



I hereby give notice that a Special Meeting of Council will be held on:

**Date:** Wednesday, 1 August 2018  
**Time:** 5.30pm  
**Location:** Council Chambers  
Minlaton Town Hall  
57 Main Street  
Minlaton

# **AGENDA**

## **Special Council Meeting**

**1 August 2018**

A handwritten signature in blue ink, appearing to read "Cameron", is positioned above the name and title of the Chief Executive Officer.

**Andrew Cameron**  
**CHIEF EXECUTIVE OFFICER**

CONFLICT OF INTEREST

Members are reminded of the requirements for disclosure by Members of direct or indirect pecuniary benefit or detriment and non-pecuniary benefit or detriment in relation to a material conflict of interest in accordance with Section 73, or an actual or perceived conflict of interest in accordance with Section 75 of the Local Government Act in items listed for consideration on the Agenda. Section 74 and 75A of the Local Government Act 1999 requires that Elected Members declare any interest and provide full and accurate details of the relevant interest to the Council. In relation to actual or perceived conflicts of interest a member has an obligation to outline how they propose to deal with the actual or perceived conflict of interest prior to consideration of that item on the Agenda.

This requirement does not apply to Ordinary Business Matters prescribed by regulation 8AAA Local Government Act (General) (Accountability and Governance) Variation Regulations 2016.

Each Member of a Council has a duty to vote at all meetings unless excepted by legislation.

The major exception being where a Member has a material conflict of interest.

## Agenda

1	Welcome and Acknowledgement of Country by Mayor .....	5
2	Opening Prayer .....	5
3	Present .....	5
4	Leave of Absence .....	5
5	Apologies .....	5
6	Conflict of Interest .....	5
7	Questions without Notice.....	5
	<b>INFORMATION AGENDA .....</b>	<b>6</b>
8	Items for Exclusion.....	6
9	Receipt of Information Reports.....	6
10	Visitors to the Meeting.....	6
	<b>DEBATE AGENDA.....</b>	<b>8</b>
11	Chief Executive Officer.....	8
	11.1 Local Government (Rate Oversight) Amendment Bill 2018.....	8
12	General Business.....	31
13	Next Meeting .....	31
	Wednesday 8 August 2018	
14	Closure .....	31



**1 WELCOME AND ACKNOWLEDGEMENT OF COUNTRY BY MAYOR**

Meeting declared opened

**2 OPENING PRAYER**

**3 PRESENT**

**4 LEAVE OF ABSENCE**

Cr Scott Hoyle

**5 APOLOGIES**

Nil

**6 CONFLICT OF INTEREST**

**7 QUESTIONS WITHOUT NOTICE**

**INFORMATION AGENDA**

- 8 ITEMS FOR EXCLUSION**
- 9 RECEIPT OF INFORMATION REPORTS**
- 10 VISITORS TO THE MEETING**

# DEBATE AGENDA

**DEBATE AGENDA****11 CHIEF EXECUTIVE OFFICER****11.1 LOCAL GOVERNMENT (RATE OVERSIGHT) AMENDMENT BILL 2018****Document #:** 18/51606**Department:** Executive Services**PURPOSE**

To present to Elected Members updated information on the Local Government (Rate Oversight) Amendment Bill 2018 for consideration and support.

**RECOMMENDATION**

That Council:

1. advises the Local Government Association (LGA) that it **[supports/opposes]** the Local Government (Rate Oversight) Amendment Bill 2018; and
2. advises the LGA that the priority issues, amendments and concessions Council would seek the LGA to use best endeavours to address in discussions with political parties about the Local Government (Rate Oversight) Amendment Bill 2018 include the following:
  - (a) Amendment Priorities:
    - 1 Should the regulator be required to consult with local government and other interested stakeholders prior to the development and adoption of guidelines and regulations that support the Rate Oversight Bill?
    - 2 Should the regulator be given powers to cap state government taxes, levies, fees and charges to create consistency with any scheme applied to local government?
    - 3 Should the definition of "Annualised revenue recoverable from general rates" exclude discretionary and mandatory rebates, objections, write offs / bad debts, interest & fines, and other recovered costs? Does the legislation need to be clearer about what is included/excluded?
    - 4 Should the legislation include a provision to ensure that the financial impact of state government cost shifting is not included in the calculation of the base standard rate? For example, if the cost to a Council is \$1 million per year to provide the 75% mandatory rebate to community housing providers, this amount should be deducted from the calculation of the base standard rate.
    - 5 Should all powers for Ministerial direction be removed from the legislation to ensure independence and avoid politicisation of the rate capping scheme?
  - (b) Concession Priorities:
    - 1 State Government Grants
    - 2 Solid Waste Levy
    - 3 NRM Levy
    - 4 Mandatory Rebates and Exemptions
    - 5 Litter and Nuisance

**LINK TO STRATEGIC PLAN**

**Goal:** 5 Responsible Governance

**Strategy:** 5.2 Effective leadership and informed decision making

## BACKGROUND

The State Government introduced the Local Government (Rates Oversight) Amendment Bill 2018 (the Bill) in the House of Assembly on 20 June 2018 following a Liberal Party election commitment to introduce rate capping legislation in the Parliament within their first 100 days of government. Rate capping is promoted by the government as a measure to ease cost of living pressures on households and businesses.

The Bill establishes a framework for a rate cap policy that gives the Essential Services Commission of South Australia (ESCOSA) responsibility for setting an annual rate cap, assessing applications from Councils for variations to the rate cap, and monitoring and reporting on Council compliance with the rate cap.

## DISCUSSION

The rate capping system outlined in the State Government's proposed legislation comprises the key elements summarised below.

