



**SUBMISSION TO IPART REVIEW OF LOCAL
GOVERNMENT RATING SYSTEM.**

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NSW Farmers' Association Background

The NSW Farmers' Association (the Association) is Australia's largest State farmer organisation representing the interests of its farmer members – ranging from broad acre, Livestock, wool and grain producers, to more specialised producers in the horticulture, dairy, egg, poultry, pork, oyster and goat industries.

Executive Summary.

The NSW Farmers' Association Oyster Committee (NSWF Oyster Committee) wishes to address the suggestion by the IPART Review that the rate exemptions currently applicable to commercial activities, including oyster cultivation, may not be equitable. Specifically, NSWF Oyster Committee strongly opposes imposing local government rates on oyster leases, which are operated by the Department of Industries.

We note that the NSW Farmers' Association has provided a submission on behalf of the Association as a whole and that the NSWF Oyster Committee's submission is provided in addition to the Association's submission.

Pursuant to Section 555 (h) of the *Local Government Act 1993*, land that is below high water mark and is used for any aquaculture (within the meaning of the *Fisheries Management Act 1994*) relating to the cultivation of oysters, is exempt from payment of Local Council rates. NSWF Oyster Committee submits that the exemption from Council rates of land that is below high water mark and is used for any aquaculture relating to the cultivation of oysters should remain.

The NSW oyster industry accounts for nearly 70% of the value of NSW aquaculture production and is invaluable in providing employment and economic opportunities to NSW coastal communities.¹

NSWF Oyster Committee is firmly of the view that far from creating further service needs and costs for local government, the NSW oyster industry assists local councils in managing and monitoring estuarine water quality and in managing foreshore areas.

¹ *NSW Oyster Industry, Sustainable Aquaculture Strategy 2006*, NSW Department of Primary Industries, iv.

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1. Local government rates and other fees and charges.

NSW oyster farmers incur a range of government fees and charges, including local government rates. Whilst the land that is below the high water mark and is used for any activity relating to the cultivation of oysters is exempt from payment of Local Council rates, NSW Oyster Committee submits that IPART should also give recognition to the fact that the NSW oyster industry does not operate with exemption from payment of council rates and other fees and charges.

Under the *Fisheries Management Act 1994* oyster aquaculture leases incur rent and also pay annual fees to obtain a permit to cultivate oysters. In return, the DPI Fisheries unit provides services, including NSW aquatic habitat protection, compliance activity, and also develop policies and guidelines for the industry that are consistent with habitat protection objectives.

According to DPI, there are currently 297 'Class A 'Aquaculture Permits covering 2254 oyster leases (2887 ha). NSW oyster growers currently pay \$69.00 per Ha, as well as Permit Fees, Research Charges and a Security Bond.

Oyster businesses must also hold a Seafood Licence under the *Food Act 2003* and pay state and local levies to the NSW Shellfish Program. Currently, according to DPI, there are 248 active Licence holders, each valued at approximately \$1,788.00. Seafood Licences enable oyster growers to harvest oysters for human consumption. In addition to the Seafood licence fee, NSW oyster growers are also required to pay a local levy, which funds the testing required in the Management Plan to keep an estuary open for harvesting.

Oyster growers' reliance on local council services is confined to services on the land and does not include their oyster aquaculture leases. There is no road access to oyster leases (the only way to access leases is by oyster punts/barges etc.), oyster growers do not have any garbage collection services for their oyster leases and are not permitted to take any oyster infrastructure or waste products to land based recycling centres.

It is submitted that imposing further rates on the industry would unfairly increase the operating costs for the industry.

2. Services provided by the oyster industry.

NSWF Oyster Committee submits that because the oyster industry in NSW incurs significant unavoidable public costs it is equitable and efficient to exempt it from paying rates. The oyster industry incurs significant unavoidable public costs associated with shoreline and catchment water pollution. According to DPI, NSW oyster growers pay water monitoring costs of between \$800,000 and \$1 million per year as a result the delivery of catchment water pollution to their lease areas. These costs are considerably higher than incurred in other parts of the Australian oyster industry and are a direct consequence of the lease areas being adjacent to or downstream of urbanised, residential or otherwise developed areas.

Because, as filter feeders, oysters are highly vulnerable to the water quality of the estuary, oysters are impacted by poor water quality related to certain service functions of councils in many estuaries, including storm water management, development control, and unsealed road management. The impact of these service functions can cause harvest closures. Should oyster growers be required to pay local council rates on leases, it is likely that the industry and growers would require a considerably higher degree of accountability for the impact of these service functions from local councils.

