

Draft Submission on Local Government Amendment (Rates) Bill 2021

January 2021

Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to comment on the Exposure Draft of the *Local Government Amendment (Rating) Bill 2021* (the Bill).

While the 12 amendments proposed in the draft exposure bill introduce greater flexibility and efficiency to NSW's antiquated ratings system, LGNSW contends that these reforms don't go far enough.

The current rate pegging system has resulted in the under-provision of community infrastructure and services and deferral of infrastructure maintenance and renewal expenditure, is undermining the financial sustainability of councils and acts as a financial disincentive for councils to accept growth. Fundamental reforms to the rating system are required.

Before the Bill goes before the Parliament, LGNSW calls for further legislative and regulatory reforms to:

- Facilitate the removal of rate pegging;
- Decouple the Emergency Services Levy (ESL) from rate pegging and allow rates to be increased to recover the full cost of the ESL;
- Reform rate exemptions in accordance with the IPART recommendations;
- Maintain existing arrangements in relation to the mining rates;
- Consider introduction of a new 'energy' rate category or sub-category; and
- Introduce the option of Capital Improved Valuations.

ADDITIONAL REFORMS SOUGHT

Rate Pegging

LGNSW maintains its opposition to rate pegging and calls on the NSW Government to remove rate pegging and allow councils to determine rates in consultation with their communities.

The cumulative negative impacts of over 40 years of rate pegging include an estimated \$15 billion in rate revenue forgone when compared to Victoria (NSW Productivity Commission Green Paper 2020 p. 256). New South Wales' average local government rates per capita of \$591 (in 2019) are below the average for all other states of \$835.

Rate pegging in NSW has resulted in:

- Under-provision of community infrastructure and services.
- The deferral of infrastructure maintenance and renewal expenditure resulting in massive infrastructure backlog.
- Undermining the financial sustainability of councils.
- A financial disincentive for councils to accept growth.

The NSW Productivity Commissioner has called for the removal of this disincentive for growth councils to accept development and growth by allowing for the local government rate peg to reflect population growth. The removal of rate pegging is also supported by NSW TCorp, the Planning Institute of Australia, the Committee for Sydney, the Sydney Business Chamber and the Western Sydney Business Chamber.

The Commission also found that while the rate peg helps councils' rate base to increase with prices, it does not allow for increases in the volume or standard of services demanded. Nor does it account for the costs of expanding roles and responsibilities mandated by State and Federal Governments.

As a step towards the complete removal of rate pegging, LGNSW recommends that the Government consider a voluntary trial of the removal of rate pegging on a number of councils.

Emergency Services Levy (ESL)

The ESL on local government is unsustainable. The rapidly escalating cost of the ESL is eroding the financial base of councils and reducing their capacity to maintain infrastructure and services. Rural and regional councils with small rate bases and with a high RFS component in the levy are particularly hard hit, with increases absorbing 50% or more of allowable revenue increases under the rate peg.

LGNSW seeks regulatory amendment to decouple the ESL from the Rate Peg to enable councils to increase rates to fully recover the cost of the ESL outside the rate pegging process.

Rate Exemptions

LGNSW urges the NSW Government to implement IPART's recommendation (Rec. 14) that:

Sections 555 and 556 of the Local Government Act 1993 should be amended to:

- *exempt land on the basis of use rather than ownership, and to directly link the exemption to the use of the land, and*
- *ensure land used for residential and commercial purposes is rateable unless explicitly exempted.*

This recommendation is the key to reforming the rate exemptions system in this State providing an unambiguous and consistent test on rateability.

Under IPART's recommendation the following currently exempt activities would become rateable:

- Commercial logging in State Forests (Forestry Corporation of NSW)
- Retirement villages
- Childcare centres charging market rates
- University student or other residential accommodation
- Land used by a water corporation
- Freight Rail lines
- Social housing owned by Community Housing Providers (CHPs)

Mining Rates

LGNSW is pleased that IPART's Recommendation 34 in relation to Mining Rates has not been included in the Bill. The IPART recommendation is that *"any difference in the rate charged by a council to a mining category, compared to its average business rate, should primarily reflect differences in council's cost of providing services to the mining properties"*.

This recommendation was strongly opposed by councils that have mines in their local government area. However, LGNSW is disappointed that the Government still intends to implement the reform through issuing guidance to councils.

