

**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**  
**CABINET-IN-CONFIDENCE**

**Local Government Amendment (Rates) Bill  
2021**

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2021**

No           , 2021

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**A Bill for**

An Act to amend the *Local Government Act 1993* to give effect to certain recommendations made by the Independent Pricing and Regulatory Tribunal concerning the local government rating system; and for other purposes.

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Local Government Amendment (Rates) Act 2021*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) The following provisions of this Act commence on the date of assent to this Act—
  - (a) Schedule 1[5],
  - (b) Schedule 1[12]–[14],
  - (c) Schedule 1[30],
  - (d) Schedule 1[31].

## Schedule 1 Amendment of Local Government Act 1993 No 30

**[1] Section 493 Categories of ordinary rates and categories of land**

Omit “4 categories” wherever occurring in section 493(1). Insert instead “5 categories”.

**[2] Section 493(1)**

Insert after the first dot point—

- environmental

**[3] Section 495 Making and levying of special rates**

Insert at the end of section 495—

- (3) Without limiting subsection (1) or (2), a special rate may be levied for or towards meeting the costs of works, services, facilities or activities (the *intergovernmental project*) provided or undertaken, or proposed to be provided or undertaken, by the council together with one or more other government entities (a *project partner*).
- (4) The following provisions apply for a special rate levied for an intergovernmental project—
  - (a) before the rate is levied, the council must include the following information in the draft operational plan for the year in which it is proposed to be levied—
    - (i) the anticipated benefits to the council’s area or local community of the intergovernmental project,
    - (ii) the basis of the council’s opinion, under subsection (2), for the different application of the rate, if any, in relation to different land,
    - (iii) the estimated cost of the intergovernmental project (both for the year and in total),
    - (iv) the estimated contributions to the intergovernmental project, including financial and in-kind contributions, to be made by the council and each project partner (both for the year and in total),
    - (v) the amount of money estimated to be levied by the rate (both for the year and in total),
  - (b) the intergovernmental project does not need to be works, services, facilities or activities within the functions of the council,
  - (c) if the cost of the intergovernmental project is partly funded by another person or under another arrangement, charge or contribution—the rate levied may be limited to what is needed to fund the proportion of the cost for which the council is responsible,
  - (d) money raised from the rate may be used only for the purpose of funding the intergovernmental project,
  - (e) money raised from the rate is not to be treated as part of the general income of the council,
  - (f) the annual report of the council is to include the following information—
    - (i) the actual cost of the intergovernmental project, and the actual contributions to the intergovernmental project made by the council and each project partner, during the year of the report,

- (ii) a statement explaining the difference, if any, between the actual cost and contributions and the estimated cost and contributions in the council's draft operational plan,
  - (iii) the total revenue generated by the rate during the year of the report,
  - (iv) the outcomes of the project, and the benefits to the council's area and the local community of the project, during the year of the report,
  - (i) despite sections 498(3)(b) and 499(4)(b), the Minister does not need to approve the different application of the rate, if any, in relation to different land.
- (5) Subsection (4) applies despite any other provision of this Act to the contrary.
- (6) In this section—
- another Australian jurisdiction** means the Commonwealth or another State or a Territory.
- government entity** means each of the following—
- (a) the State or another Australian jurisdiction (including the Crown in right of the State or another Australian jurisdiction),
  - (b) a Minister of the government of the State or another Australian jurisdiction,
  - (c) a government sector agency (within the meaning of the *Government Sector Employment Act 2013*) or a Department or other agency of another Australian jurisdiction,
  - (d) a public authority of the State or another Australian jurisdiction,
  - (e) a person acting on behalf of the State or another Australian jurisdiction (or the Crown in right of the State or another Australian jurisdiction),
  - (f) a person or body (whether of this State or another Australian jurisdiction) declared by the regulations to be a government agency for this section,
- but does not include a council or county council or a local authority of another Australian jurisdiction.

