partly compromised
9	Oyster cultivation and cattle dipping areas	Compromised	Compromised	Compromised
10	Public places, cemeteries or libraries	Partly compromised	Minimally compromised	Not compromised
11	Land leased for granted mineral claims	Compromised	Compromised	Compromised
12	Land used for health or safety purposes	Partly compromised	Partly compromised	Not compromised
13	Land assigned to listed groups and societies	Partly compromised	Partly compromised	Compromised

<sup>^</sup> Variable depending on park characteristics.

### 6.1.2 Reform recommendations

On the basis of the indicative evaluation provided above, Table 6.3 outlines a set of reform recommendations for consideration. Where reform is recommended, it is generally motivated by the aim of rating commercial activities where there is not a strong excess of community benefits over cost to council. That is, where equity is compromised from both a benefit principle and capacity to pay perspective.

- In some instances, this suggests revocation of an existing exemption; in others it implies refining the current provisions.
- Effective refinement can be achieved via more explicit specification of the exempt activities that can be undertaken by the exempt entity or by utilising partial rebates (though the scope of this review has not extended to consideration of what magnitude these should take). The latter will be preferable where the costs of specifying and monitoring exempt activities outweigh their benefits.

Table 6.3: Overall Recommendations

Group	Land Use Category	Recommendation and reform considerations
1	Crown land not held under a private lease	<b>Refine</b> At the very least, commercial enterprises such as the Forestry Corporation of NSW should be required to make payments related to the benefits they receive from the provision of services and performance of functions by councils. See case study in section 5.2.2.
2	National parks and conservation areas	<b>Refine</b> An amendment to the wording of the legislation should be made which creates the obligation for rates payments for areas within parks that are used for commercial activities (see case study in Section 5.2.2). This could also take the form of a partial payment/rebate. Provisions should also be made to accommodate the impact of National Park expansion on rating bases.
3	Water corporation land	<b>Refine</b> Retain for special areas but consider removal for controlled areas and land which has installed water supply works, where the nature of activity is more commercial.
4	Land used for certain religious purposes	<b>Refine</b> <ul style="list-style-type: none"> <li>Religious institutions and charitable institutions should be treated equivalently.</li> <li>Consider amending the legislation to allow for a minimum rebate on applicable rates. Additional rebates could be granted at council discretion, provided that there is a demonstrable community benefit.</li> </ul>
5	Land used for charitable purposes	<b>Refine</b> <ul style="list-style-type: none"> <li>Religious institutions and charitable institutions should be treated equivalently.</li> <li>Establish stricter qualification criteria to ensure that exempt land is not used for commercial purposes.</li> <li>Consider amending the legislation to allow for a minimum rebate on applicable rates. Additional rebates could be granted at council discretion, provided that there is a demonstrable community benefit</li> </ul>
6	Land used in connection with education	<b>Retain with consideration of refinement</b> <ul style="list-style-type: none"> <li>Retain exemption for core educational purposes of schools.</li> <li>Consider removing exemption for building occupied a residence by teachers, employees or caretakers.</li> <li>Consider removing exemption for Teacher Housing Authority.</li> <li>Refine treatment of universities to ensure competitive neutrality with private tertiary education providers and TAFE and remove exemptions for commercial precincts within universities (this may be most practically achieved via a partial rebate).</li> </ul>
7	Land vested in an Aboriginal land council	<b>Retain</b>
8	Land occupying rail infrastructure facilities	<b>Refine</b> Consider refinement such that all land use directly associated with commercial activity is rateable.
9	Oyster cultivation and cattle dipping areas	<b>Remove</b> There is little justification for such exemptions on efficiency or equity grounds. There are no comparable exemptions in SA or QLD.
10	Public places, cemeteries or libraries	<b>Retain</b>

11	Land leased for granted mineral claims	<b>Remove</b> There is little justification for such exemptions on efficiency or equity grounds.
12	Land used for health or safety purposes	<b>Retain</b>
13	Land assigned to listed groups and societies	<b>Remove</b> These are all primarily commercial purposes.

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## Appendix A: Treatment of rate exemptions in other jurisdictions

This appendix provides a summary of rate exemptions allowances elsewhere in Australia and overseas. Points of interest relevant to the case of NSW reform are drawn from the examples of South Australia, Queensland, New Zealand, Canada and the United Kingdom. This analysis is intended to complement the summary of lessons provided in Chapter 4.

### Rate exemptions across Australia

In Australia, the way in which local governments are able to raise revenue is determined by state legislation. Therefore, the admission of rate exemptions varies across the country. The Productivity Commission compiled a comparison of rate exemptions provisions in 2008 (p. 201). This table is reproduced below (Table A.1).

**Table A.1: Comparison of rate exemptions**

State or Territory	Rate exemptions specified in State legislation
New South Wales	Land owned by the Crown, held in trust or subject to a conservation agreement, owned by a State water corporation or used for water supply works, used in connection with a religious purpose, public place, mines rescue stations, school or rail infrastructure facilities, public benevolent or charitable institutions, the Sydney Cricket and Sports Ground Trust, Zoological Parks Trust, land vested in Aboriginal land councils (Local Government Act 1993, s 555).

