

LOCAL GOVERNMENT RATING SYSTEM REVIEW

Report of the Ministerial Panel

March 2020

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Local Government Rating System Review

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31 March 2020

Hon Adem Somyurek MP
Minister for Local Government
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Dear Minister

Letter of Transmittal – Local Government Rating System Review – Ministerial Panel's Final Report

In accordance with the Terms of Reference for the Local Government Rating System Review, the report of the Ministerial Panel is submitted for your consideration.

The key focus of the review was the equity and fairness of the current application of rates and charges, along with its interaction with the taxation, valuation and other related systems of the Victorian Government, exemption and concession arrangements, the autonomy of local governments to apply the system and the quality of their rates planning and engagement with their communities, and the extent to which the application of the system aligns with commonly accepted principles of taxation policy. The Panel developed a framework for its analysis that incorporated these commonly accepted taxation principles and other principles important to the unique characteristics of rates.

The report is based in investigation of issues raised through consultation with councils, peak bodies and other stakeholders and the community. We are confident that we have provided every opportunity to Victorians to engage with the Review. We reported on the consultation process separately in January 2020 and have maintained a comprehensive website throughout the review.

The report contains 56 recommendations, some of which relate to significant reforms in some areas. The Panel recognises that changes to the rating system, like changes to any system of taxation, are challenging. Some of our recommendations require legislative changes. Others may require funding and support by the State government and councils and may take some time to achieve.

On behalf of the Ministerial Panel, I thank you for the opportunity to undertake this important review.

Yours sincerely



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Foreword

We are pleased to present this final report of the Review of the Local Government Rating System as the conclusion of our work since June 2019.

We are pleased to present this final report of the Review of the Local Government Rating System as the conclusion of our work since June 2019.

The Victorian rating system has been central to local government since its inception in the 19th century. It is, fundamentally, a taxation system which allows councils to raise revenue to fund essential public goods and services in accordance with the needs and means of their communities. Importantly, this taxation system includes tools to accommodate issues of equity and to ensure fairness in rating for all ratepayers.

Although the rating system has changed little over the years, it continues to have many desirable qualities which are affirmed in this report. However, there are many opportunities to improve the system's fairness and equity for ratepayers. Many of the issues and concerns about equity and fairness raised over the course of the Review are the result of customs and practices by councils. These concerns can be addressed without systemic or disruptive change. They are, in most respects, responses that rest in the hands of councils. We have made recommendations to modernise the legislation, to introduce new legislative and regulatory requirements, and to improve processes for governance, decision-making and the administration of rates by councils. We believe these reforms will address many of the concerns raised with us.

There are, however, some fundamental concerns about the fairness and equity of outcomes experienced by ratepayers which, although beyond the immediate scope of our terms of reference, must be acknowledged and addressed. The final chapter of this report outlines some of these issues and our recommendations for government consideration.

We greatly appreciate the contributions to our work made by people who wrote submissions, responded to our survey, attended meetings or read about our work online. The issues they raised were our starting point for consideration and investigation and, therefore, fundamental to our recommendations to improve the system's equity and fairness.

We thank the Minister for Local Government, the Hon Adem Somayurek MP, for the opportunity to review this important system.

Finally, we thank our secretariat, headed by Dr Leighton Vivian and supported by Archana Ananthuni, Caine Chandler and Juliette Wileman, for sharing their expertise and providing administrative assistance.

Dr Kathy Alexander (Chair), John Tanner AM, Dr Ron Ben-David

Victorian Local Government Rating Review Panel

About the Panel

Chair – Dr Kathy Alexander, a former South Australian Telstra Businesswoman of the Year and former CEO of City of Melbourne, is an experienced board member and chair in public, not-for-profit and private for-profit organisations. Her previous and current board chair roles include Chair of Administrators of the City of Greater Geelong, Chair of the Naomi Milgrom Foundation and Chair of the Eastern Melbourne Primary Health Network. She is currently a member of a number of boards and has held many board roles in her previous roles as CEO of Royal Children's and Royal Women's hospitals in Victoria and other health services in South Australia.

Panel Member – Mr John Tanner AM, a former regional business owner and operator with 30 years of experience, has a strong understanding of the rating system and challenges facing rural and regional cities. John also has had extensive experience working with metropolitan and regional councils as Commissioner of the Shire of Delatite, Administrator for Brimbank City Council and Commissioner of the Inquiry into Ararat City Council. He has been a Director and a Chairperson on many boards including the Lord Mayors Children's Camp, the Benalla Flood Plan Committee, the Rotary Club of Benalla, Brimbank City Fund and the LeadWest Board and was a founding Chairperson of Action Benalla. He received an Order of Australia in 2016 for recognition of his contribution to the community.

Panel Member – Dr Ron Ben-David was Chairperson of the Victorian Essential Services Commission until May 2019, responsible for regulating the electricity gas, water, taxi, freight and local government sectors. He was also the former Deputy Secretary of the Victorian Department of Premier and Cabinet from 2004-2008 and has a long history working in various government policy positions.

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Acronyms and Key Terms

Ad valorem – the Latin term used to describe a tax that is levied on the estimated value of something.

Capital improved value (CIV) – the amount that the land and improvements might be expected to sell for, i.e. the value of the land AND all buildings on it. At present, 74 councils use this method of valuation as their rates base.

Differential rates – councils that use CIV for their rating base can declare any number of rating categories with different rates in the dollar.¹ For each category councils must provide a statement of reasons for its use and the level of that rate, as well as what properties are affected.

General rates – the amount which the council intends to raise through a proportionate rate on its property valuation base. General rates comprise uniform or differential rates but do not include municipal rates, service rates/charges and special rates/charges.

Limited Differential rates – a limited set of differential rates that can be used by councils that do not use CIV as their rating base. Limited differential rates can include:

- A farm rate;
- An urban farm rate; and
- A residential use rate.

MAV – Municipal Association of Victoria

Municipal charge – may be declared as a fixed charge to cover some of the administrative costs of councils. Revenue raised from a municipal charge must not exceed 20 per cent of the council's total revenue from general rates and municipal charges.

Net annual value (NAV) –

Either:

- the estimated annual rent for which the land might reasonably be expected to be let, less some expenses; or
- five per cent of the capital improved value (CIV) of the land (whichever is the greater)

For residential properties the NAV is five per cent of the CIV. At present, five councils in Victoria use this method of valuation as their rates base.

