

Local Government (Financial Management and Rating) Amendment Bill 2004

EXPLANATORY NOTES ON CONSULTATION DRAFT

Introduction

The South Australian Government is proposing comprehensive legislative changes in response to public concern about the level and impact of council rates and the perceived lack of accountability for them.

A draft Bill providing for the changes has been prepared for consultation purposes and is attached (the *Local Government (Financial Management and Rating) Amendment Bill 2004*).

The South Australian Constitution requires that there be a system of local government established by an Act of Parliament. Consistent with the constitutional requirement, the position of the South Australian Government is that the essential authority of local councils must not be usurped but that the legislative framework should be strengthened to improve the capacity of communities to influence their councils' decisions about rates, to get information about the efficiency and economy with which their council activities are conducted, and to assure themselves of equitable treatment in rating decisions.

Councils, like other spheres of government, must work within the constraints of limited resources. Equally, however, their budget decisions have to be considered in relation to the difficult position in which councils find themselves. Local governments are now facing a serious dilemma. Historically, there has been under-investment in maintenance and replacement of community infrastructure for which councils are responsible – for example, local roads, stormwater drains, and bridges. Inadequate investment will leave future generations with a sad legacy of disintegrating assets. At the same time councils have taken on additional roles and responsibilities. The dilemmas confronting local government have been well recognised and documented in the 2003 report of the Commonwealth House of Representatives Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: A Fair Share for Responsible Local Government* (the Hawker Report)¹.

It is important that local government councils are seen as being directly accountable to their communities. Effective measures for local accountability are key to ensuring that revenue and rating decisions are informed by community consultation and councils consider fully the impact of council rate increases on individuals. The Government's proposed legislative amendments would provide additional accountability, flexibility and requirements relating to council rating decisions.

The new provisions will be brought into force as soon as practicable with appropriate transitional provisions. In the meantime it is expected that councils will prepare to act on the proposed changes in advance of their passing into law, in order to make them effective as soon as possible.

Comments on the draft Bill may be forwarded to:

Sue Forder, Senior Project Officer
Office of Local Government
PO Box 8021
Station Arcade 5000
Phone: (08) 8204 8714
Fax: (08) 8204 8734
Email: olg.legreview@saugov.sa.gov.au

The consultation draft of the Bill and the *Local Government Act 1999* can be found on the OLG Website at http://www.localgovt.sa.gov.au/legislation_index.html

¹ The Hawker Report of the Inquiry into Local Government and Cost Shifting can be found through the website of the House of Representatives Standing Committee on Economics, Finance and Public Administration, at <http://www.aph.gov.au/house/committee/efpa/localgovt/index.htm>

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Aims of the Bill

The Government intends to improve councils' accountability in a number of ways. The proposed changes address both the accountability to the ratepayers of elected members and the accountability to elected members of council administrators.

The effect will be to:

- open up to wider community scrutiny and participation council processes for planning essential expenditure over time and for adopting annual business plans and budgets and declaring rates;
- clarify the powers of councils' elected bodies to order efficiency and economy audits of council activities; and
- ensure that councils have sufficiently flexible rating powers to respond appropriately to volatile property valuation movements and the otherwise consequential impact of rates decisions on individual ratepayers, especially those with fixed and low incomes.

The proposals also highlight the role of the South Australian Ombudsman, who is also the Ombudsman for local government, in making sure that councils' decisions about rates impact fairly and justly throughout their communities.

The Bill in summary

The proposed accountability measures strengthen provisions that require councils to give careful attention to strategic planning in consultation with their communities. They add new obligations to undertake long term infrastructure, asset management and financial planning and impose new requirements to conduct annual consultations with ratepayers regarding their budgets, rating strategies and business plans.

Making it clearly mandatory for councils to undertake long term infrastructure, asset management and financial planning will better ensure that councils will assess their annual and long-term revenue in a strategic way. In also requiring councils to produce an annual business plan translating strategic and other plans into intentions for the forthcoming financial year, such reform will make it possible for councils to explain clearly to their communities why rate revenue is needed.

Annual business plan and budget consultations will make it possible for people to make it clear to their council before rating decisions are made the level of rates and services they believe should be the council's aim. When making their views clear, ratepayers will also have before them information about the council's objectives for the area, the revenue needs and how it is to be raised, how the proposed expenditures will contribute to their achievement, and the consequences of not raising the required revenue.

In relation to individual rates liability, the Bill will equip councils with additional flexibility to give relief from rates in appropriate circumstances, and provide the right to postpone rates liabilities in specified circumstances.

