NSW Revenue Professionals

[redacted]

11 May 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 – Issues Paper".

Please find attached our comments in this matter. Also attached is our previous submission made to the Local Government Acts Taskforce in 2013.

Yours sincerely

[redacted]

John Towers
President
NSW Revenue Professionals Society Inc

Review of Local Government Rating

1. Do you agree with our proposed tax principles? If not, why?

Local Government rates are not competitively neutral as they do not compete with private enterprise. The benefits principle is not always applied equitably in all rating structures. Rates should be seen as an asset tax on the ratepayer. Any taxing system should be easy to understand & administer with consideration to capacity and user pay functionality..

2. What valuation method should be used as the basis for determining the ad valorem amounts in council rates? Should councils be given more choice in selecting a valuation method, as occurs in other states, or should a valuation method continue to be mandated?

Capital Improved Value (CIV) is more easily understood by the public than other methods. Councils should be given the option of which valuation method they choose to use.

The use of CIV adds value to a number of other issues raised in the issues paper; we have noted this against them as they arise.

3. Should councils be required to use the Valuer General's property valuation services, or should they also be able to use a private valuation firm (as occurs in Victoria and Tasmania)?

Given the lack of evidence of the cost benefit of engaging a private valuer this should be made optional for councils.

4. What changes (if any) should be made to the Local Government Act to improve the use of base and minimum amounts as part of the overall rating structure?

Minimums should be removed as per the intent of the original 1993 legislation. This would increase the use of Base Amounts which was the original intention of the 1993 LGA. This is also dependant on changes in categorisation etc.

5. What changes could be made to rating categories? Should further rating categories or subcategories be introduced? What benefits would this provide?

Councils should be able to sub categorise without having to rely on centre of population/activity. Extending the categories to include for example by type of residential accommodation such as high rise or single dwellings. In the case of business land a Council should be able to sub categorise a business property according to the type of use across the whole of its area rather than have a need to have different sub categories as is the case now. Remove the rural residential subcategory as it is poorly understood & applied, particularly with the restriction on land size and occupation conditions. The Mining category should be expanded to allow for other types of mines than metalliferous and coal.

6. Does the current rating system cause any equity and efficiency issues associated with the rating burden across communities?

Section 585 LGA should be removed due to the difficulty Councils have in administering the section. If such a provision is to remain in the legislation, it should be treated in a similar way to a Section 14 VLA allowance and result in the rates being levied on a lower value whilst ever the property meets the requirements. The current process of levying rates and having part of them suspended/postponed until the use of the property changes is old fashioned and causes confusion for ratepayers, council staff and solicitors. This matter has also been addressed in our previous submission. Allowances granted for "subdivision" and "developer costs" (sections 14L-14W Valuation of Land Act should also be removed. The allowances do not encourage the developments to be completed in a timely manner.

7. What changes could be made to current rate pegging arrangements to improve the rating system, and, in particular, to better streamline the special variation process?

The adoption of a Stream-lined Rate-Pegging process whereby Community consultation is considered satisfactory (as mentioned on page 44 of the Panel Report) without the need then to also obtain IPART approval.

8. What changes could be made to the rating system to better encourage urban renewal?

We agree with IPART's preliminary view. One suggestion is for the opportunity for a Council to apply a higher ad valorem rate to vacant land than is applied to occupied land.

9. What changes could be made to the rating system to improve councils' management of overdue rates?

An ability to be able to claim payment from the mortgagee once 12 months rates are overdue as is the case in New Zealand. In regards to the assumption that councils are pursing relatively low claims it needs to be stated that the claims of $2,000 or less represents in excess of 2 years rates in some councils. Councils have a responsibility to their communities to ensure rates are paid in a timely manner in order to maintain a proper cash flow. Amendment of the electronic notice of sale form to allow the capture of e-mail addresses and phone numbers could assist in debt management.

Councils should be able to enter into multiple payment options without the restrictions of 564

Council's should be allowed to issue notices in an electronic format.

10. Are the land uses currently exempt from paying council rates appropriate? If a current exemption should be changed, how should it be changed? For example, should it be removed or more narrowly defined, should the level of government responsible for providing the exemption be changed, or should councils be given discretion over the level of exemption?