Occupancy – If a part of a parcel of land is adapted to being separately occupied from other land in the parcel, it is regarded as a separate rateable property and is valued as such. This may also include land used for purposes such as car parks and storage lockers. An occupancy is also sometimes referred to as an **assessment**.

Rate in the dollar – derived by dividing the revenue to be raised by the relevant property valuation base. The rate in the dollar is applied to individual property values to determine the amount of rates payable for a ratepayer.

¹ The exception is under Section 28 of the *City of Melbourne Act 2001*, which allows the City of Melbourne to raise differential rates using any method of valuation.

Service rates and charges – may be declared for any of the following services:

- Provision of a water supply;
- Collection and disposal of refuse;
- Provision of sewage services; and
- Any other prescribed services (currently none).

Site value (SV) – the amount that the land might be expected to sell for if improvements had not been made, i.e. the land only. At present, no council uses this method of valuation as their rates base. This valuation base is used by the Victorian Government to levy land tax.

Special rates and charges – Special rates or charges fund specific projects that only affect a limited number of ratepayers.

They may be declared for the purposes of:

- Defraying any council expenses; or
- Repaying (with interest) any debt incurred, or loan raised by the council.

Uniform rates – a proportionate rate set by councils which only declare one rate in the dollar that applies to all rateable properties in a municipality. It is the simplest form of rates in the current system.

VGV – Valuer-General of Victoria

VLGCG – Victorian Local Government Comparator Groups – a categorisation of councils. The categories used in this report are Small Shire, Large Shire, Regional City, Interface and Metropolitan.

3

Introduction and Context for the Review

The Terms of Reference of the Review Panel (the Panel) are focused essentially on understanding the application of the existing Victorian rating system and determining how to improve its fairness and equity. Over the past few months, the Panel has studied reports from the Auditor-General in Victoria, reviews commissioned in other jurisdictions, other related research and academic reports and submissions to many other government inquiries.

In addition, the Panel has reviewed over 200 submissions and travelled around Victoria talking to ratepayers, council staff, councillors and representatives from peak bodies about the Victorian rating system. Concerns were expressed by members of the community, councillors and some council officers about the equity and fairness of the Victorian rating system. However, it has become clear that “fairness and equity” means different things to different people. A significant focus for the Panel has been understanding community concerns, their causes and how they might be remedied.

In recent years, some individuals and groups of ratepayers have been affected differentially on a geographic basis, within and across council areas, by increased volatility in property valuations leading to volatility in their rates. This has caused them to challenge the assumptions underpinning the conventional economic view that basing council rates on property value, at its highest and best use, is an efficient and fair source of council revenue and to question the method by which the value is estimated. It is likely that the introduction of the rate cap, although very successful in limiting rate increases in total, has compounded these concerns since it is possible for properties to have appreciated in value but with different consequences on rates. One property may see its rates increase above the cap while the other may see its rates rise by less than the cap (or even decrease).

In addition to these concerns, rates are not viewed as simply a tax by either ratepayers or councils. Ratepayers generally view their rates as payment for the services their councils deliver and councils treat rates as a balancing item whereby the rate in the dollar or the ‘tax rate,’ unlike any other tax, is adjusted annually to meet councils’ budget objectives.

Council decisions to redistribute the rates contributions across the community might not necessarily be supported by all ratepayers.² The *Local Government Act 1989* (hereafter referred to as ‘the Act’) exempts certain properties from paying rates. There are concerns about whether these exemptions, which erode the potential rate base so that all other rate payers subsidise the exempt property owner, are fair. The Act also provides councils with the discretion to apply different rates in the dollar to different property categories resulting in a redistribution of the rates contribution across property types. This may not be considered fair and equitable by some property owners whose rates are based on a higher rate in the dollar.

It is clear that different groups with different needs and circumstances within the community view their rates differently. Business people have access to a range of tax advantages that relate to property and rates, including the ability to claim them an expense of doing business. The tax treatment for a principle place of residence is different from property used for business purposes. Properties used for farming and some other small businesses are unique in that they are both businesses and residencies.

Compounding these concerns about the rates system, there is clearly a view in sections of the community that the financial governance of councils requires improvement. Decisions on budget priorities, rating strategies and financial management discipline have been questioned. This raises concerns about the extent and

² When councils apply differential rates in the dollar, it is mathematically equivalent to councils adjusting the property valuation and applying a universal rate in the dollar. This redistribution across the different land types may not be supported by those property owners who pay more as a consequence of the council decision.

quality of community engagement in developing strategies for the community and in the 4-year priorities and resource plans of councils which determine rates requirements.

These findings have led the Panel to conclude that more can be done to improve rating arrangements and related planning, management and reporting processes so that they more closely align with community expectations. To assist our conclusions, we have outlined a “Framework for Analysis” in Chapter 7. The framework identifies a set of principles against which to evaluate our findings and to assist with the development of recommendations for improvement.

The terms of reference for this Review relate to improving the fairness and equity of the rating system as it currently operates in Victoria. They specify aspects for review and require consultation with stakeholders in Victoria, review of evidence, and review and analysis of the applicability of aspects of the rating systems of other jurisdictions. Chapters 8-15 address these specifications, each chapter outlining any relevant background information, the issues raised in consultation or through research, the data and evidence available on the issues, any relevant information from other jurisdictions, our own conclusions and recommendations for changes which could be made to the system to improve fairness and equity.

No matter how the rating system might be modified or reformed, some sources of inequity lie beyond the rating system. They relate to the impact of property market volatility on rates, the increasing difference in demography across and within councils, inequities in access to services between rural and metropolitan areas, the disproportionate infrastructure burden carried by rural councils with small rate bases and the shortage of skills available to them, the transfer (or imposition) of responsibilities to councils from the State or Federal governments, and the capability of councils in governance and financial management. Although these matters need to be addressed separately from the rating system, they do impact on the effectiveness of the rating system and therefore some recommendations for further work are included in Chapter 16.

Note and disclaimer.

Over the course of the Panel’s work, the Victorian Government introduced the *Local Government Bill 2019* into Parliament. This was passed, becoming the *Local Government Act 2020*, just prior to the submission of this Report. For the avoidance of doubt, all references to the Act are for the *Local Government Act 1989* and the rating provisions in this Act in this Report as per the Panel’s Terms of Reference.