Victoria	Land owned by the Crown, a Minister, a council or public statutory body, land used for public, charitable, religious or mining purposes or land held in trust for memorial of war veterans ( <i>Local Government Act 1989</i> , s 154).
Queensland	Land owned by the State or a government entity (other than non-exempt government-owned corporations), land in a State forest or timber reserve, Aboriginal land, land used to facilitate specific transport infrastructure, land used for religious, charitable, educational or public purposes ( <i>Local Government Act 1993</i> , s 957).*
South Australia	Land owned by the Crown, occupied by councils, universities or emergency services organisations, land exempt under the <i>Recreation Ground Rates and Taxes Exemption Act 1981</i> , land subject to a mining lease, land subject to division under the <i>Community Titles Act 1996</i> (s 147).
Western Australia	Land owned by the Crown or a local government, land used for the public, religious, charitable, agricultural purposes, non-government schools ( <i>Local Government Act 1995</i> , s 6.26).
Tasmania	Land owned by the Commonwealth, Crown-owned land used for conservation and nature recreation purposes, the Hydro-Electric Corporation, Aboriginal land or land used for charitable purposes ( <i>Local Government Act 1993</i> , s 87).
Northern Territory	Crown land occupied by the Territory or the Commonwealth, public land, land used for religious, educational or charitable purposes, public hospitals ( <i>Local Government Act 2005</i> , s. 58). Councils can exempt classes of land or persons (s 98), including Indigenous land holders.
ACT	Land used for public parks and reserves, cemeteries, public hospitals, benevolent institutions, land used for religious purposes, public libraries, land leased by the Commonwealth which is occupied by school, Commonwealth unoccupied land (s 8).

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Productivity Commission 2008, Table B.2, p. 201

\* QLD legislation has been since updated, through the *Local Government Act 2009*

The exemption provisions in the legislation of South Australia and Queensland are described in further detail below.

## South Australia

The South Australian rating system differs from that of New South Wales in a number of ways. Table A.2 below compares the main features of each system, from the types of rates and charges available and the property valuation methods used in each. This establishes the context within which the South Australian rating exemptions sit.

While the categories of land which are eligible for rate relief in South Australia are fairly similar to those of New South Wales, there are other key differences in the structure of the provisions. For instance, qualification criteria are more specific and the degree of relief provided is restricted in some cases. For instance, eligible charities and religious institutions receive a partial rebate of rates, rather than a blanket exemption (Comrie, Smirl & Sody

2011). This section reviews the South Australian legislation, focusing on features which may be relevant to a New South Wales reform.

**Table A.2: Comparison of NSW and SA rating systems**

	NSW	SA
Types of rates	<p>Ordinary rates, which apply to all rateable land.</p> <p>Special rates, which may be imposed on rateable land that benefits from a specific service, project or facility, apart from domestic waste management services.</p>	<p>General rates, which apply to all rateable land.</p> <p>Separate rates, for the purpose of some specific activity.</p> <p>Service rates, in relation to provision of a prescribed service.</p>
Types of charges	<p>Compulsory annual charge for domestic waste management for rateable land, and also exempt land in some cases.</p> <p>Other annual charges may also be levied according to the use of certain services.</p>	<p>Annual service charges, which may apply in conjunction with a service rate for rateable land, and in isolation for non-rateable land.</p>
Rate structure	<p>Both ordinary or special rates may either be:</p> <p>Wholly ad valorem, or a base amount plus an ad valorem amount.</p>	<p>General rates may be based on land value, or in some cases, land value and a fixed charge.</p> <p>Separate rates may be based on land value, or a proportional measure.</p> <p>Differential rates may vary according to the use/locality of the land, or some other basis determined by the Council.</p>
Property valuation method	Land value.	<p>Primarily, capital value.</p> <p>Under certain conditions, may assess annual value, or site value, the latter of which is essentially equivalent to land value).</p>
Rate pegging	Yes.	No.

Source: Productivity Commission 2008, Table B.1, NSW and SA Local Government Acts

### SA – Local Government Act 1999

Section 147(2) outlines the rate exemptions available within South Australia. These are listed in Table A.3 below. The legislation also provides certain exemptions for land which is divided under the *Community Titles Act 1996* (s 147(3)-(6)).