- The Essential Services Commission of South Australia (ESCOSA) will be responsible for making rate cap determinations, assessing applications from Councils for variations to the rate cap, and reporting on the outcomes of the system.
- ESCOSA will determine the basis of the rate cap; for example, whether it will relate to a price or particular index (CPI, LGPI etc) and whether the cap will include any efficiency or productivity component. The details of how the rate cap will be determined will be subject to ESCOSA guidelines that are yet to be developed.
- A cap may be determined for Councils generally, a class of Councils or individual Councils. There is no definition provided of a 'class' of Councils.
- The cap will be applied to a 'base standard rate', which is a nominal rate that is arrived at by dividing the total annualized general rate revenue for a Council area by the number of rateable properties in that area at the end of a base year (30 June).
- A Council may apply to ESCOSA for a variation from the rate cap for a maximum period of up to five years. In applying for a variation, Councils will need to provide the reasons for the variation application, evidence of community consultation, and an assessment of the likely impact on ratepayers.
- Councils will be expected to make efficiencies across their operations before applying for a rate cap and will need to demonstrate they have considered funding priorities and alternative sources of revenue and the willingness and capacity of their ratepayers to pay higher rates.
- Consistency with long term financial plans and infrastructure and asset management plans will be a critical component of an application for a variation.
- ESCOSA may charge Councils a fee to recover the costs of assessing a variation application and applications will need to be lodged by 31 March.
- Further details of the variation process will be provided through ESCOSA guidelines that are yet to be developed.
- Separate rates and service rates and charges are excluded from the rate cap calculation, but a Council must inform ESCOSA if they propose to introduce a separate rate or service rate or charge as this will be taken into consideration when they set the primary rate cap for that Council.
- ESCOSA must monitor and review Councils' compliance with the system and prepare reports on the effects of rate capping on Councils and any trends that may arise as a result of the rate capping scheme.

- The Minister may take action in relation to a Council under Section 273 of the Local Government Act on the basis of a report by ESCOSA. Currently this provision includes ICAC, the Auditor-General and/or the Ombudsman.
- A review of the legislation will be required before 31 December 2023 (five years from the proposed commencement).

A copy of the Bill and accompanying explanatory paper, along with the Local Government Association's (LGA) analysis of the Bill outlining the broad issues that have been identified on behalf of the sector, is available here: <https://www.lga.sa.gov.au/RateCapping>

This policy should not be confused with a cap a Council might itself apply to amounts payable by an individual ratepayer in any year under Section 153(3) of the Local Government Act 1999. Approximately 50 per cent of Councils within South Australia restrict increases on individual properties to no more than a nominated percentage every year. However, these Council decisions do not constrain total rate revenue generated.

Many of the details of the rate cap model are not defined or included in the Bill and are yet to be established by ESCOSA. For example, there is currently no detail provided on the final methodology/formula to be used in determining how a price index will be determined and whether the cap will include any efficiency or productivity component. Further, full details of the variation process, including potential application fees to Councils and the community consultation guidelines have yet to be determined by ESCOSA.

ESCOSA has indicated that an Issues Paper will be released in August 2018 on these additional details. However, the Bill is expected to be debated in Parliament's Legislative Council in early September 2018, creating a time pressure for consultation on this additional detail before the Parliament makes a decision on the Bill.

### **Rate Capping Research**

Rate capping was first proposed by the Liberal Party prior to the 2014 State Election. On the basis of evidence that rate capping results in negative impacts on communities and the absence of any evidence that it results in more efficient Councils, the LGA and the majority of South Australian Councils, have consistently voted to oppose the introduction of rate capping in South Australia.

The LGA has undertaken a range of advocacy, policy and reform activities to highlight the risks of rate capping while developing alternative local government reforms that will deliver benefits and value for communities. A summary of the extensive research the LGA has undertaken on Council rate capping policies and their impacts in other jurisdictions was presented in the report to the LGA Special General Meeting held on 13 July 2018, which is available here: <https://www.lga.sa.gov.au/page.aspx?u=6918>

1. As reported by Professor Roberta Ryan from the University of Technology Sydney at the LGA Special General Meeting, there is little Australian empirical evidence available to back up the claims about the purported advantages on rate capping. The research that is available provides evidence that rate capping is associated with:
  1. higher levels of debt;
  2. lower level of infrastructure maintenance; and
  3. lower levels of inter-jurisdictional revenue effort equity (creating inequity in individual Councils' ability to raise revenue).
2. The research does not provide any evidence of higher levels of efficiency being associated with rate capping.
3. Videos of the presentations on the New South Wales and Victorian experiences of rate capping and expert academic analysis at the LGA Special General Meeting [can be found here](#).

### **Process to resolve a sector position**

At the LGA Special General Meeting, members voted that South Australian Councils should review the Local Government (Rate Oversight) Amendment Bill 2018 and advise the LGA by Friday 3 August 2018 of the Council's endorsed position based on the following options:

- a) Council supports the Local Government (Rate Oversight) Amendment Bill 2018; or
- b) Council opposes the Local Government (Rate Oversight) Amendment Bill 2018.

Following the receipt of responses from Councils by 3 August, a special meeting of the LGA Board will be called to consider the endorsed positions of member Councils. As rate capping would impact on Councils differently depending on size, services, budget and rate base; the LGA Board will consider the endorsed positions of member Councils on the basis of both a 'one vote, one value' counting method and a weighted voting method (using the same weighting system applied at LGA General Meetings).

The Board will also use the following criteria to inform and resolve a position:

- a merits-based assessment of the proposed legislation;
- the best interests of the communities of South Australia and their confidence in the local government sector;
- current LGA policy positions and whether there is a mandate from members for an amended policy to be adopted;
- potential impacts on the long-term financial sustainability of the local government sector, and how any negative impacts could be mitigated;
- potential amendments and concessions that are in the best interest of Councils and the community they serve;
- positions of political parties in the Legislative Council and the impact this would have on the outcomes that can feasibly be achieved through the parliamentary process; and
- the number of responses received and the number of Councils that did not participate in the voting process.

The LGA has requested that Council provides advice on an endorsed position by Friday 3 August to enable the LGA Board to finalise a position and advise political parties of the sector's response in preparation for the spring session of Parliament.

It is critical for the LGA Board's decision making process, that Councils indicate whether they support or oppose the Bill irrespective of potential amendments and concessions.