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List of Recommendations

Recommendation 1: That the <i>Local Government Act 1989</i> describe rates as a tax for local government purposes.	<u>31</u>
Recommendation 2: That the <i>Local Government Act 1989</i> establish a head of power for the Minister to make regulations that incorporate (i) the principles of an effective rating system outlined in Chapter 7, section 7.2.6 of this report and (ii) the other recommendations referencing regulations in this report.	<u>31</u>
Recommendation 3: That Capital Improved Value and Net Annual Value be retained as the only options for valuation bases for the purposes of local government rates and that the <i>Local Government Act 1989</i> be amended to state that councils who move from using NAV to use CIV as their rate base, must continue to use CIV.	<u>36</u>
Recommendation 4: That the Valuer-General improve communication about the mass valuation system, including how it deals with unusual sales, and consider publishing his valuation methods online.	<u>36</u>
Recommendation 5: That the Valuer-General review and improve the accessibility of his dispute process for those who have a grievance.	<u>36</u>
Recommendation 6: That the Victorian Government undertake further analysis, and consultation on the merits of shifting from levying rates on occupancy to levying rates on the basis of land titles (through Certificate of Title).	<u>38</u>
Recommendation 7: That the Victorian Government examine the merits of a valuation averaging mechanism to reduce the impact of large changes in valuations on rates.	<u>47</u>
Recommendation 8: Retain the existing provisions under the <i>Local Government Act 1989</i> for councils using Capital Improved Value as their rating base to apply differential rates and for councils using Net Annual Value as their rate base, to apply limited differential rates only.	<u>60</u>
Recommendation 9: Retain the current limitation in the <i>Local Government Act 1989</i> that the highest differential rate be no more than four times the lowest differential rate in a municipal district.	<u>60</u>
Recommendation 10: Replace the existing Ministerial guidelines on differential rating with a legislated requirement for councils to comply with regulations as proposed in Recommendation 2 of this report.	<u>60</u>
Recommendation 11: That the regulations proposed in Recommendation 2 should outline the steps to be taken when determining differential rates. These steps should include:	<u>60</u>
<ul style="list-style-type: none"> • Stating the objectives of the differential rates. • Assessing the appropriateness of a differential rate against the range of other tools available to councils to meet the stated objectives. • Collection and analysis of data and evidence in relation to the impacts on all land types of setting the differential rates. • Assessment of the proposed rates against the principles underpinning effective rates systems which are outlined in Chapter 7 of this report. • Assessing the proposed rates against the council's strategic plan and strategic priorities of the council. • Providing information to communities on the outcomes of steps 1-5 above in a public rating strategy document and in the budget papers. • Meaningfully engaging communities in rates decisions. • Regularly reviewing and auditing differential rates against the proposed regulations and reporting on these. 	

Recommendation 12: That the Victorian Government investigate community views in relation to a requirement that annual rate notices must display the range of differential rates applied by councils along with the rate applied to the assessment on the rate notice. This should be undertaken as part of the action required to implement Recommendation 45.	61
Recommendation 13: Appoint a suitably qualified and experienced authority to monitor and report publicly to the Minister on the compliance of councils' rating strategies with the regulations.	61
Recommendation 14: Ensure that local councils continuously improve appropriate application of differential rates and receive training to support them in meeting this goal.	61
Recommendation 15: That the municipal charge be replaced by an optional 'fixed charge' without a legislative reference to a council's administrative costs.	63
Recommendation 16: That the maximum amount that may be raised in general rates by way of a fixed charge remain at 20 per cent.	63
Recommendation 17: That the Single Farming Enterprise Exemption from the municipal charge be reconsidered against the principle of horizontal equity across all enterprises.	63
Recommendation 18: Retain the current rate exemptions for Crown or council land that is unoccupied or used for public or municipal purposes.	79
Recommendation 19: Repeal ownership-based and lessee-based criteria for the purposes of rating exemptions, including those for mining, rail operators, and residences or places of education for ministers.	79
Recommendation 20: Repeal the exemption for land used exclusively for charitable purposes.	79
Recommendation 21: That further rate exemptions in legislation be determined by the use of the land, not its occupancy or ownership.	79
Recommendation 22: In accordance with Recommendation 21 of this report, include the following criteria for a public benefit test in the legislation:	79
<ul style="list-style-type: none"> • exempt land must be used for the public benefit; and • not for the purposes of either distribution of profit to members or shareholders by the entity using the land, either during operation or wind-up; or • market rental return; and • for the direct provision of a service or good that is available to the public or an appreciable portion of the public free of charge or with a nominal charge. 	
Recommendation 23: That the regulations (see Recommendation 2) include:	79
<ul style="list-style-type: none"> • a process for applying for, assessing and deciding on exemptions on the basis of the criteria in Recommendation 22; and • a requirement for information to be made available to the community through budget papers and annual reports on the application process, the assessment process, the decision-making process, the number of assessments provided with an exemption, the reasons for the decisions on exemptions, an estimate of the revenue reallocated to the rateable base due to exemptions, and the review date of exemptions. 	
Recommendation 24: That the regulations (see Recommendation 2) require exemptions to be reviewed at least 2 years after the election of a council and that an audit of the compliance of an exempt entity with the criteria for exemption is undertaken every two years.	79
Recommendation 25: That the approach to exemptions recommended above is designed and implemented in consultation with councils and stakeholders to ensure that adjustments can be made to the operation of the entities affected to maximise their opportunities for exemptions.	79
Recommendation 26: That further work be undertaken to consider the rating treatment of land use by traditional land owners.	79
Recommendation 27: That the Victorian Government reconsider providing for local government rate exemptions in other legislation (such as the <i>Major Transport Projects Facilitation Act 2009</i>) and only provide rate exemptions by applying the public benefit criteria recommended above.	79