All property categorised as residential and occupied should be rateable regardless of ownership as ALL such properties utilise a Councils services – in some cases properties which are currently non rateable provide a greater drain on a Councils resources than rateable properties.
If subsidies remain, they should be in the form of a partial rebate rather than full exemptions. Such a rebate should be standardised across local government areas to ensure consistency and reduce the likelihood of localised disputes and costly and time intensive negotiations and lobbying. (please refer to our previous submission attached for further commentary on exemptions).

11. To what extent should the exemptions from certain state taxes (such as payroll tax) that councils receive be considered in a review of the exemptions for certain categories of ratepayers?

We are unable to comment but believe if this were implemented all levels of government should be required to pay rates and no longer be exempt.

12. What should the objectives of the pensioner concession scheme be? How could the current pensioner concession scheme be improved?

To provide relief to low income/asset poor ratepayers. As in other states the concession scheme should be fully funded by the State Government. The NSW Independent Local Government

Review – October 2013 questioned welfare measures as being the responsibility of Local Council's where doubts were raised on the appropriateness of funding at the local level.

13. We have interpreted the rate path freeze policy to mean that in the four years after a merger, the rating path in each pre-merger council's area will follow the same trajectory as if the merger had not occurred. Do you agree with this interpretation?

We agree with IPART's interpretation.

14. Within the rate path freeze period, should merged councils be permitted to apply for new special variations:

– For Crown Land added to the rating base?
– To recover amounts that are 'above the cap' on development contributions set under the *Environmental Planning and Assessment Act 1979*?
– To fund new infrastructure projects by levying a special rate?

All the types of special variations mentioned above should be allowed to be applied for, however the merged entity would be required to have moved to a single valuation base date.

15. Are there any other situations where merged councils should be able to apply for new special variations within the rate path freeze period?

If there is a specific need identified by the community within the merged Council then an application should be allowed. Subject to a single valuation base date.

16. During the rate path freeze period, should merged councils only be able to increase base amounts and minimum amounts each year by the rate peg (adjusted for any permitted special variations)?

No.

17. During the rate path freeze period, should merged councils be able to allocate changes to the rating burden across rating categories by either:

– relative changes in the total land value of a rating category against other categories within the pre-merger council area, or
– the rate peg (adjusted for any permitted special variations)?

No, this is too simplistic and does not take into account existing council rating structures and how the rating burden is proportioned within individual Councils. Long term strategy should be allowed to stay in place.

18. Do you agree that the rate path freeze policy should act as a 'ceiling', so councils have the discretion to set their rates below this ceiling for any rating category?

Yes, this option allows councils to apply their rating structures & equitably spread the rating burden.

19. What other discretions should merged councils be given in setting rates during the rate freeze period?

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 values were excised from land values.

20. We considered several options for implementing the rate path freeze policy. Our preferred option is providing the Minister for Local Government with a new instrument-making power. What are your views on this option and any other options to implement the rate path freeze policy?

We offer no comment except for our response to question 19.

21. Should changes be made to the LG Act to better enable a merged council to establish a new equitable system of rating and transition to it in a fair and timely manner? If so, should the requirement to set the same residential rate within a centre of population be changed or removed?

Yes. The reference to Centre of population etc. should be removed.

22. Should approved special variations for pre-merger councils be included in the revenue base of the merged council following the 4-year rate path freeze?

No. Approved unapplied SV's should be cancelled from the date of the merger due to not all ratepayers within the newly merged Council did not have the opportunity to be part of the decision yet will be expected to contribute to that decision going forward

23. What other rating issues might arise for merged councils after the 4-year rate path freeze period expires?

Merged Councils should have a re valuation in year two so all properties are on the same valuation base date

Previous Submission

1) **What top 5 principles should underpin the content of the new Local Government Act?**

The Local Government Act (LGA) should be underpinned by at least the following principles:

- Transparency;
- Accountability;
- Fairness;
- Equity

A Council should be responsible for determining its own level of rate income in consultation with its community. This would alleviate the necessity for rate pegging. Other states in Australia do not have rate pegging and Councils in those states are able to function successfully. These Councils are able to make informed decisions about both the short and long term needs of their communities together with what their ratepayers can afford to pay. This is done via a strong consultation process prior to any long term decisions being made. Ultimately Councils are held accountable by their constituents and the success or otherwise of their decisions will be reflected in the next election.