Once the Board has resolved a position on behalf of the sector, the LGA will use best endeavours in the Parliament to secure an outcome reflective of the sector's position and in the interests of the communities they serve.

### **Parliamentary Process**

The Local Government (Rate Oversight) Amendment Bill has been introduced in the House of Assembly by the Minister for Transport, Infrastructure and Local Government, Hon Stephan Knoll MP.

The Government holds the majority in the House of Assembly (lower house), so it is likely the Bill will progress through the House of Assembly (lower house) to the Legislative Council (upper house) despite independent MPs in the lower house - Frances Bedford MP, Geoff Brock MP and Troy Bell MP (and potentially SA Labor) - all publicly stating that they will vote against the legislation. The Bill is expected to be passed in the House of Assembly in July 2018, before the winter recess of Parliament.

However, the Bill must pass in both Houses of Parliament to become law and the Government does not hold a majority in the Legislative Council.

If the Labor Party (ALP) honours its pre-election commitment to oppose rate capping, the government must secure support from three out of five crossbench members in order for the Bill to pass. The crossbench currently comprises two members from SA-BEST, two members from the Greens, and one member from Advance SA.

The ALP is considering the detail of the Bill and is yet to confirm a position. However, the Shadow Minister for Local Government, Hon Tony Piccolo MP told the LGA's Special Meeting that he has a number of concerns about rate capping and is reluctant to recommend it to the Shadow Cabinet. SA-BEST and Greens are both on record post-election opposing rate capping based on the detrimental impacts it has had interstate and its lack of policy merit. Therefore, the possibility of successfully opposing rate capping in the upper house remains available if this is ultimately the decision of Councils.

The Government has indicated that the Bill will be scheduled for debate in the Legislative Council in the first or second sitting week of Parliament, following the winter recess.

### **Possible amendments and concessions to the Local Government (Rates Oversight) Amendment Bill 2018.**

Despite any position that Council or the LGA resolves to take on the proposed legislation, ultimately the Parliament will make the decision about whether the legislation is passed, and in what form.

As discussions and negotiations with the government, opposition and other parties may be required, The LGA has also asked Councils to clearly specify the priority amendments and concessions they would ask the LGA to use best endeavours to achieve in any negotiations with political parties about the legislation.

Based on the information presented to the LGA Special General Meeting, the Greens and the ALP do not seem inclined to accept amendments. SA-BEST – while stating their opposition to the Bill – has suggested the government's proposed productivity commission could examine the Bill as part of its remit. This would potentially mean that only the government would sponsor and support amendments.

Table 1 at Attachment A provides an outline of the potential amendments to the Bill, drawn from LGA analysis, the Special Meeting on 13 July, and feedback and questions from Councils.

Council has been asked to nominate the top five amendment priorities for the LGA to pursue in its best endeavours with the political parties. Staff have reviewed the documentation provided by the LGA and encourages the Council to nominate the following amendment priorities:

1. Should the regulator be required to consult with local government and other interested stakeholders prior to the development and adoption of guidelines and regulations that support the Rate Oversight Bill?
2. Should the regulator be given powers to cap state government taxes, levies, fees and charges to create consistency with any scheme applied to local government?
3. Should the definition of "Annualised revenue recoverable from general rates" exclude discretionary & mandatory rebates, objections, write offs / bad debts, interest & fines, and other recovered costs? Does the legislation need to be clearer about what is included/excluded?
4. Should the legislation include a provision to ensure that the financial impact of state government cost shifting is not included in the calculation of the base standard rate? For example, if the cost to a Council is \$1 million per year to provide the 75% mandatory rebate to community housing providers, this amount should be deducted from the calculation of the base standard rate.
5. Should all powers for Ministerial direction be removed from the legislation to ensure independence and avoid politicisation of the rate capping scheme?

Table 2 at Attachment A provides a list of possible concessions as that the State Government should address if the Bill were to be passed.

Council has been asked to nominate the top five concession priorities for the LGA to pursue in its best endeavours with the political parties. Staff have reviewed the documentation provided by the LGA and encourages the Council to nominate the following concession priorities:

1. State Government Grants: \$TBD

South Australian Councils historically receive the lowest per-capita share of state government funding in the country.

State Government grants/funding to local government should be no less than the average in other states. Priority areas for increased long-term state funding to Councils may include:

- Stormwater infrastructure
- Coastal management
- Community infrastructure
- Libraries
- Roads
- Community services

To reduce Council costs to meet any rate cap, the State Government should fulfil their resource and funding obligations that have been handed over to Councils.

## 2. Solid Waste Levy – Impact on Councils is \$34 million dollars in 2018/19

Councils provide waste depot services in their local communities. Through their contracts with waste collection agencies, Councils and their rate-payers pay the State Government's Solid Waste Levy.

There is currently around \$118 million that has been collected via the Solid Waste Levy sitting in the Green Industry Fund.

The funds collected through the Levy are meant to be spent on waste programmes to improve recycling and help the environment. However, only a small proportion of money raised is being invested back into the sector.

Since 2001, the State Government's waste levy has increased by nearly 1450%.

## 3. NRM Levy – Impact on Councils is approx. \$690,000

Councils are currently required by the State Parliament to collect the NRM Levy on behalf of the State Government. The levy appears as a separate line on Council rates notice, and many people mistake this for Council revenue.

In 2016/17, the State Government collected over \$44 million for NRM levy through Council rates. This was a 25 percent increase on the previous year.

There are hidden administrative costs to Councils in collecting the levy on behalf of the state, particularly in relation to non-payment and rebates. There is over \$690,000 in unpaid NRM levies across the local government sector in South Australia.

## 4. Mandatory Rebates and Exemptions - Impact on Councils (rebates only):

Metro Council average = approx. \$970,000 annually

Regional Council average= approx. \$122,000 annually

Councils are required by the Local Government Act to provide a range of mandatory rate rebates to properties used for health, community, religious and education purposes. These mandatory rebates should be reviewed in the context of rate capping to ensure that the wider community is not unfairly subsidising the costs of services delivered to other properties.