Recommendation 28: That the criteria for a rebate or concession under the Act be expanded to include properties providing a public benefit. Such benefits could be defined by the public benefit test for exemptions in Recommendation 22 of this report.	<u>83</u>
Recommendation 29: That a rebate or concession for a public benefit must align with the Council's current Council Plan and that councils be required to report, audit, review and evaluate their decisions in relation to rebates and concessions.	<u>83</u>
Recommendation 30: That the Victorian Government publish guidelines and a community communication strategy on deferral schemes aimed at supporting councils to promote deferrals to address capacity to pay issues.	<u>87</u>
Recommendation 31: Ensure that the regulations (See Recommendation 2) require that all Victorian ratepayers have access to consistent billing, debt recovery and payment difficulty assistance and that the use of council's coercive powers (e.g. legal action and debt collection) are only ever measures of last resort.	<u>100</u>
Recommendation 32: Establish a collaborative change management program to support the implementation of the regulations relating to payment difficulty. The program should address the requirement for councils to develop new processes and skills to deal effectively with all aspects of payment difficulty. Responsibility for the change program should be assigned to an agency with experience in guiding, designing, implementing and monitoring reforms of this nature. The performance of councils should be reviewed two years after implementation of the change program to determine its success in changing practice in the sector and whether further recommendations for improvement are warranted.	<u>100</u>
Recommendation 33: That the section of legislation referring to "collection and disposal of refuse" be amended to ensure that all applicable waste management activities and efficient costs that are directly related to the service provided, may be considered when setting the service rate (or charge).	<u>103</u>
Recommendation 34: That "the provision of a water supply" be removed from the provisions for a service rate (or charge).	<u>103</u>
Recommendation 35: That the <i>Local Government Act 1989</i> be amended to require that the declaration of special rates and charges schemes include a project timeframe and plan, that councils report on progress against the plan in their annual reports and that councils review and report to stakeholders on the schemes on a regular basis to promote their timely completion and ongoing relevance.	<u>104</u>
Recommendation 36: That where a special rates or charges scheme relates to infrastructure, the Act clearly specify a limited timeframe between the declaration of a scheme and the initiation of the project.	<u>104</u>
Recommendation 37: That the legislative and administrative arrangements for Environmental Upgrade Agreements be reviewed to determine how they might be simplified and how best to communicate the risks and benefits to ratepayers.	<u>105</u>
Recommendation 38: That in the absence of a clear policy rationale, section 94 of the <i>Electricity Industry Act 2000</i> be repealed to bring the rating of all power generation companies under the <i>Local Government Act 1989</i> .	<u>108</u>
Recommendation 39: If section 94 of the <i>Electricity Industry Act 2000</i> (EIA) is repealed, that a transition arrangement and timeframe for electricity generators to be rated under the <i>Local Government Act 1989</i> (LGA) should be implemented. (For example, the difference in rates payable under the EIA and the LGA could be phased in evenly over three years).	<u>108</u>
Recommendation 40: That section 4 of the <i>Cultural and Recreational Lands Act 1963</i> be repealed, removing the requirement for councils to consider services provided and community benefits relating to cultural and recreational lands when setting rates for such lands.	<u>112</u>
Recommendation 41: That the rating of cultural and recreational land by councils be brought under the <i>Local Government Act 1989</i> , with any rate reductions to be determined under the proposed public benefit test for exemptions and to comply with the regulations to be established (as proposed in Recommendation 2).	<u>112</u>

Recommendation 42: That the Victorian Government and the City of Melbourne explore the impact of repealing s.28 of the <i>City of Melbourne Act 2001</i> to bring the City of Melbourne's rating provisions in line with the <i>Local Government Act 1989</i> .	113
Recommendation 43: That the Victorian Government work with the local government sector to develop and implement a best practice rates payment arrangement (including any legislative changes and systems required) to support flexibility and convenience for both councils and ratepayers.	118
Recommendation 44: That legislation formalise a hierarchy for the allocation of payments received. The hierarchy should be determined in consultation with stakeholders.	118
Recommendation 45: That the Victorian Government facilitate the development of a template for rates notices to be used across councils, which is consistent with best practice written communication principles.	118
Recommendation 46: That the owner and occupier are listed separately on the rate notice (if the rate notice is paid by the occupier).	118
Recommendation 47: That legislative reforms require councils to prepare a four-year rating strategy which aligns with their four-year resource plans and that annual budgets align with their four-year resource plans and their four-year rating strategies.	120
Recommendation 48: That the regulations (see Recommendation 2) include a requirement for councils to report on:	120
<ul style="list-style-type: none"> • The objectives of their rating strategy within the context of the council's four-year resource plan; • The evidence on which they have based their rating strategy to meet those objectives; • The method by which they have engaged their communities in the consultation and discussion of the rating strategy; and • The method by which they will review and evaluate the rating strategy. 	
Recommendation 49: That the regulations (see Recommendation 2) require the Council to approve the rating strategy publicly and to publish it.	120
Recommendation 50: That a sector wide culture development program be established to assist councils to develop the governance, leadership, skills and knowledge required to engage communities in a manner consistent with the policies and practices set out by the <i>Local Government Bill 2019</i> .	122
Recommendation 51: That further work is undertaken to assess the merits of replacing the Notice of Acquisition with a file from Land Use Victoria (Titles Office), to understand the benefits and associated costs of consolidating the administration of rating systems across the sector and to identify the potential for improved interfaces between rates administration and relevant Victorian Government functions.	125
Recommendation 52: That the Valuer-General's Office and councils collaborate to redesign the valuation objections process to provide a single point of contact within the Valuer-General's Office for ratepayers who have issues with their valuations, to improve responsiveness to ratepayers who seek information or review and to improve process efficiency.	126
Recommendation 53: That the Valuer-General's methodology and data be reviewed at least every two years by a suitably qualified and independent agency as part of a program dedicated to the continuous improvement of the rating system.	131
Recommendation 54: That work be undertaken to explore whether the valuation model can be improved by reducing its dependence on observed market prices and increase its reliance on property characteristics which are more stable than market prices (such as: size of land, floor space, distance from service centres, etc.)	131
Recommendation 55: That the Victorian Government work with relevant peak bodies and councils to design a performance development program which ensures improved alignment between councils' longer-term strategic plans for their communities, their ten-year financial and asset plans, their four-year priorities and associated resource plans and four-year revenue and rating plans. These, in turn, should inform their annual budgets.	138
Recommendation 56: That the improvement program outlined in the 2017 Report of the Rural and Regional Councils Sustainability Reform Program report is reviewed to inform future projects and programs to address improved equity across all councils in Victoria.	138

The taxation of land for government revenue extends back before the colonisation of Australia to the early 16th century in England. Property-based taxation is used around the world and began to be used to fund councils in Victoria from the mid-19th century. Rates resemble land tax in that the amount raised from each property is primarily determined from each property's monetary value.