**[4] Section 503 What is the relationship between rates and charges?**

Insert after section 503(2)—

- (3) This section does not prevent a charge being made for a water supply service or sewerage service on land that is the subject of a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*.
- Note.** Section 557 limits the levying of water supply special rates and sewerage special rates being levied on land that is the subject of a conservation agreement.

**[5] Section 506 Variation of general income**

Insert at the end of the section—

- (2) Without limiting subsection (1), the order may—
  - (a) specify different percentages for different areas of councils, and
  - (b) specify a methodology for calculating a percentage rather than specifying a particular percentage, including by specifying a base percentage to which an additional figure may be added in specified circumstances.

**[6] Section 514 Categorisation of land for purposes of ordinary rates**

Insert after the first dot point in section 514—

- environmental

**[7] Section 514, note**

Insert “environmental,” after “farmland.”

**[8] Section 515A**

Insert after section 515—

**515A Categorisation as environmental**

- (1) Land is to be categorised as *environmental* if it is a parcel of rateable land valued as 1 assessment and—
  - (a) its use is constrained because of one or more of the following—
    - (i) the land has limited value relative to its size and location,
    - (ii) development cannot be carried out on the land,
    - (iii) the land has low development potential for business, residential or farming activity, and
  - (b) it is subject to geographical restrictions or regulatory restrictions.
- (2) In determining whether the matters mentioned in subsection (1)(a)(ii) or (iii) apply, the council must consider—
  - (a) the zoning, if any, of the land under an environmental planning instrument,
  - (b) matters that may be prescribed by the regulations.
- (3) In this section—

*geographical restrictions*, in relation to land, include the water areas, mud flats, swamps, marshlands, steep slopes or other terrain resulting in physical limitations preventing the carrying out of all, or almost all, residential or commercial development on the land.

**Consultation note.** Comments are sought on the way for determining the apportionment of rates if part of a parcel could properly be categorised as environmental, and the remainder could be categorised under one or more of the other categories.

**[9] Section 518 Categorisation as business**

Insert “environmental,” after “farmland.”

**[10] Section 519 How is vacant land to be categorised?**

Omit “section 515, 516 or 517”. Insert instead “sections 515–517”.

**[11] Section 519(2)**

Insert at the end of the section—

- (2) Despite subsection (1), land that is vacant land may also be categorised according to a sub-category of vacant land determined under section 529.

**[12] Section 529 Rate may be the same or different within a category**

Omit section 529(2). Insert instead—

- (2) A sub-category may be determined as follows—
  - (a) for the category “farmland”—according to—

- (i) the location of the land, or
    - (ii) the intensity of land use, or
    - (iii) the irrigability of the land, or
    - (iv) economic factors affecting the land,
  - (b) for the category “environmental”—according to one or both of the following—
    - (i) the location of the land,
    - (ii) whether the land is subject to a conservation agreement,
  - (c) for the category “residential”—according to—
    - (i) the location of the land, or
    - (ii) whether the land is rural residential land, or
    - (iii) whether the land is in a centre of population, or
    - (iv) whether the land is in a residential area or in part of a residential area,
  - (d) for the category “mining”—according to the kind of mining involved, or
  - (e) for the category “business”—according to 1 or more of the following—
    - (i) the location of the land,
    - (ii) whether the land is in a centre of commercial or industrial activity,
    - (iii) whether the land is industrial land,
    - (iv) whether the land is non-industrial land.
- (2A) A sub-category may be determined for subsection (2)(c)(iv) only if the council is satisfied that it is necessary to identify residential areas because of significant differences between the areas in relation to access to or demand for, or the cost of providing, services or infrastructure.
- (2B) For subsection (2)(e)(iii) and (iv)—
- (a) land is industrial land if the activities carried out on the land are predominately industrial activities,
  - (a) land is non-industrial land if the activities carried out on the land are predominately not industrial activities.
- (2C) A sub-category of vacant land may be determined for each of the categories mentioned in subsection (2)(c)–(e).
- (2D) Without limiting the factors that are relevant, regard must be had to whether there is a substantial and permanent structure located on land in determining whether the land is to be sub-categorised as vacant land.
- (2E) A sub-category must be identified by reference to geographical names if—
- (a) the sub-category is identified by reference to the location of the land, or
  - (b) the sub-category is identified by reference to the factor mentioned in subsection (2)(c)(iv).