The rating exemptions that apply to state government owned land should also be reviewed in the context of rate capping to reduce fiscal illusion.

## 5. Litter and Nuisance - \$TBD

Councils have faced significant cost increases in recent years to manage and administer new responsibilities and obligations related to litter and nuisance control. These costs are not recovered or offset by additional revenue and must be subsidised by general rates.

To reduce Council costs to meet any rate cap, the State Government should take back the responsibilities that have been handed over to Councils.

### Impacts of Rate Capping

The LGA's research confirms that there is overwhelming evidence that shows rate capping is not an effective public policy. The New South Wales and Victorian experience show that rate capping:

- undermines local democracy, centralises decision making about Council rate revenue and shifts accountability from community representatives to an unelected bureaucracy;
- limits Councils' ability to provide local services – putting discretionary services at risk;
- leads to higher user pays fees, charges and fines;
- creates asset renewal and infrastructure backlogs; and
- does not make Councils more efficient or financially sustainable – in fact Council debt increases as Councils struggle to meet community expectations.

The lack of detail in the Local Government (Rate Oversight) Amendment Bill 2018 means that it is challenging to forecast and model the specific impacts on Council services and the long-term financial sustainability of the local government sector and Yorke Peninsula Council.

LGA modelling that assumes a rate cap aligned with LGPI the previous year, shows the potential loss of rates revenue across the local government sector would have been:

- \$65.2 million in 2014-15;
- \$42.7 million in 2015-16; and
- \$15.8 million in 2016-17.

Council modelling based on similar assumptions shows the potential impact on Council's Long Term Financial Management Plan as outlined below.

The figures in the Long Term Financial Plan (LTFP) are based on a number of assumptions and increases. One of these that is especially sensitive in terms of impact on the Plan is general rates revenue (excludes waste, CWMS and water supply service charges).

The annual general rate increase forecast for this LTFP includes in addition to CPI, a 'financial sustainability' increase to achieve Council's aim of becoming financially sustainable in the medium to long term. Given the sensitivity of this additional general rate increase on the Plan, modelling has been undertaken to show the detrimental impact on Council's long term financial position of removing the 'financial sustainability' rate increase from Y1 (2018/2019). The modelling is based on the assumption that general rate increases would be no more than the annual CPI, meaning an increase of \$2.3% in Y1 followed by a 1.95% increase annually in Y2 – Y10. The results are as follows.

### Operating Surplus/ (Deficit)

The table below shows the impact on Council's operating bottom line. Compared to the LTFP proposed (base) model Council remains in deficit for the life of this Plan and beyond, with the deficit getting significantly worse each year, if expenditure patterns and levels of service remain the same. This is due to costs increasing at a rate greater than income.

	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6	YR 7	YR 8	YR 9	YR 10
<b>BASE</b>	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28
Operating Surplus / (Deficit)	-\$ 1,925,578	-\$ 889,749	-\$ 418,861	\$ 99,340	\$ 289,887	\$ 494,921	\$ 440,254	\$ 353,620	\$ 207,957	\$ 6,692
<b>CPI ONLY INCREASE</b>										
Operating Surplus / (Deficit)	-\$ 2,348,539	-\$1,826,277	-\$ 1,903,228	-\$1,968,967	-\$2,094,263	-\$2,220,322	-\$2,327,937	-\$2,468,551	-\$2,669,246	-\$2,926,617

### Capital Expenditure

Removal of the 'financial sustainability' general rate increase will also mean that Council will have approximately \$21m less to spend on renewal and replacement of existing assets. This will lead to

a rapid deterioration of assets and increase in the asset renewal backlog i.e. gap between required spending and actual spending. The table below presents a snapshot of the funding shortfall under the CPI only general rate increase scenario.

BASE	AMP		DEPRECIATION	
10 YR REQUIRED SPEND	\$108,345,032	ASR	\$ 97,108,826	ASR
LTPF FUNDING PROPOSED	\$ 94,000,000	87%	\$ 94,000,000	97%
<b>FUNDING SHORTFALL EXCL PRIOR YEARS BACKLOG</b>	<b>\$ 14,345,031</b>		<b>\$ 3,108,826</b>	
CPI ONLY INCREASE	AMP		DEPRECIATION	
10 YR REQUIRED SPEND	\$108,345,032	ASR	\$ 97,108,826	ASR
LTPF FUNDING PROPOSED	\$ 72,700,000	67%	\$ 72,700,000	75%
<b>FUNDING SHORTFALL EXCL PRIOR YEARS BACKLOG</b>	<b>\$ 35,645,032</b>		<b>\$ 24,408,826</b>	

**COMMUNITY ENGAGEMENT PLAN**

Level 1 - Inform

**CONSULTATION PROCESS**

In preparing this report, the following Yorke Peninsula Council officers were consulted:

- Director Corporate and Community Services

In preparing this report, the following external parties were consulted:

- Local Government Association

**POLICY IMPLICATIONS**

Not applicable

**BUDGET AND RESOURCE IMPLICATIONS**

See body of report.

**RISKS/LEGAL/LEGISLATIVE/ IMPLICATIONS**

See body of report.

**ATTACHMENTS**

1. Rate capping - attachment A [!\[\]\(6ca584d6648a28b1eff778a6815e2d73\_img.jpg\)](#) [!\[\]\(648d131333897bb88e0e07ccf23175d6\_img.jpg\)](#)
2. Local Government (Rate Oversight) Amendment Bill 2018 [!\[\]\(604e1e9e8d12c8e6961e2cb14ebecf4e\_img.jpg\)](#) [!\[\]\(efd320a7a6d53b765bc2a9c84bdd4550\_img.jpg\)](#)

## Attachment A

Table 1: Potential Amendments to the Rate Oversight Bill

Note: The analysis of the LGA is that only the government may be willing to sponsor and support amendments, and amendments would still need the support of the ALP or the majority of the cross bench in the Legislative Council.