2) **What is currently working well in the Local Government Act and why? Should it be retained in the new Act?**

- Rating Categories and sub-categories generally work well. These allow a Council the ability to set a different rate for each category and sub-category and let the Council levy higher rates on areas that have a greater need for resourcing and lower rates.
    - The LGA could be improved by altering and simplifying the residential rating category criteria:
        - The serviced apartment requirement. These type of properties are in direct competition with hotels/motels yet Councils are required to rate them differently according to the Regulations.
        - Allowing Councils to sub-categorise those properties which are used for holiday letting. Again these type of properties are in direct competition with hotels/motels yet Councils are required to rate them differently. This type of property places a greater than normal strain on a Councils resources without making any different contribution to the

Council revenue than the house/flat next door.

- The categorisation of "Bed & Breakfasts", particularly when they are this in name only. There are many examples where the owner doesn't actually live on the property concerned but advertises at for short term rental i.e. in opposition to hotels/motels etc.

- Creation of sub-categories could also be broadened to allow sub-categories by the type of building and occupancy (e.g. the ability to have a different rating structure on units/flats to houses etc.) which would allow Councils to set differential rates to obtain a better balance between the rating principles of "benefit" and "capacity to pay".

- There could also be improvement in having further categories available for Councils to use e.g. Community Land which could be anywhere within a Council area and not necessarily be contiguous as is required now. Or, the ability to sub-categorise on the basis of land locked parcels, jetties, car parks etc.

- The separation of rates and annual charges. Councils having the ability to make annual charges allow the Councils to better manage the demand for resources, and at times can make it clearer to the ratepayer what service/s they are paying for.

3) Are there areas in the Local Government Act that are working well but should be moved to another Act or into Regulations, Codes or Guidelines?

From a rating perspective the LGA generally works well but it would need some amendments or adjustments.

The centralisation of the granting of mandatory pensioner rebates as happens in other states and is administered by the relevant state government. This would reduce the likelihood of fraud on behalf of the ratepayer.

4) What is not working well in the Local Government Act (barriers or weaknesses) and should be modified or not carried forward to the new Act?

There are several areas which cause concern to Councils as part of the revenue/rate raising processes:

- Part 2 – Limit of Annual Income from Rate and Charges – this needs be re-written to accommodate the principle of NSW Councils determining their own levels of income and the cessation of rate pegging. Understanding and implementing this part of the Act is one of the most difficult for rating staff in the state and at times is confusing and difficult for the Division of Local Government (DLG) staff to understand. Ensuring

compliance is almost impossible due to the complexities involved. Few auditors understand the process well enough to perform adequate audits.

  - Assuming rate pegging is to remain, there needs to be amendments to this concept to also allow for catch up provisions for lost income due to changes in category of rateable properties. There is currently provision for Councils to catch up lost income due to properties becoming non rateable and this needs to be extended to changes in category e.g. when a property moves from Business to Residential the revenue lost because of this change is lost to Council forever and a Council should be able to recoup the difference as part of this process in the same way it recoups revenue due to changes in rateability.

  - Currently Councils are able to recoup lost revenue due to Objections to Valuations under Valuation of Land Act (VLA) as part of the annual process. However there is no similar provision for valuations which are amended by way of reascertainment under VLA. A reascertainment is a 'valuation objection' by a different name and is instigated by the Valuer Generals Office (VG) as a consequence of a discrepancy found in the valuation data by the VG. These reascertainments can cover many properties and have a significant effect on a Councils forward revenue/income.

- Sections 555 and 556 LGA covering the provision of rate exemptions are at times vague and difficult to understand. The current legislation has not kept pace with changes in society and the way that some organisations operate in today's society. This has resulted in Councils having difficulty in interpreting and applying these sections which leaves the Councils open to legal challenges. These sections should be modified to give greater clarity and certainty, particularly in regard to the accepted practices of today. Some of the areas of concern are:

  - The growth in public benevolent institutions (PBI's) and the much looser interpretation being applied by the courts. The definition needs to be more conclusive or similar to the public charity exclusion clause in Section 559 LGA. There have been a large number of what were Public Housing properties handed over to various Housing Groups. These groups are registered as PBI's and then make a claim for non rateability under the LGA. If non rateability is granted then the rest of the community is required to pay additional rates in order that the Councils revenue base does not decrease. It is understood that it was never intended that such properties were to be granted non rateability and that the provisions of Section 560(4) were to continue to apply however the LGA has not kept pace with what is happening in the community and needs updating.