There were several reasons for the appeal of council rates. Firstly, the revenue they raised would pay for municipal services which, in turn, would contribute to increasing the value of the land. Secondly, the taxation of land is administratively simple and transparent, as property records are maintained and readily available. In addition, land, unlike many other financial assets, is impossible to conceal.

The Town Council of Melbourne was incorporated and empowered to levy rates on land in legislation passed in 1842.³ Other metropolitan councils were created in subsequent years. The *Roads Act 1854* made provision for establishing District Road Boards which were empowered to levy tolls, along with rates on land, to raise revenue for roads. These district boards were precursors to regional shires. Following these initial steps, Victorian councils' power to levy rates has been granted by the Victorian Parliament and governed through the Local Government Acts of 1874, 1903, 1958, and the current *Local Government Act 1989*. The Victorian Parliament passed the *Local Government Act 2020*, which makes a number of amendments to the *Local Government Act 1989* in mid-March 2020 at the conclusion of this report.

In many respects, the fundamentals of the current rating arrangements are similar to those established in the 19th century. However, several important changes have occurred over the years in line with contemporary ideas about fair and equitable taxation and modern administrative practices. Despite relative legislative stability, the context of property values and service expectations within which the rate system operates has changed over the decades.

A range of contextual factors originate both at the local level and in the environment external to local government. Local level factors include rezoning decisions by councils and private or public developments which change the value of both the rezoned and surrounding land. External factors include changes in demography, technology, the global economy and the availability of capital. Legal requirements, structures and requirements of both State and Federal governments and community expectations have also changed.

The combined effect of these factors may lead to unanticipated consequences for ratepayers and communities. For example, the availability of capital has enabled very large investors to purchase land and farming technology to drive economies of scale in production and increase yields. This, in turn, has increased land values and rates for surrounding local farm land owners who may not have the level of capital required to increase their yields.

Additionally, communities now expect a broader range of services from councils which might have declining tax bases, possibly narrowed even further by legislated exemptions for charitable organisations now increasing their property bases and competing against private service providers in outsourced models of government service provision. There are many more examples.

In recent years, some important inquiries both in Australia and New Zealand have addressed the application of property-based rates and taxes in this contemporary context. These include:

- Parliament of Australia, House of Representatives Standing Committee on Economic, Finance and Public Administration, Inquiry in Local Government and Cost Shifting, *Rates and Taxes: A Fair Share for Responsible Local Government* 2003;⁴

³ The incorporation of the City of Melbourne was enabled by the NSW Parliament. See: http://classic.austlii.edu.au/au/legis/nsw/num_act/mia1842n14298.pdf

⁴ See https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=efpa/localgovt/report.htm

- (New Zealand) Local Government Rates Inquiry Panel, Funding Local Government, 2007 (the 'Shand Report')
- New Zealand Productivity Commission. (2019). *Local government funding and financing: Final report*;⁵
- The Commonwealth Productivity Commission (2008). *Assessing Local Government Revenue Raising Capacity*;⁶
- Australia's Future Tax System (2010) (the 'Henry Review')⁷;
- The 2015 Victorian Parliamentary Committee for Environment, Natural Resources and Regional Development's 'Inquiry into the Sustainability and Operational Challenges of Victoria's Rural and Regional Councils'⁸;
- The New South Wales Independent Pricing and Regulatory Tribunal (IPART) 'Local Government Rating System Review' 2016⁹; and
- The 2017 Report of the Rural and Regional Councils Sustainability Reform Program by KPMG.¹⁰

These reports have been key references for the Panel's consideration of the Victorian rating system.

5 See https://www.productivity.govt.nz/assets/Documents/a40d80048d/Final-report_Local-government-funding-and-financing.pdf

6 Available <https://www.pc.gov.au/inquiries/completed/local-government/report/localgovernment.pdf>

7 See <https://treasury.gov.au/review/the-australias-future-tax-system-review/final-report>

8 Available at <https://www.parliament.vic.gov.au/401-enrrdc/inquiry-into-the-sustainability-and-operational-challenges-of-victorias-rural-and-regional-councils>

9 See <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Local-Government-Rating-System/Local-Government-Rating-System?qDh=2>

10 Available at https://www.localgovernment.vic.gov.au/___data/assets/pdf_file/0025/214675/Rural-and-Regional-Councils-Sustainability-Reform-Program_Phase-1-Final-Report.pdf

6

Terms of Reference for the Review

6.1 Equity and fairness

Consideration of equity and fairness in rating is central to the Terms of Reference of the Review. Both concepts mean different things to different people. A description of the Panel's understanding of the two concepts is provided in Chapter 7 which outlines the Panel's framework for examining the local government rating system and related issues of equity and fairness.

6.2 In-scope

The Terms of Reference required that the Panel:

- Examine the current application of rates and charges by local governments in Victoria, including:
 - Current local government rates and related charges, including those made under the *Local Government Act 1989*, *City of Melbourne Act 2001* and *Cultural and Recreational Land Act 1963*; The interaction of the local government rating system with the taxation, valuation and other related systems of the Victorian Government (noting in particular the rating system related functions of the *Valuation of Land Act 1960*, *Fire Services Levy Property Act 2012*, *State Concessions Act 2004*, and *Electricity Industry Act 2000*); The current exemption and concession arrangements for rates applied by councils, including legislated exemptions, deferments, waivers, rebates and use of differential rates by councils;
 - The autonomy of individual local governments to apply the rating system in accordance with their own decision-making circumstances, including the quality of council rating strategies and associated public consultation (noting the status, roles and responsibilities of local government as expressed by the *Victorian Constitution Act 1975* and *Local Government Act 1989*); and
 - Commonly accepted principles of taxation policy including equity, capacity to pay, simplicity, efficiency, sustainability and cross-border competitiveness, where they relate to or interact with the local government rating system.
- Undertake research into the application of municipal rating and charging systems applied in other jurisdictions, including analysis of such systems' applicability to the Victorian local government context;
- Consult with councils, peak bodies and other stakeholders and the community on the application of rates and charges by local government in Victoria;
- Establish principles and priorities for the future application of local government rates and charges in Victoria;
- Provide formal advice to the Minister for Local Government on the optimal arrangements for local government rating and charging including legislative and non-legislative arrangements, recognising rates and charges are the primary own source revenue for councils. This should include an analysis of the impacts any recommended changes may have on councils, businesses, various classes of ratepayers and the community; and
- Provide advice to the Minister for Local Government on the impact of the local government rating system on other Victorian Government portfolios arising from any recommendations.