LGNSW urges the NSW Government to reconsider its support for this particular reform and drop it from the reform agenda. Furthermore, LGNSW also calls for the repeal of Section 528

(2) of the *Local Government Act* (1993) which already provides the Minister with the power to regulate mining rates in the manner proposed by IPART Recommendation 34:

528 (2) The regulations may provide that the ad valorem amount of the ordinary rate for land categorised as mining is to be not more or less than a specified percentage of the ad valorem amount of the ordinary rate for land categorised as business. The regulations may apply to all councils or one or more councils specified in the regulations.

There are several sound reasons why council discretion on mining rates should be retained and secured by rejection of IPART Recommendation 34 and the repeal of Section 528 (2).

LGNSW and councils consider IPART's reasoning to be flawed on fundamental grounds:

- IPART is seeking to link rates to the costs of providing services. This is contrary to the principle of council rates being a tax - the only taxation mechanism available to councils to raise general revenue. Unlike fees and annual charges, rates are not and should not be linked to the provision or availability of specific services. Council rates should be no more tied to specific service provision than NSW Government land taxes, stamp duties on property transfers or royalties.
- IPART is setting aside the important taxation principle of capacity to pay. Application of this principle is essential to the delivery of equitable rating outcomes. Equity is a fundamental taxation principle applied by local, state and federal governments. It is generally accepted that mining has a higher capacity to pay than other business or farmland uses. Setting aside the capacity to pay principle is a radical and damaging departure from core taxation principles.
- IPART provides no justification for linking mining land use with other business category land uses. Mining activities cannot be compared with the activities typically conducted by other types of businesses – for example, shops, offices, factories, warehouses and logistic centres, service centres etc. Mining typically generates high revenues over a limited lifespan. Other businesses typically generate less annual revenues and are established with the objectives of growth and permanence. Furthermore, once the local gas and mineral resources are extracted, the associated wealth is lost to the local area forever. This provides justification for taxing these activities more highly than other land uses and supports the expectation that communities should share in the mining wealth.
- Local rating policies should be determined by councils in consultation with their communities through the Community Strategic and Long Term Financial Planning processes so that they represent local circumstances and community priorities.

In addition to the questions of principle, councils are also opposed to Recommendation 34 on practical grounds. The large reductions in mining rate revenue that would result from implementation of the recommendation will necessitate large increases in residential, farmland and business rates to compensate. It is expected that there will be a strong community backlash to the rate increases, particularly as the increases are effectively being used to offset rate savings for the mining companies and not to improve local infrastructure and services. This could prove to be a very divisive issue in regional communities.

Energy Rating Category or Sub-Category

LGNSW requests that the NSW Government consider introducing an 'energy' rate category similar to the mining rate category, with the proportionate value of the land occupied by the development (e.g. wind farm, solar array, CSG) subject to mixed use rating provisions.

Capital Improved Value

LGNSW seeks amendments to the Local Government Act and the Valuation of Land Act to provide councils with the option to use Capital Improved Valuations for rating purposes. (Based on IPART Recommendations 1-7).

IPART recommended that councils' rates income should increase over time in line with the growth in Capital Improved Value (CIV) arising from new development. This was fundamental to the IPART solution to funding population growth. It would enable growth in the rate base to keep pace with real growth and the associated increase in demand for council infrastructure and services. LGNSW agrees with IPART's findings that application of CIV would be more equitable and efficient than the current UV based methodology, in that current ratepayers would not subsidise future ratepayers and it would better capture the costs of new developments.

Conclusion

While LGNSW acknowledges that the amendments contained in the draft Bill would provide greater rating flexibility for councils, help councils deliver more equitable and efficient rating outcomes to their communities and help facilitate rate harmonisation for the 17 newly amalgamated councils, LGNSW is firmly of the view that these reforms are largely superficial and that more fundamental reforms are required.

First and foremost among the reforms required is the removal of rate pegging. Rate pegging is demonstrably damaging NSW communities and the NSW economy. There also needs to be an overhaul of the archaic and poorly targeted system of rate exemptions that is costing communities and perversely producing inequitable results. The rating system also desperately needs to be amended to provide for councils to fully recover the costs of the ESL independently of the rate pegging system.

LGNSW seeks the commitment of the NSW Government to progressing fundamental reforms of the rating system. LGNSW would be pleased to work with the NSW Government in bringing about real reform.

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