**[13] Section 529(5) and (6)**

Insert after section 529(4)—

- (5) The regulations may make provision for or with respect to the following—

- (a) the factors that may or may not be taken into account in determining a sub-category for a category of land for which a sub-category may be determined,
  - (b) the kinds of activities that are, or are not, industrial activities or non-industrial activities for the purposes of this section,
  - (c) the factors that may or may not be taken into account in determining a sub-category of vacant land for a category of land for which a sub-category of vacant land may be determined,
  - (d) public consultation requirements to be followed by councils in determining a sub-category, including by applying, with or without modification, provisions of the Act, the regulations or guidelines concerning the preparation, exhibition and publication of strategic council planning documents.
- (6) In this section—
- conservation agreement** means—
- (a) a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
  - (b) another agreement relating to the conservation of the land of a kind prescribed by the regulations.
- geographical name** has the same meaning as in the *Geographical Names Act 1966*.
- strategic council planning document** means a community strategic plan, resourcing strategy, delivery program or operational plan mentioned in Chapter 13, Part 2.

**[14] Section 530**

Insert after section 529—

**530 Special provisions for residential sub-categories**

- (1) This section applies in relation to determining a sub-category (a **residential sub-category**) under section 529 for the category “residential” (the **residential category**) for rateable land in a council’s area.
- (2) The highest ordinary rate for rateable land in a contiguous urban locality must not be more than a factor of 1.5 times, or any other factor prescribed by the regulations, the average ordinary rate payable for other rateable land in the contiguous urban locality.
- (3) Despite subsection (2), the Minister may by written instrument given to a council on its application—
  - (a) determine a factor for the council that is greater than the factor mentioned in subsection (2), and
  - (b) impose conditions in relation to the use of the determined factor.
- (4) The Minister may, by a further written instrument given to a council on its application, vary or revoke a determination, or a condition of a determination, made or imposed for the council under subsection (3).
- (5) If a council decides to make different ordinary rates for residential sub-categories, the council must—
  - (a) publish the reasons for doing so on its website as soon as practicable after making the rates, and



- (b) set out the reasons in the council's statement of revenue policy in its operational plan for year concerned.
- (6) The Minister may, from time to time, issue written directions to councils concerning—
  - (a) the factors or circumstances that may, or may not, be used by councils in determining a residential sub-category or the ordinary rate for a residential sub-category, and
  - (b) matters to be included in reasons published for subsection (5)(a).
- (7) A council must comply with directions given by the Minister under subsection (6).
- (8) The regulations may make provision for or with respect to—
  - (a) the methodology for calculating the average ordinary rate payable for other rateable land for subsection (2), and
  - (b) the circumstances in urban land is, or is not, to be treated as being completed separated from land that is not in the residential category for paragraph (b) of the definition of *contiguous urban locality* in subsection (9).
- (9) In this section—
  - contiguous urban locality* means urban land—
    - (a) that is in the residential category, and
    - (b) no part of which is completely separated from the rest of the land by land that is not in the residential category.

**[15] Section 555, heading**

Insert “, other than water supply special rates and sewerage special rates” after “rates”.

**[16] Section 555(1)**

Insert “, other than water supply special rates and sewerage special rates” after “all rates”.

