



Anglican Church Diocese of Sydney

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ALL CORRESPONDENCE TO:

11 October 2016

Mr Derek Francis
Director
Independent Pricing and Regulatory Tribunal (IPART)
PO Box K35
Haymarket Post Shop NSW 1240

Dear Mr Francis

Re: IPART – Review of the Local Government Rating System - Removal of rate exemption for Places of Public Worship (POPW)

Thank you for the opportunity to comment on the aforementioned review.

I am writing on behalf of the Anglican Church Property Trust Diocese of Sydney (ACPT), the registered proprietor of all parish property in the Anglican Diocese of Sydney which comprises 270 Anglican parishes and over 700 property titles.

ACPT has previously provided submissions in relation to this matter, most recently on 13 May 2016.

Executive Summary

In summary, ACPT provides the following comments on the IPART Draft Report for the Review of Local Government Rating System:

1. The retention of the exemption under s 555(e) for religious bodies based on land use is supported.
2. The introduction of a temporal test for mixed use sites is not supported.
3. The proposed changes should not place an undue administrative burden on religious bodies which would lessen their ability to continue to provide a public benefit.
4. There is ambiguity in relation to the definition of commercial activities.
5. The retention of the exemption for the housing needs of a religious body is supported.
6. Transition provisions should be considered so as to deal with existing contractual relationships relating to the payment of rates between lessee and lessor.

Substantive Submission

1. Retention of exemption for religious bodies based on land use rather than ownership

IPART Draft Recommendation 10 is that Sections 555 and 556 of the Local Government Act 1993 NSW (**LG Act**) 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.

ACPT supports the IPART Draft Recommendation 11 that section 555(e) of the Local Government Act 1993 (NSW) which provide for exemptions from council rates being land used by a religious body occupied for that purpose, should be retained.

The Draft Report does not make clear what changes should be made to section 555(e) to give effect to these recommendations. Presumably it would involve deleting the words "belongs to a religious body and" in section 555(e) to remove the ownership requirement, but otherwise leave the section unchanged.

Retaining an exemption for land used for religious purposes acknowledges the invaluable contribution that churches make to the wellbeing of communities in NSW via the provision of community infrastructure available for use by members of the public at no cost to serve the spiritual, health, welfare, educational, social and other needs of the population residing and/or visiting within each local government area. This exemption from rates for churches is also consistently reflected across Australia in each of the other Australian States and Territories respective local government legislation. We note and agree with IPART's comments in Box 6.1 on page 76 of the Draft Report, discussed further below. The role of churches in providing community infrastructure was also acknowledged by the then NSW Minister for Planning Mr Brad Hazzard when he provided an exemption to the State Infrastructure Contribution Levy (SIC) for all Places of Public Worship.

2. Mixed use church properties – introduction of temporal test

Draft Recommendations 15 and 16 apply to mixed-use properties where a proportion is used for exempt purposes. The Draft Report recommends that rates be payable for the non-exempt use, determined on either a spatial or temporal basis.

Previously, in 2010, the LG Act was amended to limit exemptions granted to religious and charitable organisations. The exemptions available to these organisations would only apply to the parts of their land used for exempt purposes, and not those parts used for non-exempt purposes. Draft recommendation 15 appears to recommend a spatial limitation on the exemption when this is already provided for in the Act.

The effect of draft recommendation 16 is to extend this limitation on a temporal basis where land is used for an exempt purpose only part of the time, and requires a self-assessment process to be used to determine the proportion of rates payable for the non-exempt use. We do not support dividing land on a temporal basis for determining exemption from rates. In the draft report IPART indicates an intention to minimise compliance costs for land owners and the administrative burden for councils (page 87). We submit that extending the limitation on a temporal basis will achieve neither objective. We offer the following observations -

1. A spatial division is relatively clear. In a situation where a property is leased for use for a non-exempt purpose the rates exemption will be lost for the duration of the lease, or until the exempt use resumes. A temporal division will often be quite unclear. The non-exempt use may not be formalised and no, or few, records may be kept.

2. It may also be unclear when a facility is being used for an exempt and a non-exempt purpose. In the Conference Centre example in Box 6.5 on page 86, is the Centre in use for the exempt purpose at night time if the seating is configured for a church service and musical equipment is set up on the stage? It would appear to be, since such use is for a religious purpose and "in connection with ...a church or other building used or occupied for public worship" (s 555(e)).
3. The proportion of non-exempt use of a shared building may change on a regular basis, especially given the informality of the use. The steps set out at 6.5.2 of the Draft Report presumably involve the property owner estimating the use for the year ahead. This estimate may be too high or too low. The proposed bands would be of limited assistance since a change in use may put the property owner into a higher or lower band.
4. The property owner may not be able to recover the rates from the commercial user where a property is in shared use and the arrangements are not formal. By contract, in a spatial division where a portion of a site is leased, the rate liability would typically be recovered from the tenant under the terms of the lease.
5. It creates the potential for argument between the landowner/tenant/council which will simply lead to higher costs, including legal costs, for all concerned.

We submit that section 555(5) already stipulates an appropriate spatial limitation on use of land for an exempt purpose, and that it not be extended to impose a temporal limitation on the exemption.

