14 October 2016

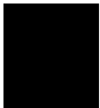
Review of Local Government Rating System
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Dear Sir/Madam

Review of Local Government Rating System – Issues Paper

The NSW Revenue Professionals Society Inc. welcomes the opportunity to submit a response to the questions posed in the "Review of Local Government Rating System, Local Government – Draft Report August 2016".

Yours sincerely



Robert Hay
President
NSW Revenue Professionals

NSW Revenue Professionals

Review of the Local Government Rating System submission

NSW Revenue Professionals responses to the Draft Recommendations

General Comments

The NSW Revenue Professionals welcome the opportunities to contribute to the Rate Review availed to its members by IPART to date and hope to continue on that path.

However, we do wish to express our concern over the number of submissions made by ourselves and many other councils which were raised in regards to the Rate Path Freeze Policy.
In our submission of 11 May 2016 we commented *"Councils should be able to commence rate equalisation from year two of the merger. There should be transitional legislation implemented similar to that which was in place when water rights were removed from land values"*
If it is necessary to persist with some form of rate path freeze then the newly merged councils should be provided with some form of flexibility within this system to allow for them to commence a limited equalisation process from year two of their existence. We are concerned that restricting the commencement of the equalisation until the end of the four year rate path freeze period and then setting limits on the level of equalisation to 10 percentage point concept is too restrictive and will have a devastating effect on the viability of the newly merged councils. We ask that IPART reconsiders the Rate Path Freeze Policy.

Allow councils to use CIV as an alternative to UV in setting rates

1. Councils should be able to choose between the Improved Capital Value (CIV) and Unimproved Value (UV) methods as the basis for setting rates at the rating category level. A council's maximum general income should not change as a result of the valuation method they choose.

   NSW Revenue Professionals support having the ability to use CIV as an alternative to UV as a valuation method in setting rates. CIV is widely recognised as a fair and sustainable approach to the valuation process both nationally and internationally, as it is more easily understood by the ratepayer. The use of CIV would provide a truer distribution of the rating burden, particularly in those councils with a large number of multi-unit or high rise apartment buildings.

   Councils should be allowed the option of a CIV or UV method of rating which best suits their particular circumstances.

   The NSW Revenue Professionals feel that CIV should have a more defined methodology and would like the opportunity to work with the Valuer General's Office in order to achieve this.

2. Section 497 of the Local Government Act 1993 (NSW) should be amended to remove minimum amounts from the structure of a rate, and Section 548 of the Local Government Act 1993 (NSW) should be removed.

   The NSW Revenue Professionals support the amendment of Section 497 and the removal of Section 548 in conjunction with the use of CIV as the method to set rates.

Allow councils' general income to grow as the communities they serve grow

3. The growth in rates revenue outside the rate peg should be calculated by multiplying a council's general income by the proportional increase in Capital Improved Value from supplementary valuations.
   - This formula would be independent of the valuation method chosen by council's for rating.

The NSW Revenue Professionals supports this recommendation to allow councils the ability to increase general income by the proposed calculation method of growth in CIV through supplementary valuations. This recognises the need for growth councils to provide increased infrastructure and services. However, few councils would have the software capacity to allow the recording of two sets of valuations and this may prove to be a problem with councils who choose to continue with UV.

4. The Local Government Act 1993 (NSW) should be amended to allow councils to levy a new type of special rate for new infrastructure jointly funded with other levels of Government. This special rate should be permitted for services or infrastructure that benefit the community, and funds raised under this special rate should not:
   - Form part of a council's general income permitted under the rate peg, nor
   - Require council's to receive regulatory approval from IPART

   We support this recommendation

5. Section 511 of the Local Government Act 1993 (NSW) should be amended to reflect that, where a council does not apply the full percentage increase of the rate peg (or any applicable Special Variation) in a year, within the following 10-year period, the council can set rates in a subsequent year to return it to the original rating trajectory for that subsequent year.