**[17] Section 555(1)(b)**

Omit section 555(1)(b) and (b1). Insert instead—

- (b) land reserved or acquired under the *National Parks and Wildlife Act 1974*,

**[18] Section 555(1A)**

Insert after section 555(1)—

- (1A) Without limiting subsection (1), the following land is also exempt from all rates, other than water supply special rates and sewerage special rates—
  - (a) land that is a public place,
  - (b) land used for a public reserve and vested in the Crown, a public body or trustees,
  - (c) land used for a common and vested in the Crown, a public body or trustees,
  - (d) land used for a public cemetery and vested in the Crown, a public body or trustees,
  - (e) land used solely for a free public library and vested in the Crown, a public body or trustees,

- (f) land acquired under an environmental planning instrument for the public purpose specified in the instrument and not leased for private purposes,
- (g) land that is held under a lease from the Crown for private purposes and is the subject of a mineral claim granted under Division 4 of Part 9 of the *Mining Act 1992* and that the council has declared is not rateable,
- (h) land that belongs to a public benevolent institution or public charity and is used or occupied by the institution or charity for the purposes of the institution or charity,
- (i) land that belongs to a public hospital,
- (j) land that is vested in the Minister for Health, the Health Administration Corporation or the New South Wales Health Foundation,
- (k) land that is vested in a local health district constituted under the *Health Services Act 1997*,
- (l) land that is vested in a university, or a university college, and is used or occupied by the university or college solely for its purposes,
- (m) land that is vested in the Crown or Venues NSW and is described in Schedule 4A, Parts 1, 2 or 3 of the *Sporting Venues Authorities Act 2008* and is used or occupied for the purposes of or in accordance with that Act,
- (n) land that is vested in the Crown or the Zoological Parks Board and is used or occupied by the Board for its purposes,
- (o) land that—
  - (i) is vested in the mines rescue company, within the meaning of the *Coal Industry Act 2001*, and
  - (ii) is used for the purposes of a mine rescue station controlled by that company,
- (p) land that is managed by the Teacher Housing Authority and on which a house is erected,
- (q) land that is leased to the Crown for the purpose of cattle dipping,
- (r) land that is specified or described in the regulations as being exempt from all rates, other than water supply special rates and sewerage special rates,
- (s) land that is vested in an Aboriginal Land Council and that is reserved under Part 4A of the *National Parks and Wildlife Act 1974*.

**[19] Section 555(3)**

Omit the subsection.

**[20] Section 555(4)**

Insert “or (1A)(h)–(o)” after “subsection (1)(e), (f), (g) and (g1)”.

**[21] Section 555(5)**

Omit the subsection. Insert instead—

- (5) A parcel of rateable land is to be valued in accordance with section 28A of the *Valuation of Land Act 1916* to enable rates to be levied on a part of the parcel that is not exempt from rates under this section if it is—

- (a) a parcel belonging to a religious body partly occupied and used in a way described in subsection (1)(e) and partly in a way that would result in part of the parcel not being exempt from rates under this section, or
- (b) a parcel belonging to a public benevolent institution or public charity partly used or occupied by the institution or charity for its own purposes and partly for a purpose that would result in part of the parcel not being exempt from rates under this section.

**[22] Section 556**

Omit sections 556 and 557. Insert instead—

**556 What land is exempt from water supply special rates and sewerage special rates?**

- (1) Water supply special rates may not be levied on land to which the council has resolved not to supply water.
- (2) Sewerage special rates may not be levied on land which the council has resolved not to connect to the council's sewers.
- (3) Subject to subsection (4), water supply special rates and sewerage special rates may not be levied on land that is the subject of a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*.
- (4) If part of a single parcel of land is the subject of a conservation agreement, any rate levied on that whole parcel is to be reduced by the following percentage—

$$P = \frac{CA}{WA}$$

*P* is the percentage.

*CA* is the area of that part of the parcel that is the subject of the conservation agreement, and

*WA* is the area of the whole parcel.

**Note.** For example, if a parcel of land would normally be subject to a rate of \$1,000, but 40% of the area of the land is subject to a conservation agreement, that rate is to be reduced by 40% to \$600.

**[23] Section 558, heading**

Omit “water supply special rates and sewerage special”.

**[24] Section 558(1)**

Omit “water supply special rates and sewerage special”.

**[25] Section 558(6)**

Insert after section 558(5)—

- (6) The regulations may make provision for or with respect to—
  - (a) the considerations councils may, or may not, take into account in granting an exemption, or a kind of exemption, under this section, and
  - (b) the publication of reasons by councils for exemptions they grant.