Issue		Council priority
<b>Theme 1: ESCOSA's role</b>		
1.1	Should ESCOSA's proposed regulatory role be replaced with another independent body to administer the system? Should this be the Local Government Grants Commission?	
1.2	If ESCOSA retains a regulatory role, should there be a local government nominee or appointee on the Commission to bring local government skills and knowledge?	
1.3	Should the regulator be given powers to cap state government taxes, levies, fees and charges to create consistency with any scheme applied to local government?	
1.4	Should the regulator be required to consult with local government and other interested stakeholders prior to the development and adoption of guidelines and regulations that support the Rate Oversight Bill?	
<b>Theme 2: Rate cap methodology (formula)</b>		
2.1	Should the legislation provide an obligation for the regulator to consult with Councils, the LGA and other interested stakeholders each year on the factors that should be taken into account when setting the cap?	
2.2	Should the methodology for the rate cap be a more simple mechanism to give revenue certainty to Councils and account for development growth during the period? Would a LGPI/WPI + growth be suitable?	
2.3	Should the definition of "Annualised revenue recoverable from general rates" exclude discretionary & mandatory rebates, objections, write offs / bad debts, interest & fines, and other recovered costs? Does the legislation need to be clearer about what is included/excluded?	
2.4	Should all powers for Ministerial direction be removed from the legislation to ensure independence and avoid politicisation of the rate capping scheme?	
2.5	Should the regulator be restricted from determining an efficiency dividend as part of setting the annual cap?	
2.6	Should the regulator be required to determine the primary rate cap on or before 31 December in all circumstances? Or should the legislation retain the flexibility for the regulator to extend this timeframe?	
2.7	Should the legislation include a provision to ensure that the financial impact of state government cost shifting is not included in the calculation of the base standard rate? For example, if the cost to a Council is \$1 million per year to provide the 75% mandatory rebate to community housing providers, this amount should be deducted from the calculation of the base standard rate.	
<b>Theme 3: Rate cap variation – applications and assessments</b>		

3.1	Should the reference to Councils paying a fee for a variation application be removed from the legislation?	
3.2	Should the impacts of emergency and disaster response and recovery be included in the legislation as a factor in making cap determinations?	
3.3	Should the legislation include a deadline by which the regulator must determine and advise Councils on the outcome of their variation applications?	
3.4	Should the legislation provide an administrative appeal process for Councils that have a variation application rejected by the regulator?	
<b>Theme 4: Property valuations and objections</b>		
4.1	Should the legislation include a provision to ensure that a Rate Oversight system factors in annual losses through objections and falling property valuations?	
<b>Theme 5: Monitoring compliance</b>		
5.1	Should provisions for financially penalising Councils that inadvertently breach the cap be removed given there are already broad powers available in the Act for investigation and review of Council decision making?	
5.2	Should the legislation require consultation with local government before determining the administrative requirements at Section 187K to ensure there is agreement about how the performance/impacts of the rate capping scheme will be measured, how the data will be collected and analysed?	
<b>Theme 6: Review of the Rate Oversight legislation</b>		
6.1	Should the legislation include a provision that requires the legislation to be publically reviewed every two years, with input from Councils and the LGA?	

**Table 2: Possible Concessions – issues the State Government needs to address should the Rate Oversight Bill be passed**

	Issue	\$ (impact/ funds sought)	Comment	Council priority
<b>1. Cost Shifting</b>				
1.1	Community Housing Rebates	Impact on Councils is \$10.7 million per year for 12,000 properties	The previous State Government commenced the transfer of management of SA Housing Trust (SAHT) properties to Community Housing Providers (CHPs). However, under the Local Government Act 1999 Councils must provide a mandatory 75% rate rebate on Council rates to community housing properties.  Local government in South Australia supports the provision of affordable and sustainable public housing. However, as this is a State Government responsibility the LGA continues to oppose costs for community housing being shifted to Councils through State Government policy decisions.	

1.2	Solid Waste Levy	Impact on Councils is \$34 million dollars in 2018/19	<p>Councils provide waste depot services in their local communities. Through their contracts with waste collection agencies, Councils and their rate-payers pay the State Government's Solid Waste Levy.</p> <p>There is currently around \$118 million that has been collected via the Solid Waste Levy sitting in the Green Industry Fund.</p> <p>The funds collected through the Levy are meant to be spent on waste programmes to improve recycling and help the environment. However, only a small proportion of money raised is being invested back into the sector.</p> <p>Since 2001, the State Government's waste levy has increased by nearly 1450%.</p>	
1.3	Rubble Royalties	Impact on Councils is approx. \$1 million per year.	As part of the 2014-15 budget, the previous State Government introduced a requirement for regional Councils to pay royalties (currently 52c per tonne) to them on rubble raised from borrow pits they own and manage for the purpose of road construction.	
1.4	NRM Levy	Impact on Councils is approx. \$690,000	<p>Councils are currently required by the State Parliament to collect the NRM Levy on behalf of the State Government. The levy appears as a separate line on Council rates notice, and many people mistake this for Council revenue.</p> <p>In 2016/17, the State Government collected over \$44 million for NRM levy through Council rates. This was a 25 percent increase on the previous year.</p> <p>There are hidden administrative costs to Councils in collecting the levy on behalf of the state, particularly in relation to non-payment and rebates. There is over \$690,000 in unpaid NRM levies across the local government sector in South Australia.</p>	
<b>2. Funding, Roles and Responsibilities</b>				
2.1	State Government grants	\$ TBD	<p>South Australian Councils historically receive the lowest per-capita share of state government funding in the country.</p> <p>State Government grants/funding to local government should be no less than the average in other states. Priority areas for increased long-term state funding to Councils may include:</p> <ul style="list-style-type: none"> <li>• Stormwater infrastructure</li> <li>• Coastal management</li> <li>• Community infrastructure</li> <li>• Libraries</li> <li>• Roads</li> <li>• Community services</li> </ul> <p>To reduce Council costs to meet any rate cap, the State Government should fulfil their resource and funding obligations that have been handed over to Councils.</p>	