3. Objection to increased regulatory burden generally

Section 6.5.1 sets out the process for rating mixed-use land whereby the council requires the owner submitting an application for a partial rating exemption by a land owner on the grounds that the land is partly used for an exempt purpose, to provide supporting evidence of exempt use.

Page 84 states " *to minimise the regulatory burden, we consider there should be a presumption that specific categories of exemptions are unlikely to be involved, to any great extent, in non-exempt activities*". For example:" *"schools"* and *"Hospitals"*. Footnote [78] clarifies that this is only a presumption. The Council can, if it determines that the land is being used for non-exempt purposes, treat the property like any other seeking an exemption from the rate.

Under current regulations, not for profits, church, schools and hospital properties are exempt. However, in relation to church properties, under the Draft IPART proposal where there are additional uses occurring on the site, the regulatory burden will rest with the church to establish what land or percentage of land is ratable and what is exempt.

ACPT argues that the regulatory burden should be minimised for church properties, as it is for schools and hospitals. With reference to the manner in which private hospitals are operated for commercial gain and schools can license out rooms to obtain rental income, churches are no more likely to be involved to any great extent, in non-exempt activities. ACPT argues that the proportion of church usage for non-exempt activities is similar to schools and hospitals, and so should also be exempt from this requirement. Council will still have the ability as per footnote [78] discussed above, to determine the land is being used for non-exempt purposes.

ACPT reiterates the grounds for which rate exemptions should be granted, as set out in Box 6.1 of the Draft Report. That is "*where an activity provides substantial public benefits to the community*"; and "*where the organization has limited ability to pay*" and granting exemptions "*could allow them to spend more on public goods such as helping the disadvantaged, which results in better outcomes for society.*" These reasons are applicable to the necessity for religious bodies to receive a similar rates exemption regime to schools and hospitals. To place additional regulatory burdens on church properties where

there is a mixture of uses, would necessarily lead to less benefits being able to be provided to the community and allow for less spending on public goods with which religious bodies are intimately involved.

4. Definition of commercial activities

IPART appears to give a meaning to “commercial activity” that will include activities that are incidental or ancillary to the exempt use. The definition in box 6.2 on page 78 of the Draft Report lists the following elements:

- involves the selling of goods and/or services,
- is provided at more than a nominal consideration,
- is undertaken on an ongoing basis, and
- is not the provision of a public service.

However the indicative use in Table 6.2 on page 86 includes the following as commercial activities:

- A store selling full priced goods to raise funds for a charitable cause.
- Use that is incidental to the core purpose and/or once off activities (eg, annual fundraising dinner).

The test for whether something constitutes a commercial activity will be complex to administer. This is also born out in the inconsistency between the definition and the examples. For example, the definition indicates “more than nominal consideration” while the example refers to the sale of “full priced goods”. Where does this leave the sale of discounted goods through an op-shop or church fete that is run by the local church, for example? The definition also refers to activities being undertaken on an “ongoing basis”, whereas the examples refer to “once off” at one end of the spectrum and “regular” at the other. There will be many activities that are somewhere in between. It is not clear what activities are in or out.

We submit that there is no good purpose in construing incidental or ancillary fundraising activities undertaken by a religious body (or charity) to be commercial. To use the words of section 555(e), these activities involve “use in connection with...a church or other building used or occupied for public worship”. Such use of land should remain exempt.

5. Church use of housing

In relation to residential use of church land as ministry housing, footnote 75 (Page 81) of the Draft Report states:

“One exception is the exemption for the residence of a minister of religion. However as a significant part of a minister’s role is being available to the congregation at all times, it is reasonable to conclude that the residence is being used as part of a religious purpose.”

The ACPT supports the continued exemption of housing for a minister of religion.

The ACPT also requests that IPART amend its report recommendations by specifying that such an exemption includes those studying to be a minister of religion. In this regard, a minister of religion is typically required to undertake theological training over 3 or 4 years, such study undertaken whilst serving the community in his relevant ministry.

6. Transition period

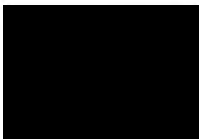
We note the changes recommended by the Draft Report may have an impact on the obligations between lessee and lessor. Particularly in circumstances where a mixed use is occurring on land held by an owner whose use is subject to an exemption where a lessee may now be liable to pay rates. The land owner may be unable to pass on those rates to the tenant under the lease and therefore would be left with the burden of covering those costs. Similarly, land privately owned but used for an exempt purpose by a lessee may not have those benefits passed on to it due to the existing lease obligations. In this regard, ACPT requests a suitable transition period that would allow for parties in these circumstances to make the necessary arrangements to deal with the new liability/exemption fairly.

Should you wish to discuss anything contained in this submission in greater detail can you please contact either the Head of the ACPT, Mr Greg Ellem, or the Manager, ACPT, Mr Scott Lincoln, to arrange a time that is convenient:

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Yours sincerely



Dr Robert Tong AM
Chair, ACPT

Cc The Most Reverend Dr Glenn Davies, Archbishop of Sydney, and Metropolitan of the Province of New South Wales.

Mr Geoff Kyngdon, Chair, Mission Property Committee, Anglican Diocese of Sydney.

Mr Greg Ellem, Head of ACPT, Anglican Diocese of Sydney

Mr Scott Lincoln, Manager, ACPT, Anglican Diocese of Sydney