**Table A.3: Land exempt from rates in South Australia**

	<b>Land Type</b>	<b>Other Relevant Legislation</b>
(a)	Unalienated Crown land	
(b)	Land used or held by the Crown or an instrumentality of the Crown for a public purpose, including educational purposes, except if it is held under a lease or license, or if it constitutes domestic premises	
(c)	Land (not including domestic or residential premises) occupied by a university established by statute	
(d)	Land that is exempt from rates by virtue of further legislation	Recreation Grounds Rates and Taxes Exemption Act 1981
(e)	Land within the Coober Pedy district that is subject to a mining lease or precious stones tenement	Mining Act 1971 Opal Mining Act 1995
(f)	Land occupied or held by the council, except that under a lease or license	
(g)	Land occupied by a subsidiary, where the land is situated in the area of the council that established the subsidiary or a constituent council	
(ga)	Land occupied or held by an emergency services organisation	Fire and Emergency Services Act 2005
(h)	Land that is exempt from council rates under or by virtue of another Act	

Source: SA *Local Government Act 1999* – s 147(2)

Unlike in NSW, Division 5 of the South Australian *Local Government Act 1999* also provides allowances for the rebate of rates to certain groups. The proportion of these rebates vary between groups, but extend to qualifying uses of land for health services, community services, religious purposes, public cemeteries and educational purposes (s 160-165). The requirements associated with the rebates are outlined in Table A.4.

**Table A.4: Rate rebates provided under South Australian legislation**

<b>Section</b>	<b>Rebate</b>	<b>Qualifying Purpose</b>	<b>Other Relevant Legislation</b>
160	100%	Land being predominantly used for service delivery or administration by a hospital or health centre incorporated under the relevant Act	South Australian Health Commission Act 1976

161	75%	Land being predominantly used for service delivery or administration (or both) by a community service organisation, which meets certain criteria	
162	100%	Land containing a church or other building used for public worship (and any grounds), or land used solely for religious purposes	
163	100%	Land being used for the purposes of a public cemetery	
164	100%	Land owned by, or under the care, control and management of the Royal Zoological Society of South Australia Incorporated – other than land used as domestic premises	
165(1)	75%	Land occupied by a government school under a lease or licence, or occupied by a registered non-government school, that is being used for educational purposes	Education and Early Childhood Services (Registration and Standard) Act 2011
165(2)	75%	Land being used by a university or university college to provide accommodation and other forms of support for students on a not-for-profit basis	

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Source: SA Local Government Act 1999 – s 160-165

In order to qualify for a rebate, a community service organisation must:

- Be incorporated on a not-for-profit basis, not involved in any trade or commerce;
- Provide services either for free or below cost, and,
- Not restrict the availability of its services to its members.

More specifically, community services can include:

- Provision of emergency or supported accommodation;
- Provision of food, clothing or legal services to the disadvantaged;
- Provision of essential services or employment support for people with physical, intellectual or mental health disabilities;
- Provision of drug or alcohol rehabilitation services;
- Provision of palliative care to persons who suffer from diseases or illnesses, or,
- Support of research into, or community education about, diseases or illnesses.

These criteria appear to be much more detailed than those within the corresponding legislation in New South Wales, which does not describe what constitutes a public benevolent institution or public charity. Section 559 simply notes that the provisions of *Charitable Fundraising Act 1991* are irrelevant to exemption determinations. These requirements appear to better reflect the principle of equity than the legislation of NSW.

To some extent, more attention is drawn to the importance of only providing rate relief to organisations which generate significant benefits for the local community, through the condition that services must at least be provided on a below-cost basis. The fact that services cannot be restricted to members also reinforces the benefit principle. The application of a partial rebate rather than a blanket exemption aligns more closely with the notion of capacity to pay. It also allows for greater scrutiny of the degree of rate relief provided, through the inclusion of rebate calculations in accounting records. This is not the case for exemptions.

Furthermore, the South Australian legislation makes slightly more explicit the requirements for educational rate rebates. In New South Wales, it is only necessary that exempt land be “used in connection with a school”. In contrast in South Australia, to qualify for a 75% rebate, the land occupied by any school must be used “for educational purposes”. It is likely that this wording is more appropriate, as it may prevent some educational institutions from receiving benefits for land that is used for commercial recreational purposes, or staff accommodation.

In order to clarify the way in which the South Australian exemptions relate to those of New South Wales, links with the *Recreation Grounds Rates and Taxes Exemption Act 1981*, and *South Australian Forestry Corporation Act 2000* are described below.

### **SA – Recreation Grounds Rates and Taxes Exemption Act 1981**

This Act allows exemptions from rates and taxes for land that meets particular requirements. A complete exemption will apply provided that:

- The total of any income derived from the land is put towards the maintenance, repair or improvement of the land, and the land is either:
  - Vested in, or under the care, control or management of a council, and accessible to members of the public for sport or recreational purposes;
  - Vested in trustees or an association, and accessible to members of the public for sport or recreational purposes, or,
  - Occupied under a lease, licence or permit granted by a council and used by the occupier for sport or recreational purposes.

It seems that the object of this exemption is to create a financial incentive for bodies responsible for land associated with sport and recreation to also take more responsibility for the upkeep of that land. It would be hoped that the loss of rates revenue for local governments would be at least partially offset by a reduced cost burden in maintaining sport and recreational facilities. This is an example of a way in which conditions could be imposed in NSW to reduce the burden of exemptions for local councils.