2.2	Review of services provided on behalf of the state government	\$ TBD	There are a number of discretionary services and programmes that local government provides on behalf of the State Government under individual or sector-wide agreements. For example, services such as immunisations, food safety inspections and maintenance of state-owned jetties. A review of these agreements and the functions being undertaken by Councils on behalf of the State Government may be required in a revenue constrained environment.
2.3	Development contributions	\$TBD	Councils in South Australia, particularly those experiencing high levels of growth, are making significant upfront investments in infrastructure and facilities that support new developments. Councils in New South Wales and Victoria have the benefit of a legislated development contributions system to support this investment; and for some Councils this is a significant source of additional revenue, which reduces pressure on Council rates. The introduction of rate capping in South Australia will require consideration of an appropriate development contributions system to ensure growth areas in South Australia are not disadvantaged.
2.4	Review of statutory fees and charges	\$ TBD	Councils provide services to the community that are subject to a fee set by statute. Examples include planning and building assessments under the Development Act (PDI Act) and food inspections under the Food Act. The cost of the delivering these services far exceeds the fee Councils are permitted to charge. LGA data analysis shows that the Councils are subsidising the costs of providing these services by up to 70-80%.  A commitment is required to review all relevant statutory fees and charges and implement a cross-government policy to reset these fees at a cost recovery level.
2.5	Litter and Nuisance	\$TBD	Councils have faced significant cost increases in recent years to manage and administer new responsibilities and obligations related to litter and nuisance control. These costs are not recovered or offset by additional revenue and must be subsidised by general rates.  To reduce Council costs to meet any rate cap, the State Government should take back the responsibilities that have been handed over to Councils.
<b>3. Local Government Reform</b>			
3.1	Benchmarking and data sharing	\$3 million in 2018/19, and \$1 million a year for the following 3 years	Establishment of a sophisticated database of performance measures administered by the LGA to support Council planning and community consultation to enable local government to continually improve.  While there is a considerable amount of information already available to communities about what their Council is doing; this information is often spread across multiple documents and platforms, can be difficult to find, and is not easy to compare with other Councils.  The LGA is working towards developing a more sophisticated performance measurement and reporting framework as a consistent way to promote transparency and accountability.
3.2	Mandatory Rebates and Exemptions	Impact on Councils (rebates only):	Councils are required by the Local Government Act to provide a range of mandatory rate rebates to properties used for health, community, religious and education purposes. These mandatory rebates should be reviewed in the context of rate capping to ensure that the wider community is not unfairly subsidising the costs of services delivered to other properties.

		<p>Metro Council average = approx. \$970,000 annually</p> <p>Regional Council average= approx. \$122,000 annually</p>	<p>The rating exemptions that apply to state government owned land should also be reviewed in the context of rate capping to reduce fiscal illusion.</p>	
3.3	Local Government elections	\$TBD	<p>Support participation in local democracy and decision making by investing in the development and implementation of a cost effective and reliable electronic voting system for local government elections to, in time, replace the current postal ballot voting system. Legislative change would be required to implement this reform.</p>	

**Advance**

South Australia

**Local Government (Rate Oversight) Amendment  
Bill 2018**

A BILL FOR

An Act to amend the *Local Government Act 1999*.

---

Local Government (Rate Oversight) Amendment Bill 2018  
Contents

---

## Contents

### Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

### Part 2—Amendment of *Local Government Act 1999*

- 4 Amendment of section 3—Objects
- 5 Amendment of section 123—Annual business plans and budgets
- 6 Insertion of Chapter 10 Part 1A

#### Part 1A—Rate oversight

- 187C Objects of Part
  - 187D Interpretation
  - 187E Primary rate cap determinations
  - 187F Rate cap variation determinations
  - 187G Rate cap variation determination applications
  - 187H Publication of Ministerial requests and directions
  - 187I Council must notify ESCOSA of certain matters
  - 187J Compliance with rate cap determinations
  - 187K Administration
  - 7 Amendment of section 273—Action on report
  - 8 Amendment of section 303—Regulations
  - 9 Review
- 

## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

- 5 This Act may be cited as the *Local Government (Rate Oversight) Amendment Act 2018*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

### Part 2—Amendment of *Local Government Act 1999*

#### 4—Amendment of section 3—Objects

- 15 Section 3(f)—after "communities" insert:  
and to provide for appropriate financial contributions by ratepayers to those services and facilities

Local Government (Rate Oversight) Amendment Bill 2018  
Amendment of *Local Government Act 1999*—Part 2

### 5—Amendment of section 123—Annual business plans and budgets

Section 123—after subsection (2) insert:

- (2a) A council must ensure that, if relevant, an annual business plan also contains a statement—
- 5                                   (a) that the council intends to apply for a rate cap variation determination to increase the primary rate cap determination applying to the council for the financial year under Chapter 10 Part 1A; or
- 10                                   (b) that the council has made an application to ESCOSA for a rate cap variation determination but that a determination has not been made in relation to the application; or
- (c) that a rate cap variation determination made by ESCOSA for the financial year applies to the council.

### 6—Insertion of Chapter 10 Part 1A

15                   Chapter 10—after Part 1 insert:

#### Part 1A—Rate oversight

##### 187C—Objects of Part

The objects of this Part are to ensure—

- 20                                   (a) that the financial contribution of ratepayers to the provision of services and infrastructure by local government to meet the present and future needs of local communities is subject to appropriate oversight; and
- (b) that a council has the financial capacity to perform its duties and functions and exercise its powers.

##### 25                   187D—Interpretation

(1) In this Part—

- base standard rate*—see subsection (2);
- base year* means the financial year before the capped year;
- capped standard rate* see subsection (3);
- 30                                   *capped year* means the financial year specified in a primary rate cap determination;
- ESCOSA* means the Essential Services Commission established under the *Essential Services Commission Act 2002*;
- 35                                   *primary rate cap* means the primary rate cap (expressed as a percentage) specified by ESCOSA in a primary rate cap determination;
- primary rate cap determination*—see section 187E(1);
- rate cap variation determination*—see section 187F(1);

## Local Government (Rate Oversight) Amendment Bill 2018

Part 2—Amendment of *Local Government Act 1999*

*varied rate cap* means the varied rate cap (expressed as a percentage) specified by ESCOSA in a rate cap variation determination.