6.3 Out of scope

Issues identified in the Terms of Reference as “out of scope” include:

- The elements of the local government rating system specific to the rate cap provisions under Part 8A of the Act, which will be the subject of a statutory review by December 2021;
- The adequacy of the taxation, valuation and other related systems of the Victorian Government, specifically the principal functions of the *Valuation of Land Act 1960*, *Fire Services Levy Property Act 2012*, *State Concessions Act 2004*, and *Electricity Industry Act 2000*; and
- Other sources of funding for local government, such as State and Commonwealth grants.

Many councils and some community participants expressed disappointment to the Panel about these exclusions. The role and level of external funding is of particular concern to councils.

The Review also did not inquire into the expenditure decisions of councils. Expenditure decisions directly impact the level of revenue councils need to raise and, therefore the rate in the dollar which must be applied to properties in their municipalities. Clearly, these decisions impact the rates of individual ratepayers. However, the priorities for expenditure and the period over which they will be addressed are the domain of the elected councillors and not within the terms of reference of this review.

7

Review Method and Framework for Analysis

7.1 Review method

The Panel designed a method of review which ensured that any conclusions and recommendations would be based in an understanding of relevant information from Australia and comparable jurisdictions, the views of Victorian community members and the local government sector and available data and evidence relating to the current system. The method included a review of property taxation and municipal rating systems in Australia and around the world, as well as a review of recent and relevant government inquiries and public submissions to these inquiries.

A key element of the Rating Review has been a public consultation and engagement process beginning on 29 July 2019 and ending on 1 November 2019. The process was aligned with the scope of the Review and the time available and featured a range of ways for people to engage and interact with the Review. Its elements included:

- Informing participation through a short, animated video on how rates work, and information sheets on the rating system;
- A discussion paper outlining the rating system, the focus of the review and the initial approach the Panel intended to take. The discussion paper identified four key themes for the review which also formed the basis of other consultation methods to ensure alignment and consistency of method;
- A Review website through which all the above information was provided as well as information on how to participate in the consultation process;
- Providing ways to participate in the consultation including:
 - An online survey;
 - A short online submission form for the public; and
 - A platform for local government-specific submissions.
- Public forums in 17 locations around Victoria;
- Council forums (for councillors and relevant staff) in 17 locations around Victoria;
- Meetings with stakeholders;
- Public hearings for selected submitters who were invited to provide additional information to the Panel on some aspects of their submissions (held in Melbourne on 13-14 November 2019);
- Providing information to the public and stakeholders on the Review and how to participate, through:
 - Newspaper and online advertising through social media;
 - Radio interviews; and
 - A written invitation to stakeholders to make written submissions.
- Closing the loop by providing information on the outcomes of the consultation process. This entailed the preparation and distribution of a report titled “What We Heard” outlining the issues raised by the participants of the consultation process. The purpose of the consultation report was to allow the Victorian community to know what was said about the rating system and to promote transparency of the Review. It was therefore unvarnished by any analysis of participants’ claims and opinions. The Panel used the “What We Heard” Report as a starting point for gathering further evidence and information before making any conclusions or recommendations; and
- Collation of data and evidence pertaining to issues identified throughout the literature search and the consultation process.

Statistics.

- Number of written submissions from Councils – 46
- Number of written submissions from individuals and organisations – 199
- Number of online survey responses – 3,250
- Number of Review website visits – 17,243

7.2 Framework for analysis

7.2.1 Principles of Good Taxation

The main purpose of any government revenue collection system, including council rates, is to raise revenue to fund public services. However, sometimes the design of a tax and how it is applied by a government can have unintended consequences and costs on business, government and the community. The following principles are commonly considered to guide good tax design and to minimise unintended consequences of taxation.

- **Efficiency:** Taxes should not significantly distort decisions around property ownership, usage and development. For example, stamp duty, as a one-off tax on a transaction, is often considered inefficient because it may prevent property buyers from locating close to work, family, suppliers, or customers.
- **Equity:** The tax burden should fall across different types of ratepayers according to:
 - **Vertical equity:** Taxpayers with greater capacity to pay should pay more taxes; and
 - **Horizontal equity:** Taxpayers in similar circumstances should be treated in a similar way.
- **Simplicity:** The system should be practical and cost-effective to administer and enforce. The system should also be simple to understand and comply with; and
- **Sustainability:** The system should generate reliable revenues for government on an ongoing basis. Taxes should be durable and flexible in changing economic conditions.

The Terms of Reference for the Rating Review require a specific focus on fairness and equity. Fairness and equity refer respectively to how people experience the rating system (as administered by councils) and how they judge the impact of the system on themselves and their communities.

7.2.2 Considerations on Equity

In the context of taxation, equity requires that individuals and organisations with greater capacity to pay should pay more taxes than those with less capacity to pay (also known as vertical equity). This principle is reflected in many taxes including federal income and state land taxes. Local government rates attempt to take capacity to pay into account in several ways:

- The general rate component of council rates and charges is set as a percentage of property values. This is based on the premise that property values are generally a proxy for wealth and that wealthier ratepayers generally have higher valued property. Therefore, wealthier ratepayers will generally pay more in rates than those with less wealth in the same municipality; and
- Certain lower-income groups in the community, such as age pensioners, are recognised as having limited or restricted income and therefore receive concessions on rates subsidised by the State (and, in some cases, by local governments).

However, capacity to pay is not the only type of equity consideration in setting taxes or local government rates. For goods and services that could be acquired in private markets, it may be appropriate that users who benefit more should pay more. Paid parking and swimming pool fees are examples of such services. Not all ratepayers may use such council services equally.

Fundamentally, a discussion about the equity of any rates decision must recognise that a concession provided to one group or individual must be compensated by an increased payment for others if the same amount of revenue is to be collected in a municipality. Equity considerations should consider the impact on all ratepayers in a community, not just the immediate beneficiaries of a concession or other rate reduction.