### **SA – South Australian Forestry Corporation Act 2000**

This Act had the effect of establishing the South Australian Forestry Corporation. It is a statutory enterprise, “with the principle responsibility of managing plantation forests for the benefit of the people and economy of the State” (s (3)).

The legislation is of interest as it reflects the principle of equity within section 17, which describes the obligations of the Corporation to make rates payments. It is required that the

Corporation pay council rates “in respect of land managed ... for commercial purposes”. It determines that land owned by the Corporation, for rates purposes, should be considered as a freehold estate, not an instrumentality of the Crown (s 17(1)).

Furthermore, s 17(2) requires that half of these funds should be invested by local governments, through consultation with the Corporation, specifically into maintenance works or the upgrade of roads affected by the Corporation’s activities.

These provisions recognise that the operations of the Corporation are likely to cause damage to roads, creating a liability for local government. As it is intended to operate commercially, the resulting capacity to pay is demonstrated by the requirement that it make financial contributions towards the local government services which it receives.

## Queensland

Another relevant interstate comparison is the treatment of rate exemptions in Queensland. This state has most recently updated its legislation in relation to the powers of local government, with the *Local Government Act 2009* superseding that of 1993. A comparison of the NSW and QLD rating systems is provided in Table A.5.

While the QLD legislation does not allow for alternative rate relief instruments besides exemptions, there is greater emphasis placed on eligibility criteria. There is an opportunity to transfer across some of these features to the NSW legislation, to ensure that exemption allowances more accurately reflect the principles of optimal taxation.

**Table A.5: Comparison of NSW and QLD rating systems**

	NSW	QLD
Types of rates	<p>Ordinary rates, which apply to all rateable land.</p> <p>Special rates, which may be imposed on rateable land that benefits from a specific service, project or facility, apart from domestic waste management services.</p>	<p>General rates, which apply to all rateable land.</p> <p>Special rates, which apply to land that has a special association with a service, facility or activity.</p> <p>Separate rates, for any other service, facility or activity.</p>
Types of charges	<p>Compulsory annual charge for domestic waste management for rateable land, and also exempt land in some cases.</p> <p>Other annual charges may also be levied according to the use of certain services.</p>	<p>Special charges, which apply to land that has a special association with a service, facility or activity.</p> <p>Utility charges, relating to waste management, gas, sewerage or water provisions.</p> <p>Separate charges, for any other service, facility or activity.</p>

Rate structure	Both ordinary or special rates may either be: Wholly ad valorem, or a base amount plus an ad valorem amount.	Council may fix a minimum amount of general, special or separate rates. Councils are also permitted to levy differential general rates, and differential special rates in certain circumstances.
Property valuation method	Land value.	Land value, for the financial year, or averaged over two/three financial years.
Rate pegging	Yes.	No.

Source: Productivity Commission 2008, Table B.1, NSW and QLD Local Government Acts / Regulation

### QLD – Local Government Act 2009

The provision of exemptions appears early in the legislation relating to council finances, with the allowances made in section 93(3), as listed in Table A.6 below. It is important to note that not all of these exemptions apply to Brisbane City Council (s 5). Instead, section 95 of the *City of Brisbane Act 2010* lists the exemptions for that particular local government area. These are primarily identical to the exemptions listed below. Those that do not apply, or apply differently to Brisbane City Council are marked as appropriate.

**Table A.6: Land exempt from rates in Queensland**

	Land Type	Other Relevant Legislation
(a)	Unallocated State land	Land Act

(b)	Land that is occupied by the State or a government entity, unless it is a non-exempt government owned corporation, or, if occupied under a lease the lessor is not a State or government entity	Government Owned Corporations Act 1993
(c)	Land in a state forest or timber reserve, other than land occupied under an occupation or stock grazing permit, or a lease	Forestry Act Land Act
(d)*	Aboriginal, or Torres Strait Islander land, other than a part of the land that is used for commercial or residential purposes	Aboriginal Land Act 1991 Torres Strait Islander Land Act 1991
(e)(i)	Strategic port land occupied by a port authority, the State, or a government entity	Transport Infrastructure Act
(e)(ii)*	Strategic port land that is occupied by a wholly owned subsidiary of a port authority, and is used in connection with the Cairns International Airport or Mackay Airport	Transport Infrastructure Act
(e)(iii)	Existing or new rail corridor land	Transport Infrastructure Act
(e)(iv)	Commercial corridor land that is not subject to a lease	Transport Infrastructure Act
(f)	Airport land, that is used for a runway, taxiway, apron, road, vacant land, buffer zone or grass verge	Airport Assets (Restructuring and Disposal) Act 2008
		* Such land will stop being exempted if development starts, or is permitted, for a use that is not mentioned
(g)~	Land that is owned or held by a local government that is not leased to someone other than a local government	
(h)*	Land primarily used for showgrounds or horseracing	If exempted from rating by resolution of a local government
(i)*	Land used for charitable purposes	If exempted from rating by resolution of a local government
(j)(i)ϕ	Land otherwise exempted from rating	Under another Act
(j)(ii)*	Land otherwise exempted from rating for religious, charitable, educational or other public purposes	Under a regulation