- (2) The *base standard rate*, in relation to a council, means the rate calculated in accordance with the following formula:

$$BSR = \frac{Rb}{N}$$

Where—

*BSR* is the base standard rate;

*Rb* is the total annualised revenue recoverable from general rates on rateable properties within the area of the council as at 30 June in the base year;

*N* is the number of rateable properties within the area of the council as at 30 June in the base year.

- (3) The *capped standard rate*, in relation to a council, means the rate calculated in accordance with the following formula:

$$CSR = \frac{Rc}{N}$$

Where—

*CSR* is the capped standard rate;

*Rc* is the total annualised revenue recoverable from general rates on rateable properties within the area of the council as at 1 July in the capped year;

*N* is the number of rateable properties within the area of the council as at 1 July in the capped year.

### 187E—Primary rate cap determinations

- (1) ESCOSA may, on its own initiative or at the request of the Minister, by notice in the Gazette, determine that the capped standard rate for a specified financial year must not exceed the base standard rate by more than the primary rate cap specified in the notice (a *primary rate cap determination*).
- (2) A primary rate cap determination may apply to—
- (a) councils generally; or
  - (b) a class of councils; or
  - (c) a particular council.
- (3) Before making a primary rate cap determination that is to apply to councils generally or a class of councils, ESCOSA must consider the following:
- (a) the basis of the primary rate cap (for example, a relevant price or cost index);

**Local Government (Rate Oversight) Amendment Bill 2018**  
Amendment of *Local Government Act 1999*—Part 2

---

- 5
- (b) whether the primary rate cap should include an efficiency or productivity component;
  - (c) the amount of the primary rate cap (including, if relevant, any efficiency or productivity component);
  - (d) any matter that the Minister directs ESCOSA to consider;
  - (e) any other matter considered relevant by ESCOSA.
- (4) The following provisions apply to the making of a primary rate cap determination that is to apply to a particular council:
- 10
- (a) ESCOSA may only make a primary rate cap determination that is to apply to a particular council if ESCOSA considers it appropriate to do so taking into account—
    - 15 (i) the council's record of compliance with 1 or more previous primary rate cap determinations or rate cap variation determinations; or
    - (ii) a proposal by the council to—
      - 20 (A) change the basis on which rates are assessed against land under section 148; or
      - (B) declare a separate rate under section 154 or impose a service rate or an annual service charge under section 155 in relation to a financial year; or
    - 25 (iii) the level of other fees or charges imposed or proposed to be imposed by the council other than under Part 1; or
    - (iv) any other matter that ESCOSA thinks fit;
  - (b) before making a primary rate cap determination that is to apply to a particular council, ESCOSA must—
    - 30 (i) consider the following:
      - 35 (A) the matter or matters set out in subsection (4)(a)(i) to (iv) based on which ESCOSA considers it appropriate to make the determination;
      - (B) if ESCOSA proposes to make a primary rate cap determination that is to apply to councils generally for the relevant financial year, the amount of the primary rate cap (including, if relevant, any efficiency or productivity component);
      - 40 (C) any matter that the Minister directs ESCOSA to consider;
      - (D) any other matter considered relevant by ESCOSA; and

## Local Government (Rate Oversight) Amendment Bill 2018

Part 2—Amendment of *Local Government Act 1999*

- (ii) give the council a reasonable opportunity to make submissions in relation to the proposed determination.
- 5 (5) A primary rate cap determination does not have effect in relation to a capped year unless it is published in the Gazette—
- (a) on or before 31 December in the financial year before the capped year; or
- (b) on or before another date specified by ESCOSA by notice in the Gazette in the financial year before the capped year.
- 10 (6) A primary rate cap under a primary rate cap determination may be a positive or negative amount.

**187F—Rate cap variation determinations**

- 15 (1) ESCOSA may, on application by a council the subject of a primary rate cap determination applying to councils generally or a class of councils, make a determination specifying a varied rate cap (being a cap that is different from the primary rate cap applying to the council under the primary rate cap determination) for 1 or more specified financial years (up to a maximum of 5 years) (*rate cap variation determination*).
- 20 (2) ESCOSA may only make a rate cap variation determination on an application under this section if satisfied that the varied rate cap is appropriate, having regard to—
- (a) the matters set out in section 187G(2); and
- 25 (b) the council's record of compliance with any previous primary rate cap determination or rate cap variation determination; and
- (c) whether requirements given by ESCOSA under section 29 of the *Essential Services Commission Act 2002* relating to the council giving information relevant to the application (if any) have been complied with; and
- 30 (d) any matter that the Minister directs ESCOSA to consider; and
- (e) any other matter determined by ESCOSA.
- 35 (3) If ESCOSA makes a rate cap variation determination under this section, ESCOSA must publish a notice in the Gazette specifying—
- (a) the fact that a rate cap variation determination has been made; and
- (b) the council to which the rate cap variation determination applies; and
- 40 (c) the varied rate cap applying under the rate cap variation determination (which may be the varied rate cap proposed by the council or another cap set by ESCOSA); and

**Local Government (Rate Oversight) Amendment Bill 2018**  
Amendment of *Local Government Act 1999*—Part 2

---

- (d) each financial year to which the varied rate cap applies.
- (4) A varied rate cap under a rate cap variation determination may be a positive or negative amount.