   We support this recommendation

Give councils greater flexibility when setting residential rates

6. The Local Government Act 1993 (NSW) should be amended to remove the requirement to equalise residential rates by 'centre of population'. Instead, councils should be allowed to determine a residential subcategory, and set a residential rate, for an area by:

   - A separate town or village, or
   - A community of interest.

   Due to case law already existing on this subject we agree with the proposal as it adds clarity to the current legislation.

   Further improvements can be made by simplifying the residential rating category criteria in the following ways:-

- ***In addressing the issues around holiday lettings, councils should be given the option to rate these according to the basis of non-continuous occupancy, either as a sub-category of residential or as business.***

- ***We recommend that a definition be added to Section 516 of the LGA for "Residential", similar to that mentioned in 6.2.1 of the review and being:-***

  "Residential" means a premise that is,

  (a) Predominantly used as a place to live, and

  (b) Is occupied by the same resident continuously for periods of three months or greater".

- ***We recommend that clause 122 from the Local Government (General) Regulation 2005 be amended to allow councils to rate serviced apartments and time-shares as per their dominant use. Serviced apartments run in direct competition with hotels and motels and as such they should be rated as a business not as a residential property. Council requests that this change be made in the interests of equality.***

- ***Remove the 'Rural Residential' category as it is poorly understood and applied due to the restriction in land size and occupancy.***

7. An area should be considered to have a different 'community of interest' where it is within a contiguous urban development, and it has different access to, demand for, or costs of providing council services or infrastructure relative to other areas in that development.

We support this recommendation but believe that the Act should contain a definition of what constitutes a 'community of interest'

8. The Local Government Act 1993 (NSW) should be amended so, where a council uses different residential rates within a contiguous urban development, it should be required to:

   - ensure the highest rate structure is no more than 1.5 times the lowest rate structure across all residential subcategories (ie, so the maximum difference for ad valorem rates and base amounts is 50%), or obtain approval from IPART to exceed this maximum difference as part of the Special Variation process, and
   - publish the different rates (along with the reasons for the different rates) on its website and in the rates notice received by ratepayers.

   We disagree and believe Councils should have the discretion to determine the most appropriate rate structure and be accountable to its communities through the IP&R process.

9. At the end of the 4-year rate path freeze, new councils should determine whether any pre-merger areas are separate towns or villages, or different communities of interest.

   - in the event that a new council determines they are separate towns or villages, or different communities of interest, it should be able to continue the existing rates or set different rates for these pre-merger areas, subject to metropolitan councils seeking IPART approval if they exceed the 50% maximum differential. It could also choose to equalise rates across the pre-merger area, using the gradual equalisation process outlined below.
   - in the event that a new council determines they are not separate towns or villages, or different communities of interest, or it chooses to equalise rates, it should undertake a gradual equalisation of residential rates. The amount of rates a resident is liable to pay to the council should increase by no more the 10 percentage points above the rate peg (as adjusted for permitted Special Variations) each year as a result of this equalisation. The Local Government Act 1993 (NSW) should be amended to facilitate this gradual equalisation.

   The NSW Revenue Professionals strongly object to the 4 year rate freeze methodology and believe that merged councils should be allowed to begin the equalisation process much earlier. The four year rate freeze will be confusing to ratepayers and difficult for councils to administer.

   We do not support this approach to rate equalisation as it is too restrictive and undermines the basis of the reform to give councils greater flexibility in setting rates.

   Whist we agree with the concept of trying to minimise the impact of rate equalisation, however, delaying the process until the commencement of the 5th year for merged councils results in them not being able to achieve rate equalisation until well over a decade from the date of the merge, This could impact upon the long term financial sustainability of the new councils.

   We support a transitional policy that would enable councils to gradually merge their rating database systems, but believe that the 10 percentage point concept is too restrictive. Flexibility should allow newly formed councils to merge their rating structures and thereby address the core elements of the tax principles of equity whilst being accountable to its community through the IP & R process.