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Source: QLD *Local Government Act 2009* – s 93(3)

\* Not an exemption under the *City of Brisbane Act 2010*

~ Provided for by the *City of Brisbane Regulation 2012*, s 66

† Section 95(f)(ii) of the *City of Brisbane Act 2010* extends this to land used for religious, charitable, educational or other public purposes

ϕ Section 95(f)(i) of the *City of Brisbane Act 2010* extends this regulations, as well as Acts

An interesting provision which does not appear within the NSW legislation is that of subsection (i). Rather than a blanket exemption for all land parcels used for charitable purposes, local governments are given the power to grant such exemptions themselves. This gives councils the opportunity to weigh up the costs and benefits of such provisions at their own discretion, to suit the circumstances of their local communities. However, it is not clear whether guidelines have been issued to help councils formulate the conditions for such determinations.

At the same time, as per subsection (j)(ii), land may also be exempted under a regulation if used for charitable, educational or other public purposes. The way in which the *Local Government Regulation 2012* limits the level of council self-discretion must be subsequently explored.

### QLD – Local Government Regulation 2012

As shown in Table A.7, additional exemptions are currently in place in accordance with section 73 of the *Local Government Regulation 2012*. The regulation specifies certain qualification criteria for land relating to religious, educational, recreational, charitable, community health, or other general public purposes.

**Table A.7: Land also exempt from rates in Queensland**

<b>Land Type</b>	
(a)	<p>Land owned by a religious entity if the land is less than 20ha and is used for at least one of the following purposes:</p> <ul style="list-style-type: none"> <li>• Religious purposes, such as public worship</li> <li>• Provision of education, health or community services, including facilities for aged persons and persons with disabilities</li> <li>• Administration of the religious entity</li> <li>• Housing incidental to any of these given purposes</li> </ul>

- (b) Land vested in, or placed under the management and control of, a person under an Act for a:
  - Public recreational or sporting purpose, or
  - Charitable purpose
- (c) Land used for the purposes of a public hospital, if
  - The hospital is part of a private hospital complex, or a private and public hospital complex
  - The land used for the purposes is no more than 2ha and is separated from the rest of the complex
- (d) Land owned by a community organisation if the land is less than 20ha and is used for providing the following:
  - Accommodation associated with the protection of children
  - Accommodation for students
  - Educational, training or information services aimed at improving labour market participation or leisure opportunities
- (e) Land used for a cemetery

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Source: QLD *Local Government Regulation 2012 – s 73*

There are a number of features of this Regulation which differ from the provisions of both New South Wales and South Australia.

Firstly, subsection (b) allows for exemptions for land used for charitable or public recreational purposes, if the use of the land in such way has been established by further legislation. This has the potential to restrict the discretionary powers of local governments as provided for by section 93(1)(i) of the Act.

Likewise, subsection (d) establishes an opportunity for the exemption of land owned by a community organisation, provided it meets certain criteria. The preliminary condition is that the land must be no greater than 20 hectares in area. This can be linked to the benefit principle; if the land is within this size constraint, it is more likely that the community benefits generated by the organisation are concentrated more heavily within the local jurisdiction, better justifying the provision of the exemption on equity grounds. A smaller parcel of land to conduct such community activities might also be a reflection of a reduced capacity to pay. However, it is questionable whether the 20 hectare limit is small enough to only identify legitimate exemption claims.

The land use requirements of subsection (d) are also particularly broad. As children have limited financial status, and the protection of children is likely to be in the interests of the local community, the provision for child accommodation could be justified on equity grounds. However, this reasoning is not as straightforward for the case of accommodating students. It may not be appropriate for ratepayers to subsidise the cost of housing students from areas outside the local jurisdiction, particularly when the capacity to pay of those students is unclear. That said, if community organisations are catering for the socioeconomically disadvantaged, the provision of a stable and secure residential environment may provide significant benefits for the community. The potential efficiency effects of such an exemption should however be also taken into account.

The reference to community service organisations which provide “educational, training or information services aimed at improving labour market participation or leisure opportunities” is also somewhat generic. Ideally, exemption provisions should be more accurately targeted to cases where local community support is sufficiently warranted upon the application of optimal taxation principles. Whilst it is generally appreciated that the availability of employment assistance and leisure activities will have positive effects for a local community, more attention must be drawn to the issues highlighted in Section 5 before exemptions are automatically sanctioned. This includes the assurance that, on average, the advantages gained by the ratepayers within each jurisdiction are sufficient, and are not offset by the additional costs borne by local communities as a result of distortions in economic activity, due to the incentive effects of exemptions.

Subsection (a) establishes comprehensive exemptions for land owned by religious entities. It specifically allows for aged care facilities run by religious institutions to benefit from exemptions, provided that the land in question is less than 20 hectares. This has important efficiency implications.