7.2.3 Considerations on Fairness

Considerations about fairness generally coincide with concerns about equity. Fairness is a subjective concept, informed by individual perceptions and experiences. Fairness also relates to the administration processes and conduct associated with the rating system. The elements of this include:

- **Consistency** – A council should administer the rating system in line with its stated policies and procedures. Ratepayers in like circumstances should be confident they will be treated on like terms by the council. Public transparency of council policies and procedures for the application of rates supports consistency of practices;
- **Consideration** – Ratepayers' circumstances differ in innumerable ways. A council should consider and respond reasonably to a ratepayer's circumstances. Examples include payment difficulty and financial hardship practices that ensure that council uses its coercive powers only after making all reasonable efforts to engage (and assist) ratepayers to meet their liabilities;
- **Transparency** – Councils should provide ratepayers with information on their decisions, the processes for coming to their decisions and the impact of their decisions on their individual rates; and
- **Accountability** – Ratepayers should have access to all the information required for them to assess the fairness and integrity of the system.

7.2.4 Concerns about Equity and Fairness of the Current System

Insights gained through the consultation process indicate eight broad reasons why many who have submitted their views to the Review believe the rating system is unfair and inequitable:

- **Concerns that there is a disconnect between rates and capacity to pay** when the highest and best use market value of land, and therefore rates, are driven up by increased urbanisation or intensification of land production even though the ratepayer may not want to sell his or her land to realise that "value";
- **Concerns about an uneven wealth tax** when the so-called 'wealth' attributed to the ownership of the property is being taxed more heavily in regional and rural areas than in metropolitan areas, particularly when the average income in these areas tends to be lower;
- **Concerns that rates are a discriminative input tax** (particularly expressed by farmers and retirees) when rates appear to tax some factors of production (i.e. land) but not others, and some forms of capital investment (e.g. a retirement village home) and not others (e.g. a home in a lifestyle/residential village otherwise known as a caravan park);
- **Concerns that there is a disconnect between rates and services** when people perceive that they do not have access to, or are using fewer, council services which are funded by their rates contribution. This concern was most frequently expressed in geographically large municipalities where most council services tend to be concentrated in a few urban centres. This is exacerbated when people perceive that councils do not plan and manage services according to their own views about what the community needs;

- **Concerns that land valuations are unfair when property valuations change markedly** leading to large increases in rate liabilities that may not be anticipated or budgeted, and which are disconnected to any intentions of ratepayers to sell at highest and best use in the immediate future (the Panel notes that annual valuations may reduce this perception going forward);
- **Concerns and misunderstanding of the relativities between the whole community and individual rates.** Property owners see only their own rates notice and that their property value has changed. They do not see the relativities of valuations across the municipality. This influences how people perceive their rates outcome;
- **Concerns about a lack of social validity for exemptions** when the rate exemptions provided in legislation lead to apparently uneven treatment of property owners who may not be directly contributing financially to their municipalities. This is especially concerning when the ratepayer perceives that the exempted property owner is incurring costs to councils and is therefore further subsidised by the ratepayer; and
- **Concerns about an inconsistent approach to ratepayer payment difficulty, financial hardship and complaints** when the process for discounts and rebates is not clear, transparent or easily accessed and navigated by vulnerable people who fear losing their homes.

During the state-wide consultation some people advocated for abolishing the property-based rating system and replacing it with an entirely different revenue base. The most common proposals were:

- **A levy on the Goods and Services Tax (GST)** collected by the Federal Government and distributed to councils according to a centrally managed process;
- **Income taxation options:** One option was that the Federal Government impose a council levy on income taxes paid by residents of a local government area and then remit this revenue to the relevant council. Another was the imposition of a levy on all income tax paid and the distribution of revenues to councils according to a centrally managed process. A third option proposed that the Federal Government share income data with councils so they can collect revenue according to income;
- **State-wide municipal rate:** This proposal typically arose from concerns that like properties are levied different rates in the dollar depending on the council area. It was argued that the State should set a state-wide rate in the dollar and collect the total revenue required by all councils in aggregate and distribute the revenue raised to councils according to a centrally managed process; and
- **Increased funding through Federal and State Government grants programs** was proposed to allow councils to reduce their reliance on rates-based revenue. This arose from considerable frustration that there had been no 'catch up' of the grant funding foregone as a result of the Federal Government's funding freeze between 2014 and 2016. This has impacted the revenue of rural councils more than metropolitan councils.

While these alternative arrangements might appeal to members of the community and some councils, they could result in a loss of council autonomy, which is fundamental to the local relevance of services and infrastructure. Councils could become increasingly dependent on the State and Federal governments and politics which could, in turn, have increasingly greater leverage over how council funds are spent.

Fewer suggestions were offered about other council revenue bases, or alternative formulations for how property-based rates might be levied. Some suggestions were:

- **An accommodation levy** to be paid by visitors to councils in tourism destinations. It was considered that this would in the provision and maintenance of infrastructure and services required by many thousands more people than pay rates in the community;

- **Fixed in time valuations** determined at the point of purchase and indexed by inflation until the next time it is sold. While this would lead to much greater stability in the rates paid by each property, it could, over time, breach the concept of horizontal equity when it is highly likely that two similar and neighbouring properties would pay differing rates;
- **Greater use of fixed charges:** While concerns in relation to fairness and equity were expressed about a fixed charge on each rateable property irrespective of its valuation, there were also views expressed that councils could make more use of fixed charges to reduce reliance on variable property valuations and therefore provide greater stability to rating assessments;
- **Rates per capita:** Given the nexus between council rates and the services delivered by councils, a small number of participants suggested that rates should be more like a poll tax, i.e. based on the number of people dwelling on a property. Other participants were extremely concerned about the implications of this approach in relation to vertical equity; and
- **Rates based on land area and/or floor space of buildings** to reduce reliability on variable property valuations. It was noted that different types of land or different regions within a municipality, might have different rates applied.

These options were generally proposed as additional tools that could be made available to councils to provide them with greater flexibility to improve the fairness and equity of rating arrangements. Yet all these suggestions have their own particular impacts on the fairness and equity of revenue raising.