Furthermore, water pollution incidents frequently force NSW oyster growers to close down their operations. According to DPI, in the period 2012-2015 there have been 122 sewage spills and 3 fuel spills reported adjacent to oyster leases. As a consequence of these spills, NSW oyster growers incur significant on-going management and monitoring costs as well as financial losses associated with being required to recall their product from sale. In addition, there is nothing that can be done by NSW oyster farmers to reduce catchment pollution and requiring oyster farmers to pay Local Government rates for 'water land' would therefore be inequitable.

Far from creating further service needs and costs for local government, NSW Oyster Committee submits that the NSW oyster industry assists local councils in managing and monitoring estuarine water quality and in managing foreshore areas. Oyster farmers currently pay for all testing of estuary water for E. coli, Faecal Coli forms, Phytoplankton, bio toxins and heavy metals. According to DPI, oyster farmers currently contribute 58% of the total costs of running the NSW Shellfish Program being \$1,604,141, or approximately \$930,400.00.

3. Non-exclusive possession.

Commercial fishers, marine contractors and tourism operators conduct business in and over 'water land'. These businesses are not required to pay Local Government rates for the use for commercial purposes of "water land". Similarly commercial moorings do not pay Council Rates. Removal of the exemption for oyster aquaculture leases would therefore create an inequitable disadvantage for aquaculture businesses.

This inequity is relevant to the commercial use of all water land, but becomes most obvious when oyster leases themselves are considered. Under the IPART proposal, the oyster industry would be required to pay rates to use a leased area, while other businesses using exactly the same area would not. This arises because oyster leases do not confer exclusive possession.

Oyster leases (aquaculture leases) are issued under the *Fisheries Management Act 1994*. Section 164 Rights conferred by a lease - indicates that:

- 1) An aquaculture lease vests in the lessee, the lessee's executors, administrators, and assigns:
 - (a) the exclusive right during the currency of the lease to undertake the type of aquaculture specified in the lease, subject to the provisions of or made under this Act and the provisions of the lease, and

(b) the ownership of all fish or marine vegetation specified in the lease that are within the leased area.

(2) An aquaculture lease does not confer the right of exclusive possession of the leased area.

(3) An aquaculture lease is subject to the public right of fishing and to any right recognised by the regulations, except as provided by subsection (1) and the other provisions of or made under this Act.

(4) Nothing in this section authorises a person to interfere with or damage anything on the leased area.

Wild harvest rights and public rights to fishing co-exist with the lease area. As a result other businesses and individuals can operate at the same location – for example there are wild harvest shellfish businesses operating in Wallis Lake, Shoalhaven River and Merimbula Lake. These businesses can and do gather shellfish from aquaculture lease areas for subsequent sale. In addition, recreational fishers and boaters and tourist operators can use leased areas.

An oyster aquaculture lease does not give the lease holder exclusive possession over the lease area. In fact leaseholders are required to allow public access over their leases. This has caused many problems for growers, most especially in relation to oyster theft and damage to lease infrastructure. Leaseholders are also not permitted to alter in anyway the estuary floor of their leases. We submit that it is therefore, not appropriate that oyster growers be required to pay rates on their leases.

4. Ability to value and procedure for rating.

We submit that determining the rate and valuation of oyster leases would be almost certainly be impossible, and at the least, inequitable. Valuing oyster aquaculture leases *ad valorem* is complex because lease areas have very highly variable productive capacity. We are also of the view that rent cannot be considered to be an indicator of land value, as it is applied uniformly across the State at approximately \$56/ha, according to DPI.

In addition, preliminary valuing of the capital improved value for the purpose of the Emergency Services Property Levy would require knowledge of the type of infrastructure on the lease and the age of the infrastructure. Oyster culture infrastructure deteriorates rapidly in the marine environment making capital improved value highly variable.

If nonexclusive possession of oyster leases was a mitigation factor and this could lower the value of the land (lease) and therefore lower the rate, this could, in our view, have the propensity to decrease the value of the leases when the farmer wishes to sell them or to borrow against the value of the lease for business improvements.

We submit that the administrative processes and systems required for the Department of Primary Industries to determine an equitable valuation of lease areas would far outweigh any additional revenue. The costs of those new systems and processes would invariably be passed on to oyster growers, again, with no additional services provided.

Conclusion.

The benefits provided by the NSW oyster industry to the community environmentally, economically and socially are significant and involve minimal additional costs to local government. Indeed, NSW Oyster Committee submits that the industry in many ways alleviates pressures on local governments, particularly in an environmental context.

For the above reasons, therefore, NSW Oyster Committee submits that the rate exemptions for land that is below high water mark and is used for any aquaculture relating to the cultivation of oysters, pursuant to Section 555 (h) of the *Local Government Act 1993*, should remain.