  - The growth of private schools, particularly in established areas. There are many private schools and other organisations which are acquiring entire precincts and requesting and being granted non rateability. This transfers the rate liability to the other ratepayers within the Council area, due to the current rate pegging legislation. In many cases these schools draw the majority of their students from outside the Council area and make a zero or minimal contribution to the Council revenues but place an extraordinary impost on Council resources and services. Could the South Australian model be investigated?

  - Houses owned by various statutory authorities e.g. National Parks & Wildlife Service, Teacher Housing Authority etc are claiming non rateability even though there is a private lease or agreement in place and the building is not occupied

by the authority. The LGA needs to be amended to ensure that the necessary rating contribution is made for such properties and that National Competition Policy principles are met. These properties do make use of various Council services, assets and facilities.

- Section 555(g) should be clarified and the list of "declared properties" in schedule 1 "Aboriginal Land Rights Regulation 2002 – Reg 7"should be easily identifiable. Currently Councils are having difficulty obtaining this information from the Dept of Aboriginal Affairs.

- Section 563 LGA should be removed as no Council's utilise this due to the restrictions of rate pegging. Any revenue lost by way of discounts cannot be recouped via another means which means the Council has lost forever that revenue. If rate pegging was not in place a Council could raise revenue based on the granting of discounts and not have their income streams affected.

- Section 548A LGA should be removed. All separately titled properties particularly those in Strata Plans should be rated individually. The administrative burden of applying and complying with this section are onerous. Further, it is generally not something that the whole community cab avail themselves of and this defeats the fairness policy.

- Section 585 LGA should be removed due to the difficulty Councils have in administering the section. If such a provision is to remain in the legislation, it should be treated in a similar way to a Section 14 VLA allowance and result in the rates being levied on a lower value whilst ever the property meets the requirements. The current process of levying rates and having part of them suspended/postponed until the use of the property changes is old fashioned and causes confusion for ratepayers, council staff and solicitors.

- The use of Land Value (LV) as a means of rating. As in other states Councils should have the option of using LV or Improved Value (CIV) for the purposes of rating. The use of LV, an artificial valuation, causes confusion for ratepayers who struggle to understand the concept. The use of CIV at least allows the ratepayer to have an understanding of why their property is so valued. The use of CIV would also provide a truer distribution of the rating burden to highly valued properties rather than continue the current situation whereby such properties, particularly in high rise buildings, are subsidised by the rest of the community.

- Section 518B LGA should be amended to also allow Councils to use "Mixed Use Apportionment Factors" (MUAF's) for rating purposes. With changes to the acceptance by society of property uses the legislation has not kept pace with reality. There are now many properties which are part Farmland and part Business e.g. vineyard and restaurant/winery including onsite accommodation etc but which the Council has to currently decide a dominant category for rating purposes which does not reflect the different uses of part/s of the property. The Office of State Revenue (OSR) has the ability to use MUAF's in the calculation of Land Tax and this should also be allowed to be used by Councils.

- Councils should be able to choose whether to levy and issue rates on an annual or quarterly basis, the same as in other states and also Sydney Water. As Councils are

required to apply pensioner rate rebates on a quarterly basis, this would assist in the understanding of the rebates by ratepayers. Also, for those Councils that are developing quickly and are in growth areas it would allow the Councils to maximise their rate revenue e.g. an englobo property which was rated as one on 1 July and was subdivided and sold off in August, the new properties would commence making a contribution to the Council revenue from the commencement of the next quarter. This would ensure that all ratepayers were making a contribution to the services being used.

- Is the use of minimums still valid in today's society given they changes that have taken place regarding community expectations and the provision of services? Should Section 548 LGA be deleted, given that there was no provision for minimum rates in the original legislation? As more Councils move to a base amount rating structure, is it time that all Councils instituted such a structure?

- Deletion of Section 516(1)(c) LGA or clarification of the requirements of this section as there is confusion amongst Councils and ratepayers as to the correct interpretation and application of this legislation.