At the other end of the accountability cycle, after the decisions are arrived at, the Bill's proposals:

- clarify that the amount payable by a ratepayer is a matter for which a review can be requested under a council's formal procedure for internal review of its decisions;
- require councils to have procedures to deal with requests for review; and
- clarify also the Ombudsman's jurisdiction in this regard should a council be unable or unwilling to resolve a matter.

The proposed legislative amendments are designed to ensure that councils, while working to meet community expectations in regard to the provision of services and programs, also take full account of the likely impact of their rating decisions on their ratepayers, especially those with fixed and low incomes.

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Summary of clauses of the Consultation Draft

Clause no	Heading	Local Government Act 1999 section amended	Effect of clause
1	Short title	n/a	formal
2	Commencement	n/a	The Bill will come into effect on dates to be proclaimed
3	Amendment provisions	n/a	formal
4	Delegations	s44	To complement proposed amendments to section 123, the elected body would not be able to delegate the power to adopt or revise a strategic management plan, an annual business plan or an annual budget, or delegate the power to adopt an annual revenue and rating strategy (these documents are described below).
5	Strategic Management Plans	s122	<p>Councils currently set out the objectives for the area (having regard to local, state and national objectives) in their strategic management plan(s) which contain some financial information on expected revenue and expenditure and associated performance measures. It is intended that the level of financial information and forecasting be expanded to include planning over the longer term.</p> <p>Councils would be required to have a suite of strategic management plans that include a long-term financial plan, and an infrastructure and asset management plan covering at least 10 years.</p> <p>The links between the suite of strategic management plans and the annual business plan and budget, annual revenue and rating strategy, and annual report would be clarified and revised as set out below in subsequent sections.</p> <p>In formulating its long-term infrastructure, asset management and financial planning, a council would need to have regard to its roles and responsibilities, its objectives for the area and to a report from the CEO covering the following matters:</p> <ul style="list-style-type: none"> • the sustainability of the council's financial position • the required maintenance and renewal of council infrastructure • the provision of services consistent with the implementation of council's objectives and statutory functions • anticipated changes in its area of: <ul style="list-style-type: none"> ○ real property development ○ demographic characteristics of its community • the council's approach to use of debt • movements in major cost drivers affecting council's operations.

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6	Annual business plans and budgets	s123 (substitutes chapter 8 part 2)	<p>To provide for –</p> <ul style="list-style-type: none"> • annual business plans prepared with annual budgets. This concept is designed to make clearer links between council's longer term strategic planning and its annual planning, and to allow non-experts to readily obtain a picture of the council's proposed activities, expenditure proposals, revenue targets and proposed movements in debt levels for the relevant financial year. • consultation, prior to the adoption of the annual business plan and budget, on the council's proposed revenue and rating strategy for the relevant financial year. <p>An annual business plan will include:</p> <ul style="list-style-type: none"> • the activities the council intends to undertake, • forecasts of expenditure proposals, revenue targets and proposed movements in debt levels, based on those activities, and • performance measures. <p>Prior to adopting the annual business plan and budget, a council would be required to -</p> <ul style="list-style-type: none"> • prepare a report on its proposed revenue and rating strategy for the relevant financial year covering specific information; and • conduct public consultation of proposed activities, forecast expenditure, required (total) rate revenue, and the anticipated level and distributive effects in broad terms of various components of the rating structure. <p>The intention is that elected members should first consider this report and approve its use for public consultation purposes. These provisions would replace and incorporate the current requirements for public consultation on changes to rating structures.</p> <p>Consultation would generally occur prior to extensive modelling relating to the impacts on individuals, however where councils have earlier access to the valuations for their area or are prepared to delay consultation on the report on their proposed revenue and rating strategy until June, they will be able to combine the above processes with the analysis and modelling requirements set out below in clause 13 (s. 149A).</p> <p>Consultation on the proposed revenue and rating strategy would include a public meeting and opportunities to make submissions on the proposal which would be publicly available.</p>