## Rate exemptions overseas

This section examines the treatment of rate exemptions in a selection of broadly comparable overseas jurisdictions, namely New Zealand, Canada and the United Kingdom. It is important to recognise the national context within which these rate exemption provisions sit, and acknowledge that in some instances, their applicability to NSW may be limited. The very limited amount of information and evidence upon which to draw limits the extent of the analysis conducted.

### New Zealand

New Zealand operates under a unitary system of government. There is no level of government equivalent to the States and Territories within Australia. Rather, roles and responsibilities are delegated to local government by central government policy (Guerin 2003, p. 11).

Despite this structural difference, local governments in New Zealand undertake similar roles and responsibilities as those in Australia. In accordance with the NZ *Local Government Act 2002* representatives are elected to lead local authorities for the purposes of:

- Enabling democratic local decision making and action by, and on behalf of, communities, and
- Promoting the social, economic, environmental and cultural wellbeing of communities, in the present and for the future (Local Government Review Inquiry Panel 2007, p. 33).

This section summarises the manner in which NZ local governments are authorised to collect revenue, identifies the provisions for rate relief, such as exemptions, and highlights the relevance of these measures for New South Wales.

## **NZ – Local Government Act 2002**

The *Local Government Act 2002* broadly describes the actions that local governments must take in relation to financial management. In order to ensure “predictability and certainty about sources and levels of funding”, local authorities are required to implement a number of funding policies, including a revenue and financing policy (s 102).

This policy must explain the way in which various revenue tools will be used to fund operating expenses and capital expenditure (s 103(1)). Section 103(2) lists the funding sources that are available for these purposes. The sources most relevant to our analysis include:

- General rates,
- Targeted rates,
- Lump sum contributions, and
- Fees and charges.

This prescription is intentionally general. More specific directives on the powers of councils to set, assess and collect rates are detailed in the *Local Government (Rating) Act 2002* (Department of Internal Affairs 2011).

## **NZ – Local Government (Rating) Act 2002**

Similar to the legislation in New South Wales, this Act provides that all land is rateable, unless stated otherwise (s 7). The provisions for non-rateable land however are slightly different. Section 8 establishes two classes for non-rateable land, being:

- Land fully non-rateable, and
- Land which is subject to a minimum 50% discount on rates.

However, this provision does not exempt land that falls into either of these categories from the obligation of paying targeted rates, set solely for water supply, sewage disposal or refuse collection, provided that they are in receipt of such services (s 9).

Table A.8 and Table A.9 below summarise the types of land which fall within the two non-rateable classes, as listed in Schedule 1 of the Act. They are reproduced from the NZ Local Government Rates Inquiry Panel 2007 report.

**Table A.8: Land fully rateable in NZ**

<b>Class 1:</b>	<b>Land fully non-rateable</b>
1	National parks, reserves and conservation areas
2	The foreshore, seabed, lakes and rivers
3	Publically accessible land owned by private entities for conservation purposes, which is not for profit
4	Land used by local authorities for the provision of various amenities, such as parks, swimming pools and libraries, or for soil conservation and river control, for which no revenue is received
5	Land owned or used by certain named charitable trusts
6	Schools and early childhood centres that do not operate for profit
7	Religious institutions
8	Hospitals
9	Churches and other places of worship
10	Cemeteries and crematoria
11	Maori customary land
12	Marae, Maori reservations and meeting places
13	Maori meeting houses
14	Maori land that is non-rateable by virtue of an Order in Council
15	Electricity generation and transmission equipment
16	Any land declared non-rateable by another Act
17	Roads
18	Operational areas of airports
19	Operational areas of railways, owned by New Zealand Railways Corporation
20	Wharfs
21	Land used for charitable purposes
22	Parliament and vice-regal residences

Source: Local Government Rates Inquiry Panel 2007, Table 14-1, p.230

**Table A.9: Land 50% non-rateable in NZ**

<b>Class 2:</b>	<b>Land 50% non-rateable*</b>
1	Agricultural and Pastoral Society showgrounds
2	Sports grounds, excluding horse and greyhound race tracks
3	Land used for the arts

\* Provided that they are not for profit and do not hold a liquor licence.

Source: Local Government Rates Inquiry Panel 2007, Table 14-1, p.230

### **Analysis of the New Zealand legislation**

In 2006, the New Zealand central government commissioned an independent inquiry into the local government rating system. In 2007, the Local Government Rates Inquiry Panel published a report summarising their process of analysis and findings. This report includes a chapter into the impact and appropriateness of exemptions from liability for rates. The Panel discussed the merits of different justifications provided for existing exemptions and identified areas for reform.

In many cases, it was argued that statutory exemptions be removed and the power of granting exemptions be passed directly to local governments through their rates remission policies (LGRIP 2007, p. 227). This would be a particularly useful course of action for public goods that benefit local communities (LGRIP 2007, p. 235). The phrase 'public goods' in this case refers not to goods provided by governments, but rather to goods and services which are non-excludable and non-rival, making it difficult to impose user-pay charges. In contrast, the Panel maintained that the burden of providing national public goods, which benefit the entire country, should be shifted from local to central government – that is, from the rate system to that of taxation (LGRIP 2007, p. 235).