The 20% farmland capping methodology used in 2005 as a result of water rights being removed from land valuation allowed councils to equalise their rating structure over a four year period. A similar methodology could be used which would prevent merged councils being disadvantaged by the four year rate freeze.

Better target rate exemption eligibility

10. Sections 555 and 556 of the Local Government Act 1993 (NSW) 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.

    We support the suggested amendments to sec 555 and 556. This recommendation addresses fairness and equity that appears to have been slowly undermined over time.

    Whilst we welcome the idea of basing the exemption from rates on the use of the land rather than ownership of the land and support the idea of commercial and residential usage as the primary drivers, there needs to be clarity in defining residential use to ensure that the residential/care arrangements (ie aged care, refuge centres, drug rehabilitation centres) are not un-intentionally caught up in this process.

    Consideration into a definition that differentiates "dependent" and "independent" living would be beneficial for these residential/care arrangements.

11. The following exemptions should be retained in the Local Government Act 1993 (NSW):
    – section 555(e) Land used by a religious body occupied for that purpose
    – section 555(g) Land vested in the NSW Aboriginal Land Council
    – section 556(o) Land that is vested in the mines rescue company, and
    – section 556(q) Land that is leased to the Crown for the purpose of cattle dipping.

    We would like to see IPARTS reasoning for retaining these exemptions.
    We would request that section 555 be amended to give authority to Councils to issue water, sewerage and waste charges to exempt properties as provided in section 496(2) now.

12. Section 556(i) of the Local Government Act 1993 (NSW) should be amended to include land owned by a private hospital and used for that purpose.

    Strongly disagree with IPART'S interpretation that the activities of private hospitals are comparable to public hospitals. Private hospitals operate purely for profit.

13. The following exemptions should be removed:
    - land that is vested in, owned by, or within a special or controlled area for, the Hunter Water Corporation, Water NSW or the Sydney Water Corporation (Local Government Act 1993 (NSW) section 555(c) and section 555(d))
    - land that is below the high water mark and is used for the cultivation of oysters (Local Government Act 1993 (NSW) section 555(h))
    - land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim (Local Government Act 1993 (NSW) section 556(g)), and
    - land that is managed by the Teacher Housing Authority and on which a house is erected (Local Government Act 1993 (NSW) section 556(p)).

    We support this recommendation, and note that Section 611(6)(b) should be amended to remove the reference to Sydney Water Corporation. The removal of Sydney Water Corporation in s611 falls in line with the competitive neutrality principle where Councils are charging for gas pipelines (Jemena) but not water pipelines.

14. The following exemptions should not be funded by local councils and hence should be removed from the Local Government Act and Regulation
    - land that is vested in the Sydney Cricket and Sports Ground Trust (Local Government Act 1993 (NSW) section 556(m))
    - land that is leased by the Royal Agricultural Society in the Homebush Bay area (Local Government (General) Regulation 2005 reg 123(a))
    - land that is occupied by the Museum of Contemporary Art Limited (Local Government (General) Regulation 2005 reg 123(b)), and– land comprising the site known as Museum of Sydney (Local Government (General) Regulation 2005 reg 123(c)).

    The State Government should consider whether to fund these local rates through State taxes.

    We support this recommendation.

15. Where a portion of land is used for an exempt purpose and the remainder for a non-exempt activity, only the former portion should be exempt, and the remainder should be rateable.

    We support this recommendation.

    This recommendation should be broadened to include changes to section 555 (3) of the LGA to include the area under a Conservation Agreement within the meaning of the National Parks and Wildlife Act, to enable councils to rate on the portion of the land which does not come under the agreement with the same methodology as is applied in section 555(5) of the LGA.

16. Where land is used for an exempt purpose only part of the time, a self assessment process should be used to determine the proportion of rates payable for the non-exempt use.

    We support this recommendation and request that there be guidelines to the self-assessment process for consistency.

17. A council's maximum general income should not be modified as a result of any changes to exemptions from implementing our recommendations.