**[26] Section 558A**

Insert after section 558—

**558A Information about estimated cost of rate exemptions**

- (1) A council must, at the start of each rating year, ensure that the estimated costs of rate exemptions in its area are calculated to the extent it is reasonably practicable to do so, based on information available to the council.
- (2) The council must ensure that the estimated costs are published—
  - (a) in the draft operational plan for the year in which the costs are proposed to be incurred, or
  - (b) on the website of the council.
- (3) The regulations may make provision for or with respect to—
  - (a) exempting councils from some or all of the requirements of this section, and
  - (b) the methodologies to be used in calculating estimated costs of rate exemptions, and
  - (c) the kinds of rate exemptions for which estimated costs must be calculated, and
  - (d) when and how the estimated costs of rate exemptions are to be published in draft operational plans or on websites of councils.
- (4) In this section—

*rate exemption* means a kind of exemption from a requirement to pay an ordinary rate or special rate—

  - (a) given by a provision of this Act or the regulations, or
  - (b) granted by the council under a provision of this Act or the regulations.

**[27] Chapter 15, Part 8, Division 2**

Omit the note at the beginning of the Division. Insert instead—

**Note—**

This Division enables a ratepayer to apply for a postponement in certain cases of hardship.

This Division also entitles particular public bodies to a 25% rebate for ordinary rates payable for certain land.

Other rating concessions may be provided under other Acts. For example, section 127 of the *Heritage Act 1977* provides for rates to be levied on heritage valuations determined in accordance with that Act instead of on other valuations.

**[28] Section 591**

Omit the section. Insert instead—

**591 Postponement of rates**

- (1) A council must, in accordance with this section, postpone the payment of rates for land in any rating year for which a determination or redetermination of the attributable part of the land value is in force if satisfied that the rateable person for the land would suffer substantial hardship if required to pay the rates.
- (2) For land for which no base amount of a rate is specified, the amount of the rate postponed is to be the same proportion of the rate as the attributable part of the land value bears to the land value.
- (3) For land for which a base amount of a rate is specified, the amount of the rate postponed is to be the same proportion of the ad valorem amount of the rate as the attributable part of the land value bears to the land value.

**[29] Section 595**

Omit the section. Insert instead—

**595 Postponed rates may be written off after 5 years**

- (1) This section applies if 5 years have elapsed since the commencement of a rating year for which part of the rates levied on land have been postponed under this Division.
- (2) The council may write off the part postponed and any interest accrued on that part.
- (3) This section does not affect the right of the council to recover rates and interest, even though they have been written off under this section, if it subsequently appears to the council that they should not have been written off.

**[30] Section 713 Sale of land for unpaid rates and charges**

Omit “5 years” wherever occurring in section 713(1) and (2). Insert instead “3 years”.

**[31] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts**

Insert at the end of the Schedule, with appropriate Part and clause numbering—

**Part Provisions consequent on enactment of Local Government Amendment (Rates) Act 2021**

**Definitions**

In this Part—

*amending Act* means the *Local Government Amendment (Rates) Act 2021*.

**Consultation note.** Finalised savings and transitional provisions will be included following consultation.

In particular, for Councils affected by amalgamation and having a preserved rate structure that is due to expire in 2021, a transitional provision will be included to provide for the harmonisation of rates to ensure a uniform rating structure for each category of land (such as residential).

Harmonisation within each category of land can be achieved in one of 3 ways—

- (a) by the levying of a new rate for the category of land, with effect from 1 July 2021,
- (b) by the use of sub-categorisation of the category of land (as provided for elsewhere in this draft Bill),
- (c) by gradual harmonisation of rates for the category over no more than 4 years.

If rates for a category are harmonised over 4 years, in each year the increase in rates for the category must not exceed 50% of the difference between—

- (a) the preserved rate structure for the category, and
- (b) the rate structure that is to be achieved at the end of harmonisation for the category.

It is noted that harmonisation is not expected to affect the requirements of the Act that limit variation in a Council's income from rates.