The report highlights a number of advantages that would be achieved if the provision of exemptions was removed from the legislation and passed on as a requirement of council remission policies (LGRIP 2007, pp. 235-236). These include:

- The improvement in equity circumstances,
- An increase in rate revenue, the extent to which would vary between jurisdictions,
- Elimination of the burden placed on ratepayers, in subsidising exempt institutions,
- Greater council autonomy over rating bases,
- The ability to maintain legitimate exemptions,
- Promotion of competitively neutral circumstances, and
- Creation of financial incentives for the efficient management of Crown land.

The applicability of such a reform for New South Wales is unclear. However, it demonstrates the trade-off between the principles of efficiency, simplicity, equity, sustainability, cross-border competitiveness and competitive neutrality that is inherent to the provision of any form of rate relief. Possible aspects which could be implemented include the classification of some land types as partially exempt, to generate some

obligation to contribute toward the cost of local government services which exempt institutions receive.

## Canada

Similar to Australia, Canada has a federal system of government, whereby roles and responsibilities are shared between administrations at the federal, provincial (and territorial), and municipal levels. Local municipalities are responsible for water, sewage, waste collection, public transit, land use planning, libraries, emergency services and economic development (Government of Alberta 2012).

Provinces are responsible for the legislation governing municipalities within their jurisdictions. Such legislation grants municipalities the authority to impose and collect property taxes, and correspondingly defines the eligibility conditions for tax exemptions. Rather than describing the variation in exemption legislation, this section identifies particular exemption provisions which may be relevant to this analysis and are of interest for NSW reform.

### Targeting rate relief on equity grounds

New Brunswick is one of very few jurisdictions in Canada in which the collection of property taxes is the responsibility of the provincial government, rather than of the municipalities (Patterson 1999, p. 8). Service New Brunswick undertakes property value assessments, while the Department of Environment and Local Government fixes local tax rates in co-operation with municipalities (Service New Brunswick 2010a). Payments are made to the Department of Finance before they are transferred to the municipalities themselves.

Notwithstanding this structural difference, the legislation of New Brunswick allows for a unique method of rate relief provision which may be somewhat applicable to NSW. In addition to specific exemptions (s 4), there is an opportunity for certain charities and non-profit organisations to apply for a reduction in their level of assessment (Patterson 1999, p. 60). Based on the nature of their claim, such organisations may be entitled to a 35%, 65%, 90% or 100% discount on property taxes (s 7.1).

According to Service New Brunswick (2010b) land holdings of eligible organisations must be primarily used to provide community services (predominately funded by voluntary donations) in at least one of the following domains:

- Poverty relief;
- Youth services;
- Elderly services; or
- Services for the disabled or disadvantaged.

Although local governments in NSW may not have sufficient resources to manage such an application process if it was to be implemented by the Local Government Acts Review, the structure of the provisions remains relevant. The requirement that services of applicant institutions be funded by donations reflects the importance of verifying capacity to pay. Furthermore, the enforcement of land usage conditions helps to better target tax relief towards activities which generate community benefits. A similar process of targeting should also have the effect of minimising economic efficiency losses.

## Municipality discretion

In a similar manner to the QLD *Local Government Act 2009*, various pieces of legislation in Canada also grant municipalities some discretionary powers in determining property tax exemptions. The level of autonomy does however vary between provinces.

In Alberta, the *Municipal Government Act 2000* provides for a broad range of property tax exemptions, including roads, national parks, conservation land, Crown land and certain land used for nursing homes, school, educational, religious or charitable purposes (s 353(3)). In addition, councils are authorised to grant exemptions to property held by non-profit organisations through the passage of a bylaw (s 364).

However, in very narrow circumstances, local governments may also override exemptions provided by the legislation (s 363). These powers are restricted to property “held by and used in connection with” Ducks Unlimited (a wetland conservation charity), various hostelling associations and units of the armed forces. There is a further provision that councils may terminate exemptions granted to properties or businesses prior to 1995 under a private Act or Local Authorities Board order (s 351).

Broader discretion is authorised for municipalities in British Columbia under section 809 of the *Local Government Act 1996* and section 224 of the *Community Charter 2003*. On top of mandatory exemptions made under the *Community Charter 2003* (s 220), local governments may, through a bylaw passed by a minimum two-thirds vote, provide exemptions to certain land uses for a specified term no longer than ten years (s 809). This ruling covers, among others:

- Land mainly used for public athletic or recreation purposes, owned or held by an athletic or service organisation; and
- Land used or occupied by a church for the purpose of public worship or a church hall.

Section 224 of the *Community Charter 2003* also allows for a range of permissive exemptions through local government bylaws.

In certain circumstances, there may be a case for allowing local councils in NSW a level of autonomy on rating exemptions, within some boundaries. In considering this policy option, it is important to note that any allowance for local discretion should be given carefully, in a manner which balances the advantages of catering to local circumstances against the losses in continuity across borders.