    We agree in principle however the modifications could be treated similar to as valuation objections in the implementation year.

    The NSW Revenue Professionals supports this recommendation as it is consistent with Section 509 Local Government Act 1993 (NSW). Changes to exemptions are not supplementary valuations and accordingly should not be used to modify a council's maximum general income. However we believe a mechanism should be introduced which will allow council's to be compensated for rates foregone in the year in which an exemption is granted or disallowed.

    This mechanism does not need to affect other ratepayers or result in a permanent increase to councils Notional Income. An increase would be once only and reflective of the annual income lost in the first year of granting an exemption.

18. The Local Government Act 1993 (NSW) should be amended to remove the current exemptions from water and sewerage special charges in section 555 and instead allow councils discretion to exempt these properties from water and sewerage special rates in a similar manner as occurs under section 558(1)

    We support this recommendation.

19. At the start of each rating period, councils should calculate the increase in rates that are the result of rating exemptions. This information should be published in the council's annual report or otherwise made available to the public.

    We support this recommendation, however an estimated approach should be taken as obtaining an exact amount would be onerous.

Replace the pensioner concession with a rate deferral scheme

20. The current pensioner concession should be replaced with a rate deferral scheme operated by the State Government.
    - Eligible pensioners should be allowed to defer payment of rates up to the amount of the current concession, or any other amount as determined by the State Government.
    - The liability should be charged interest at the State Government's 10-year borrowing rate plus an administrative fee. The liability would become due when property ownership changes and a surviving spouse no longer lives in the residence.

The current Pensioner Rebate Scheme is inequitable as ratepayers are being used to fund State Government functions. There is a need to have an appropriate increase in the level of concessions to keep pace with the real costs and that this should be funded by the State or Federal Government with modifications to s712 of the Local Government Act to ensure that the deferred rates remain a charge on the land and that this deferral is only applicable to those ratepayers of legislative retirement age.
We recommend that the Government needs to commit to an extensive educational campaign if they introduce this option. Pensioners need to be made aware of the potential impact this deferral scheme could have on their estate.

Provide more rating categories

21 Section 493 of the Local Government Act 1993 (NSW) should be amended to add a new environmental land category and a definition of 'Environmental Land' should be included in the LG Act.

We support "Environmental Land" being acknowledged however it should be made discretionary, i.e. sub-category, rather than being introduced as a category.

Further to the introduction of "Environmental Land" we recommend that conservation agreements be removed as this land could be categorised under the Environmental land subcategory.

We recommend the amendment of Section 555 of the Act to exclude properties that are used for residential purposes where a Conservation Agreement is in place.

22. Sections 493, 519 and 529 of the Local Government Act 1993 (NSW) should be amended to add a new vacant land category, with subcategories for residential, business, mining and farmland

We disagree with vacant land being introduced as a mandatory category. We would support vacant land being introduced as a subcategory as this is consistent with the introduction of the Emergency Services Property Levy classifications.

23. Section 518 of the Local Government Act 1993 (NSW) should be amended to reflect that a council may determine by resolution which rating category will act as the residual category.
    - The residual category that is determined should not be subject to change for a 5-year period.
    - If a council does not determine a residual category, the Business category should act as the default residual rating category

    The definition of Business land needs to be defined for this process to work. We suggest that the residual category that is determined should not be subject to change for a 4 year period, rather than 5 years. This would align to both councils' delivery program and the electoral term of the council.

24. Section 529 (2)(d) of the Local Government Act 1993 (NSW) should be amended to allow business land to be subcategorised as 'industrial' and or 'commercial' in addition to centre of activity.

    We support this recommendation and strongly recommend that councils be able to sub-categorise by type of commercial and type of industrial business activity.

25. Section 529 (2)(a) of the Local Government Act 1993 (NSW) should be replaced to allow farmland subcategories to be determined based on geographic location.

    We support this recommendation, we believe this will assist merged Councils in their rates equalisation process. This will also give Council greater scope than the existing process.