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7	Internal control policies	s125	Internal control policies to assist the council to carry out its activities in an efficient and orderly manner should be cast in the context of objectives contained in strategic management plans.
8	Conduct of annual audit	s129	<p>Changes are proposed to emphasise the responsibility of the elected members as the governing body in overseeing the management of the council's financial affairs and ensuring that the audit is independent of the council's administration.</p> <p>Currently the audit opinion and the auditor's report on any particular matters arising from the annual financial audit are provided by each council's auditor to the CEO and are distributed to each councillor (and council's audit committee if there is one). The auditor would be required to provide the opinion and the report to both the CEO and the Principal Member. The CEO would still be required to provide a copy of these, without delay, to all other members and the audit committee, and the Principal Member would be required to table them at the next scheduled meeting of the council.</p>
9	Reference of other matters to auditor	inserts new s129A	In conjunction with the annual audit (or at any time), the elected body would be able to direct the auditor to examine and report on any additional aspect of the council's financial management or the efficiency and economy with which it uses its resources to achieve its objectives.
10	CEO to assist auditor	s130	The material available to a council's auditor would be extended to permit efficiency and economy audits to be undertaken.
11	Access to documents	s132	The list of documents that should be made available on the Internet would include the new accountability documents – the Annual Business Plan and Budget and the Annual Revenue and Rating Strategy and Summary - in the proposed form while under development and replaced in the final form once adopted.
12	Related administrative standards	s132A (inserts new Part 6)	Administrative standards would be set to ensure that a council would have in place systems and procedures that ensure both statutory compliance and standards of good administrative practice are achieved and maintained.

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13	Rating structures	inserts new s149A	<p>Prior to both the adoption of the annual business plan and budget, and the adoption of the revenue and rating strategy and declaration of rates, and on the basis of valuations for the relevant financial year, the CEO must, as part of council's development of and consultation on its proposed revenue and rating strategy or subsequently, arrange for –</p> <ul style="list-style-type: none"> • an analysis of the extent of changes in valuations against the previous year in aggregate and by specific criteria - eg type of property (residential, commercial etc), location, valuation range (and possibly socio-economic groups when the info is readily available). • modelling of the impact on ratepayers of the council's proposed rating structure, including the proposed maximum increase for a ratepayer's principal place of residence, using the valuation profile and the level of rates the council intends to impose. <p>Unless the council has included the above analysis and modelling in the report on its proposed revenue and rating strategy, the council must subsequently consider a report prepared by the CEO, based on that analysis and modelling, that –</p> <ul style="list-style-type: none"> • details the likely impact compared with the previous year's rating structure. • aims to identify any significant differences between the likely impact and the impact anticipated in the course of developing and consulting on the revenue and rating strategy • in particular, aims to identify likely increases in the amount of rates payable by ratepayers that: <ul style="list-style-type: none"> ○ will be difficult for those on low or fixed incomes to accommodate, ○ are significantly higher than the average increase for the area, due to steep increases in valuation not related to development of the property, ○ would be inconsistent with the objectives of the proposed revenue and rating strategy. • assesses the extent to which the measures for rate relief will alleviate the above problems, and recommends any additions or amendments to the rate relief measures to form part of the revenue and rating strategy. • advises whether the impacts are such that the council should revise its proposed rating structure. <p>If the council proposes to change its rating structure in its proposed revenue and rating strategy, it must revise the report and consult on the revised report using the same procedures as before.</p>

These notes are provided for information only and should not be relied upon as legal advice. The draft Bill should be read in conjunction with the Local Government Act 1999. This is a legislative proposal only and would apply only if the Bill were to become an Amendment Act.

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Clause no	Heading	Local Government Act 1999 section amended	Effect of clause
14	General Principles	substitutes s150	<p>Currently the section contains the principle that a council should, when making and adopting policies and determinations concerning rates under this Act, take into account the fact that rates constitute a system of taxation for local government purposes (generally based on the value of land).</p> <p>Proposed expansion of these general principles to include requirements that:</p> <ul style="list-style-type: none"> • policies should incorporate strategies for rate relief to be provided in appropriate cases, • in designing and implementing strategies for rate relief councils should avoid narrow or overly-restrictive criteria and the need for ratepayers to meet onerous application requirements, • the council's decisions should be made and its actions taken having regard to their financial effects on future generations.
15	Basis of rating	s151	The public consultation required for changes to rating bases would be reflected in the requirements for consultation by all councils on revenue and rating proposal each financial year (clause 6).
16	General rates	s152	The option to base a general rate solely on a fixed charge would be removed.
17	Declaration of general rate (including differential general rate)	s153	<p>Following exploration of the various rating strategies and rate relief options available, each council would be required to formally consider setting a limit each year on the maximum increase payable (either a dollar amount or a percentage) on any ratepayer's principal place of residence, which may be subject to conditions (such as excluding increases resulting from property improvements).</p> <p>Details of the maximum increase payable and the conditions under which it will be available would be included in the rates declaration.</p>