- Section 713 LGA requires amendment and clarification:

    - If a Council accepts an arrangement for payment prior to the sale and the arrangement is not adhered to then the Council is forced to commence the process again. Councils are accepting arrangement agreements in good faith right up until the day prior to the sale. If the arrangement fails and the provisions of the section are still met by the property, Councils should be able to relist the property for sale under the section without the need to commence the process again

    - Also, if a property is sold Council is able to recoup any costs associated with the sale. However, if a ratepayer pays the rates outstanding prior to the sale Council is not able to recoup any of the costs associated (e.g. advertising, search fees etc) with preparing the property for sale. Could Section 550 LGA be amended so that councils "reasonable costs incurred in commencing or maintaining proceedings under section 713" be included in the charge in a similar way to how the costs of skip tracing are now included.

    - The section currently allows Councils to sell land for unpaid rates if they have been outstanding for five years (twelve months for vacant land in certain circumstances). If a ratepayer is made bankrupt or goes into liquidation it means Council is unable to take the usual debt recovery steps but is also unable to sell the land until the relevant time periods elapse. This is becoming more prevalent and there are many occasions where the trustee or liquidator does not sell the property because there is no equity in it, and the Council can do nothing but sit back and watch the rates escalate until it meets the provisions of the LGA. Could an amendment be made to the Act which allows Councils to use Section 713 should a ratepayer become bankrupt or be placed into liquidation irrespective of how long the amount has owed?

- Section 562 needs clarification as to when rates and charges are due for payment. Is the right to pay by instalments automatic even if a payment is not made? Or is payment in full of the balance outstanding required if an instalment payment is missed? The

interpretation of this affects the application many other sections of the LGA not the least being Sections 566 and 712.

- Section 604 LGA needs strengthening so that penalties do apply. Councils are aware that properties have been sold but for various reasons the Notice of Sale/Transfer (NoS) has not been lodged. This creates difficulties for Councils when attempting to collect overdue rates and charges not withstanding Section 571 LGA. Also, it creates further problems when only part of the property has been sold but the NoS has not been lodged and consequently the VG cannot issue Council with new valuations for rating purposes.

- Whilst this is in the VLA the multiple provisions for owners to object to valuations supplied to Council by the VG for rating purposes, in some instances well after Council has commenced using the valuation for rating purposes. An example of this is the recent Broken Hill Council case. There should only be a single opportunity for ratepayers/owners to object to a valuation no matter what use is to be made of it.

- The use of Conservation Agreements is against all rating ideology. If a property has a residence on it and also has a conservation agreement then the property should at least be liable for the minimum rate, not the situation as it applies today where they only pay a proportion of such a rate. There is no reduction in the levels of service provided to the ratepayer and this shows the system to be unfair and inequitable. If such a change is not possible then there should be provision for two (2) valuations to be made by the VG, one (1) for the part of the property affected by the agreement and another for the part not affected.

- Section 501(3) of the LGA states that an annual charge may be levied on each parcel of rateable land for which the service is provided or proposed to be provided.

    - This creates problems for those councils which are Local Water Utilities. Many properties which are exempt from ordinary rates under Sec 555 LGA are high resource users of water, sewer and trade waste services e.g. Government departments, schools and churches.

    - Could consideration be given to including a clause in the LGA similar to that in section 496(2) which allows councils to make an annual charge for the provision of these services for a parcel of land that is exempt from ordinary rates if the service is available to the land and the owner requests or agrees to the provision of the service?

- The requirement for candidates for Council Office (Councillor) to be up to date in payments to Council prior to the nomination being accepted should be reinstated.

    - The requirement under Section 610F of the LGA to advertise fees even though the fees maybe set under another Act and Council has no right to vary or alter them Section 610.

    - Local Government (General) Regulation no. 127. Currently a ratepayer can defend proceedings brought against them for the recovery of rates and charges by saying that they have not received a rates notice. It is felt that Regulation 127 creates a situation whereby a court can find that the Council did not serve a “rates notice” on the basis

that the document they served did not comply strictly with that regulation. Could the mandatory word “must” be changed to “may” in the regulation. This would be more in keeping with the rest of the legislation, which tries to make the debt recovery function as easy as possible for councils.

5) **Is there a case for retaining the City of Sydney Act? If so, how can it be improved?**

The City of Sydney Act is predominantly an Act dealing with planning and election matters applicable to the City of Sydney and no comment can be offered on it.