26. Any difference in the rate charged by a council to a mining category compared to its average business rate should primarily reflect differences in the council's costs of providing services to the mining properties.

    We do not support this recommendation. Each council should be given the opportunity to set rates in accordance with the IP&R process and comment from stakeholders made to assist in determining those rates. The impacts of mining by multinational entities on communities are substantively different to that of a sole trader, For example rehabilitation costs should not be borne by future ratepayers.

Recovery of council rates

27. Councils should have the option to engage the State Debt Recovery Office to recover outstanding council rates and charges.

    We do not support this recommendation. Most Councils' have adopted hardship policies and debt recovery policies which give consideration to ratepayers suffering genuine hardship with legal action being taken as an option of last resort to recover outstanding rates.

    The use of the State Debt Recovery Office in the recovery of rates and charges and the options for recovery that they could provide as mentioned in the report would not add any new recovery options that are not already available to Councils through the use of debt recovery agents.

    The report also notes that the SDRO has a recovery rate of 75%. Rates and charges are a debt on the land and therefore result in a 100% recovery rate for Councils.

    A survey conducted by The NSW Revenue Professionals indicated that of the 72 councils who responded, 24,000 Statement of Liquidated Claims (SLC) were lodged (most lodged electronically) in 2015/2016. Of those 24,000 SLC's lodged less than a quarter went to default judgement. Therefore we fail to understand how the draft report suggests that Councils recovery actions are placing a burden on the local court system. The figure of 24,000 SLC's represents less than 1% of total ratepayers. This again shows that the current system is working well.

    Councils' should have a moral obligation in relation to recovering rates and charges as they are obligatory charges, not optional. Currently rates reminder notices and demand letters are issued to ratepayers free of charge. To add fines and fees to ratepayers who are already in financial hardship would go against these moral obligations.

    We would question why IPART would consider taking such a prescriptive approach to debt recovery when the purpose of the reform is to give flexibility to councils' operational tasks. Councils should have the control and the discretion to initiate legal action.

    Placing debt recovery at a State level will take away the community aspect of Councils as most ratepayers wish to deal directly with their Council when making arrangements or negotiating rates payments.

28. The existing legal and administrative process to recover outstanding rates should be streamlined by reducing the period of time before a property can be sold to recover rates from five years to three years.

    We support this recommendation.

29. All councils should adopt an internal review policy, to assist those who are late in paying rates, before commencing legal proceedings to recover unpaid rates.

    We support this recommendation as most council's already have these processes in place. The Office of Local Government should develop guidelines to enable councils to adopt mandatory hardship policies and debt recovery policies.

30. The Local Government Act 1993 (NSW) should be amended or the Office of Local Government should issue guidelines to clarify that councils can offer flexible payment options to ratepayers.

    In addition to the options of flexible payments, Section 562 needs to be amended to add clarification to the issue of 'part year rating'. In order to align with the implementation of the ESPL councils need flexibility to rate quarterly. (This would also require an amendment to section 62 of the Valuation of Land Act 1916.)

    It is noted that IPART used only the Hills Council as an example. The NSW Revenue Professionals conducted its own survey in order that IPART may have a better perspective on debt recovery operations in most NSW councils. The results are attached in appendix A

31. The Local Government Act 1993 (NSW) should be amended to allow councils to offer a discount to ratepayers who elect to receive rates notices in electronic formats, e.g., via email.

    We disagree with this recommendation, as again it is moving away from the intention of the reform to give councils more flexibility in its operational tasks.

    More onus should be placed on councils to promote notices being delivered electronically.

    Section 710(2)(d1) should be amended to allow delivery of notices by other than direct electronical mail., ie BpayView and MyPost Digital Mailbox.

    Also there is already a productivity factor deduction in rate peg that should be removed based on these increased efficiencies.

32. The Local Government Act 1993 (NSW) should be amended to remove section 585 and section 595, so that ratepayers are not permitted to postpone rates as a result of land rezoning, and councils are not required to write-off postponed rates after five years.