**187G—Rate cap variation determination applications**

- 5 (1) An application by a council for a rate cap variation determination must—
- (a) be made by—
- 10 (i) 31 March before the first capped year to which the application relates; or
- (ii) by such other date fixed by ESCOSA by notice in the Gazette; and
- (b) be made in the form and manner determined by ESCOSA; and
- 15 (c) be accompanied by the fee determined by ESCOSA, which must not exceed the reasonable costs of determining the application.
- (2) The application must specify—
- (a) the number of financial years (up to a maximum of 5 years) that the council proposes that it be subject to a rate cap variation determination; and
- 20 (b) the proposed varied rate cap for each specified financial year; and
- (c) the reasons the council seeks a varied rate cap; and
- 25 (d) the community engagement process that has been undertaken by the council on the proposed varied rate cap; and
- (e) the likely impact of the proposed varied rate cap on ratepayers, including their capacity and willingness to pay rates in accordance with the proposed varied rate cap; and
- 30 (f) whether consideration has been given to reprioritising proposed spending measures and alternative funding options and, if so, why those options are not adequate; and
- (g) how the varied rate cap represents value for money for the council and its ratepayers and promotes the efficient use of council resources; and
- 35 (h) how the proposal is consistent with the council's long term financial plan and infrastructure and asset management plan under Chapter 8 Part 1; and
- (i) any other information required by ESCOSA.

**Local Government (Rate Oversight) Amendment Bill 2018**  
 Part 2—Amendment of *Local Government Act 1999*

---

- (3) A council must, as soon as is reasonably practicable after making an application for a rate cap variation determination, publish a copy of the application (including any accompanying information and documents) on its website.

5                    **187H—Publication of Ministerial requests and directions**

- (1) If the Minister makes a request under section 187E(1), ESCOSA must publish a copy of the request on its website as soon as is reasonably practicable after its receipt.

- (2) If the Minister gives—

- 10                    (a) a direction under section 187E(3)(d) or (4)(b)(i)(C); or  
                       (b) a direction under section 187F(2)(d),

ESCOSA must publish a copy of the direction on its website as soon as is reasonably practicable after its receipt.

**187I—Council must notify ESCOSA of certain matters**

- 15                    (1) A council must not—

- (a) change the basis on which rates are assessed against land under section 148; or  
 (b) declare a separate rate under section 154 or impose a service rate or an annual service charge under section 155,

20                    unless the council notifies ESCOSA, in the manner and form determined by ESCOSA, of the proposal before 31 October of the year before the first financial year in which the change, rate or charge (as the case may be) is to apply.

- (2) If a council notifies ESCOSA under subsection (1) of a—

- 25                    (a) proposed change of a kind referred to in subsection (1)(a); or  
                       (b) proposed rate or charge of a kind referred to in subsection (1)(b),

30                    the council must provide ESCOSA with any information or document required by ESCOSA in relation to the change, rate or charge (as the case requires).

- (3) A failure to comply with this section does not affect the validity of any of the following rates or charges recoverable under this Chapter (or any fine or interest relating to such rates or charges):

- 35                    (a) a rate or charge assessed against land on a changed basis of a kind referred to in subsection (1)(a); or  
                       (b) a separate rate, service rate or annual service charge of a kind referred to in subsection (1)(b).

**187J—Compliance with rate cap determinations**

- (1) A council must comply with a primary rate cap determination.

**Local Government (Rate Oversight) Amendment Bill 2018**  
Amendment of *Local Government Act 1999*—Part 2

---

- 5
- (2) If a rate cap variation determination is made in respect of a council—
- (a) the rate cap variation determination applies to the council for the financial year or years specified in the determination (instead of the primary rate cap determination applying during that year or those years); and
  - (b) the council must comply with the rate cap variation determination.
- 10
- (3) A failure to comply with a primary rate cap determination or a rate cap variation determination does not affect the validity of any rate, charge, interest or fine recoverable under this Chapter in respect of the financial year in relation to which the failure occurred.

**187K—Administration**

- 15
- (1) ESCOSA has such functions and powers as are necessary or expedient to give effect to this Part, including the following functions:
- (a) to monitor and review councils' compliance with this Part and, in particular, to monitor and review compliance with primary rate cap determinations and rate cap variation determinations;
  - 20 (b) to assess the effect of primary rate cap determinations and rate cap variation determinations on the provision of services and infrastructure by councils and the sustainability of the financial performance and position of councils;
  - 25 (c) to identify trends across the local government sector arising from the operation of primary rate cap determinations and rate cap variation determinations, and any other impacts arising from the operation of this Part.
- 30
- (2) ESCOSA must, in relation to each financial year, give an annual report to the Minister on the compliance of councils with any primary rate cap determination and rate cap variation determination applying in that year.
- 35
- (3) ESCOSA must prepare a biennial report on—
- (a) the matters referred to in subsection (1)(b) and (c); and
  - (b) any other matter relating to the operation of this Part that ESCOSA considers appropriate.
- 40
- (4) A report under subsection (3) must be given to the Minister within 3 months after the end of the second financial year to which the report relates.
- (5) The Minister must cause a copy of a report given to the Minister under this section to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

**Local Government (Rate Oversight) Amendment Bill 2018**  
Part 2—Amendment of *Local Government Act 1999*

---

- (6) ESCOSA may, as soon as is reasonably practicable after giving a report under this section to the Minister, publish a copy of the report on its website.

**7—Amendment of section 273—Action on report**

5 Section 273(1)—after paragraph (c) insert:

; or

- (d) a report of ESCOSA under Chapter 10 Part 1A,

**8—Amendment of section 303—Regulations**

- (1) Section 303(8a)—delete "additional"
- 10 (2) Section 303(8a)—delete "enactment of the *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015*" and substitute:  
amendment of this Act by another Act

**9—Review**

- 15 (1) The Minister responsible for the administration of the *Local Government Act 1999* must cause a review of the operation of Chapter 10 Part 1A of that Act (as to be inserted into the *Local Government Act 1999* by section 6 of this Act) to be conducted and a report on the results of the review to be prepared and submitted to the Minister.
- (2) The review and report must be completed by 31 December 2023.
- 20 (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

**12 GENERAL BUSINESS**

Council has resolved that an Agenda Item "General Business" be included on the Council Agenda to enable members to raise matters of a minor nature for action by the Administration, or to call for reports

**13 NEXT MEETING**

Wednesday 8 August 2018

**14 CLOSURE**