## Competitive neutrality and government exemptions

In regard to competitive neutrality, the federal government of Canada does not pay taxes to municipalities. Rather, payments are made in lieu, recognising “the valuable benefits received from both provincial and municipal levels of government in Canada” (Local Government Review Inquiry Panel 2007, p. 236). Public Works and Government Services Canada (PWGSC) oversees the Payments in Lieu of Taxes Program, in accordance with the *Payments in Lieu of Taxes Act 2000* (PWGSC 2012).

The Act, along with the *Payments in Lieu of Taxes Regulations* assigns the Minister of Public Works and Government Services the authority to make a payment to a taxing authority, such as a municipality, in lieu of a real property tax in respect of federal property within the

authority's jurisdiction (s 3). While there is no lower limit on payment amounts, they are, in general, capped at the product of the effective taxation rate and the property value (s 4). There are a number of additional provisions, which also allow the Minister to pay interest (s 3), or make deductions for certain purposes (s 7). Nevertheless, in principle, the central government has committed to reimburse municipalities for revenue losses due to property tax exemptions, to an extent.

Section 366 of the *Alberta Municipal Government Act 2000* establishes that municipalities may also apply to the provincial government for grants in lieu of taxes on an annual basis, in relation to property that the Crown has an interest in. It is noted that the amount of the grant is not to exceed "the amount that would be recoverable by the municipality if the property that the Crown has an interest in were not exempt from taxation" (s 366(2)). However, the definition of Crown property is restricted unless it is a single family residence (s 367). This significantly limits the opportunity to make grant claims.

## United Kingdom

Since the late 1800's the balance of power in the United Kingdom has been shared between central and local government (Local Government Group 2011, p. 2). Local authorities are responsible for the provision of a broader scope of services than those in NSW, ranging from highways, roads and transport, and planning and development to children's services including education (Local Government Group 2011, pp. 3-5).

The structure of local government is also more complex. There are five types of local authorities, which are either organised in a one-tier or two-tier system (Local Government Group 2011, p. 7). One-tier systems tend to be concentrated in metropolitan areas, governed by a unitary authority, London borough, or metropolitan district. Two-tier systems are split between county councils and smaller district councils.

Local governments receive funding from three separate channels, government grants, council tax and redistributed business rates (Local Government Group 2011, p. 21). The manner in which council taxes and business rates may be levied is defined in the *Local Government Finance Acts* of 1988, 1992 and 2012. Unfortunately the online portal for UK legislation does not currently publish a complete version of the Act with all amendments applied. This makes it difficult to clearly identify the exemptions provided by the legislation.

Unlike council rates in NSW, which are levied in respect to land, the UK council tax is payable in respect of chargeable dwellings (s 4). Consequently, it relates to residential properties rather than business premises. The *Council Tax (Exempt Dwellings) Order 1992*, and related amendments of that Order describe the types of dwellings which are considered exempt.

At present, the exemptions fall into categories from Class A to Class W (Suffolk Coastal District Council 2013). The majority of the provisions relate to dwellings which are unoccupied, for instance, property which is unoccupied because the previous resident is now located in a hospital or care home (Class E). Occupied dwellings which receive exemptions include halls of residence for students (Class M), and property owned by the Ministry of Defence (Class O).

Businesses are obliged to pay non-domestic rates. Schedule 5 of the *Local Government Finance Act 1988* describes the types of properties which are exempt from this obligation. In some cases, councils have the authority to reduce the amount payable even further, after application by an eligible organisation.

For instance, charities and amateur community sports clubs receive an 80% discount on rates, provided the property in question is used for charitable purposes. In addition, councils may provide 'discretionary relief' to such groups, up to a total of 100% (United Kingdom 2013).

It appears that local authorities have developed their own rate relief application criteria and processes, with some common guidelines. Generally, the conditions for discretionary relief are:

- The organisation occupying the property is not established or conducted for profit
- The main objectives of the organisation fall into one of the following categories:
  - Charitable;
  - Philanthropic;
  - Religious;
  - Concerned with education;
  - Social welfare;
  - Science;
  - Literature; or
  - Fine arts.

These appear to be broader than the NSW provisions. However, more attention is drawn to the appropriateness of providing relief through the local application process. Tameside Metropolitan Borough (2013) takes into consideration the principle of equity, through questions such as:

- Are the facilities available to all sections of the community?
- Does the organisation provide facilities which directly relieve the Authority of the need to do so, or enhance or supplement those which it does provide?
- Is the membership of the Organisation drawn from people mainly resident in the Authority's area?

Furthermore, to qualify for a discretionary "top up" in addition to the automatic 80% discount, charities and amateur community sports clubs are required to "demonstrate significant benefit to Tameside residents" (Tameside Metropolitan Borough 2013). A similar point is acknowledged by Suffolk Coastal District Council (n.d., p. 6). This clearly reflects the concepts which underlie the benefit principle.

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