    We support the removal of postponed rates.

    However, the removal of any form of concession in the circumstances where land is valued in a way that reflects its permitted use, rather than its actual use, may result in financial hardship for some ratepayers. We suggest that provision be included to allow a valuation concession on these properties. This allowance would remain in place whilst the property remained as a single dwelling house or rural land and used as such, and would change when sold or the dominant use changed.

    Additionally Councils should be permitted to factor in to their rate base any valuation concession granted in these instances as is currently the case with attributable parts of the land values as determined under Section 587 The Local Government Act 1993 (NSW).

Should the recommendation be adopted we suggest that transitional arrangements should be implemented to accommodate those properties with postponed rate arrangements in place under the existing legislation.

Other draft recommendations

33. The valuation base date for the Emergency Services Property Levy and council rates should be aligned.
    – The NSW Government should levy the Emergency Services Property Levy on a Capital Improved Value basis when Capital Improved Value data becomes available state-wide.

    We support this recommendation.

34. Councils should be given the choice to directly buy valuation services from private valuers that have been certified by the Valuer General.

    We support this recommendation providing provisions are in place to ensure integrity of the data

Other recommendations

We recommend that the Revenue Professionals be included in working group for review of the Local Government Rating System on a regular basis.

Currently councils are able to recoup lost revenue as a result of a valuation objection under the LVA as part of the SOC. We recommend that 'Reascertainments" under the LVA should be addressed and treated in the same way as valuation objections. Section 518B(2) LGA should be amended to enable councils use Mixed Development Apportionment Factors available in the VLA to rate properties of mixed categories without the restrictions to just Residential and Business categories.

Sale of Land for Unpaid Rates in Section 713 should be amended to enable councils to recover the costs associated with the Sale if the owner of the property pays the rates in full prior to the auction.

Part year rating should be included as part of the Rating Review to allow Councils to rate newly rateable properties from a defined date or period, i.e. date of plan registration or start of next instalment quarter.

APPENDIX A.

NSW Revenue Professionals Summary of Survey Responses for the Review of the Local Government Rating System – Draft Report

77 of the 128 Local Government Councils responded to a survey to compile information in relation to the way Councils recover outstanding Rates and Charges.

1. Does your Council engage a debt recovery agent to recover outstanding Rates and Charges?

   Yes 93%
   No 7 %

2. Does your Council utilise section 569 to recover outstanding rates by garnishee of rental money?

   Yes 76%
   No 24%

3. Does your council offer ratepayers options to pay rates periodically (weekly, fortnightly, monthly, etc.) via direct debit, Bpay, PostBillpay, Centrepay, or other types of payment methods?

   Yes 98.5%
   No 1.5%

4. List payment methods used by your council?

   BPAY - 100%
   Direct Debit - 88%
   Internet payments - 75%
   Phone/IVR - 86%
   Post Billpay - 78%
   Centrelink - 49%

5. Has your council adopted any of the following policies?

Hardship Policy	**-**	**90%**
Debt Recovery Policy	**-**	**91%**

6. Does your council deliver rates notices to ratepayers in an electronic form?

Yes	**81%**
No	**19%**

Number of rates notices currently issued electronically by 53 councils – approx. 52,000 (this form of delivery is relatively new and is yet to be taken up by most ratepayers).

7. What methods are used to email notices?

Mailing house	**-**	**62.3%**
BPAYview	**-**	**55.7%**
MyPost Digital	**-**	**37.7%**
Internal Email	**-**	**10%**

8. Please indicate how many reminder notices are issued (as a percentage of total rates instalment notices issued per instalment run)?

% of instalment notices issued	**-**	**16.9%**
No Statement of Liquidated Claims (SLC) Issued	**-**	**24,236**
No of SLC's as a % of total ratepayers	**-**	**1.18%**
No of default judgments entered?	**-**	**5,214**