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18	Service rates and service charges	s155	<p>The range of services for which councils can recover costs via service rates and service charges would be expanded to allow councils to respond to calls for more "user pays" based rating, including -</p> <ul style="list-style-type: none"> • Water treatment • TV Transmission (currently listed as a prescribed service by regulation). <p>The amendment would make clear that councils may impose service rates and service charges even if the council does not provide the service directly.</p> <p>Councils would be required to offer appropriate remissions in relation to services for which remissions are not available under the State Concession Scheme.</p>
19	Basis of differential rates	s156	<p>The public consultation required for changes to rating bases would be reflected in the requirements for consultation by all councils on revenue and rating proposals each financial year (clause 6).</p>
20	Minimum rates and special adjustments for specified values	s158	<p>To remove the reference to general rates based solely on a fixed charge in line with clause 16.</p>
21	Discretionary rebates of rates	s166	<p>Councils would be able to grant rebates to allow averaging of property values over 3 years for ratepayers' principal places of residence to reduce the impact of volatile property valuations on rates liabilities.</p> <p>An additional rebate category would be provided to provide relief in cases considered by the council to be appropriate where the amount of rates payable by a ratepayer, -</p> <ul style="list-style-type: none"> • is significantly higher than was foreseen or intended by the council in determining its annual revenue and rating strategy, or • is inconsistent with the objectives of the council's annual revenue and rating strategy, or • is manifestly unfair. <p>This is designed to allow councils to respond to cases that become apparent after the council has determined its rates.</p> <p>Councils would be required to consider applications for discretionary rebates on their merits.</p>

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Clause no	Heading	Local Government Act 1999 section amended	Effect of clause
22	Adoption of annual revenue and rating strategy	substitutes s171	<p>A council would be required to adopt and publish its Annual Revenue and Rating Strategy developed in consultation with its communities. The matters to be included in the published Annual Revenue and Rating Strategy would mirror the matters to be included in the Proposal (clause 6) adjusted to reflect the council's decisions on rating structure and rate relief measures and to incorporate more specific information on the actual level of rates declared.</p> <p>An extract of this list of matters would form a summary of the Annual Revenue and Rating Strategy of the council to accompany the rates notice.</p> <p>Each council would be required to arrange for an independent review and report to be undertaken (by a person whom the council reasonably believes to be qualified to undertake such a review) on the quality of the information and assumptions (apart from the valuations) underlying a council's annual revenue and rating strategy. The report would be provided to the council by the deadline for providing the annual audit opinion on the council's financial statements.</p>
23	Payment of rates – general principles	s181	<p>Rates payments would be quarterly and the design of rate notices would give prominence to the quarterly amount due, with the option for the ratepayer to pay the whole of the annual liability if they wish.</p> <p>The intention is that ratepayers would not be made to feel that payment in four instalments is a departure from the norm or a special concession.</p> <p>A capacity for councils to offer discounts or other incentives for early or prompt payment of rates instalments would be provided.</p>
24	Remission and postponement of payment	substitutes s182	<p>Each council would be able to offer deferrals to non-seniors based on such conditions deemed locally appropriate.</p> <p>Councils would be able to provide remissions to groups of ratepayers on an automatic basis without any application or "hardship" test.</p>
	Postponement of rates - Seniors	inserts s182A	<p>State Seniors Card holders would have the right to defer on a long-term basis part or all of council rates otherwise payable. The deferred amount would be subject to interest but would be free from the 2% fine collectable on other outstanding rates.</p>

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Clause no	Heading	Local Government Act 1999 section amended	Effect of clause
25	Administrative audits by Ombudsman	inserts s187A	Would allow the Ombudsman to review (by means of administrative audit) a council's rating practices and procedures.
	Investigation by Ombudsman	inserts s187B	Would allow the Ombudsman's jurisdiction to deal with complaints relating to the unfair or unreasonable impact of a rate or service charge on individuals. Councils would be able to grant rate relief where the Ombudsman recommended it.
26	Council to establish grievance procedures	s270	A ratepayer or class of ratepayers that believe they have been unfairly impacted by the council's rates declaration would be able to use the council's internal grievance procedure to seek review of the matter, including review of the scope or application of the council's rate relief strategies. A report of complaints made through the grievance procedure and of the outcomes of the complaints would be forwarded to the elected body at least once a year for the information of elected members. This report could trigger changes to various policies and procedures, or requests from the elected body for specific reviews by the auditor under the proposed amendments to section 129 as part of a program of continuous improvement. To complement this proposal, a requirement for councils to include information in their annual reports about the number, type and outcome of complaints dealt with under the council's grievance procedures would be considered.
27	Variation of Schedule 4		The Annual Revenue and Rating Strategy proposed in clause 22 above would be added to the schedule that lists the material to be included in the Annual Report.
28	Variation of Schedule 5		The schedule that lists the documents that must be made publicly available would be updated to include the Annual Business Plan proposed in clause 6 above and the Annual Revenue and Rating Strategy in clause 22.