7.2.5 Rates as a Tax

Despite the fact that rates are generally described as a property or wealth tax, many of the perceptions and suggestions outlined above seem to be based in a concept of rates being a fee for service, and therefore different to a tax.¹¹

Rates clearly resemble a tax insofar as they are a compulsory transfer of money and the Act provides councils with coercive powers to recover any rates not paid. However, council rates have two distinguishing features that differentiate them from other compulsory transfers of money:

- **Rates are relative** in that the rates paid by a ratepayer are determined by the value of that ratepayer's property *relative* to the total value of rateable property in that municipality; and
- **The tax rate changes from year to year** which sees councils adjust their rates in the dollar to take into account their changing budget needs, the rate cap and changes in the total value of rateable property. This makes the rate in the dollar less stable or predictable than rates of many other taxes.

Compounding these two key differences are two other characteristics of local government rates. Firstly, the fact that local government services are immediately observable to ratepayers makes them more tangible to communities than large and systemic services managed by State and Federal governments. Secondly, the fact that rates are the only tax available to local governments makes it easier for ratepayers to draw a direct connection between the tax paid and the actions of their councils.

¹¹ See for example Local Government Rates Inquiry Panel, 'Funding Local Government' 2007 (the 'Shand Inquiry') which determined rates as a hybrid of a tax and a fee for service. The NSW Independent Pricing and Regulatory Tribunal 2016 report 'Review of the Local Government Rating System' did not explicitly confirm rates as a tax, however considered them against common tax principles.

Despite these differences, many countries have a form of tax on land and buildings to provide revenue for sub-national level governments. Rosengard¹² identifies the reasons for this as follows:

- Property tax is often the main source of local government discretionary revenue and therefore an essential component of fiscal decentralisation that supports local autonomy and compliments intergovernmental fiscal transfers;
- Property tax is hard to avoid and easily enforceable; and
- Property tax is perceived as socially equitable because it is roughly progressive, loosely correlated with local government benefits, a relatively good proxy for tax on multi-year income and a way to enable the public sector to derive a share of private sector windfall gains from appreciation of real estate values which are largely due to public investments in previously un-serviced land.

Although the literature acknowledges that property taxes are often unpopular, there are many ways to mitigate some of these challenges while retaining many of the advantages of property-based taxation systems.¹³

Rosengard advocates for simplicity in property tax reform. This chiefly entails ensuring that a property tax is focussed on generating the necessary revenue to fund the services and infrastructure a community wants, and that the property tax is broad based. Granting special favours to powerful constituencies by providing them with rate relief of some sort generally results in less property revenue or increased taxes for the less powerful groups.¹⁴ A review of the introduction of a property tax in Ireland in 2013 provides some examples of the potential pitfalls of reform efforts.¹⁵

Rosengard also argues that failures in establishing effective rate bases and addressing community circumstances can also lead to public criticism as can poor administration of rates and failure to mitigate transitions such as sharp increases in valuation. Such failures may be contributing to some of the community perceptions heard by the Panel in relation to the fairness and equity of the current Victorian rating system.

Despite some differences, the Panel's view is that rates possess the characteristics of a tax and should be considered as such. They are a revenue raising mechanism for councils rather than a fee for the services they fund. Their base in the value of land has been endorsed globally and locally by recent comprehensive reviews.¹⁶ Therefore, the Panel continues to endorse the good tax design principles outlined section 7.2.1 above. However, after considering consistent themes in support of change to the current rating system in Victoria, the Panel concludes that they are best used in conjunction with other principles that recognise rates' unique characteristics, as outlined above, and which underpin successful reform.

12 Rosengard, J.K. 2012, 'The Tax Everyone Loves to Hate: Principles of Property Tax Reform' Faculty Working Paper Series, Harvard Kennedy School, 2012, available at <https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/MRCBGFWP201210-2012RosengardTaxReform.pdf>

13 See Slack, Enid et al, 'The Political Economy of Property Tax Reform' Institute of Municipal Finance and Governance, University of Toronto, 2014, available <http://www.ipti.org/wp-content/uploads/2017/06/OECD-Political-Economy-of-Property-Tax-Reform-Slack-Bird-Jan-2014.pdf>, (accessed 20 February 2020).

14 Rosengard describes four elements of successful property tax design as: Simple in practice trumps optimal in theory: New theories might seem attractive but are usually not achievable in practice without considerable adaptation to real world constraints. Revenue generation trumps social engineering: Property tax is a very poor tool for non-revenue objectives such as guiding allocative decisions (like attracting investment), achieving social goals or income redistribution or recovering capital costs. Economics of taxation trumps political mathematics in that a good property tax is broad based without special favours and behaviour change trumps paper tigers in that it is much more cost effective if people comply voluntarily with tax laws and regulations rather than through enforcement. See Rosengard, 'The Tax Everyone Loves to Hate: Principles of Property Tax Reform'.

15 See for example https://www.nerinstitute.net/sites/default/files/research/2019/inbrief_no_69_property_tax_aug_19.pdf, See also https://www.lincolninst.edu/sites/default/files/pubfiles/1859_1167_mccluskey_final.pdf, which discusses the introduction of a property tax system in Ireland.

16 Commonwealth Government 2010, "Australia's Future Tax System", sections C2 and G3, <https://treasury.gov.au/review/the-australias-future-tax-system-review/final-report>

7.2.6 Guiding Principles for Reviewing and Improving Rates

Based on the broad observations and information outlined in this chapter (and explored in further detail in the chapters that follow), the Panel has determined underpinning principles, including the principles of good taxation, in the context of an effective rating system. These principles are used to guide the analysis of the issues identified throughout the consultation process and to assist in reaching conclusions about the problems and solutions for improving the fairness and equity of the system going forward. The attributes of an effective rating system and the related principles are listed in Chart 1 below.

Chart 1 – The attributes and underlying principles of an effective rating system

Desired attributes	Underlying Principles
Councils have the authority to raise revenue through rates in a manner that demonstrably reflects their communities' priorities.	<p>The rating system must reflect council autonomy to make decisions. The role of the rates system is to generate revenue.</p> <p>The system must be flexible to meet different and changing community circumstances.</p> <p>The rating system must be applied transparently so councils can be held accountable for their decisions.</p> <p>The interests of the local community are a council's primary concern.</p>
Councils decide on the fair distribution of rates through ongoing and informed participation of their communities.	<p>Rating decisions require effective local community participation.</p> <p>Rating decisions should be reviewed regularly.</p> <p>Rating decisions and relevant evidence should be presented transparently to the community.</p>
The rating system and council arrangements are easy to understand: <ul style="list-style-type: none"> - It does not distort land use decisions - It is administered efficiently. 	<p>Rating arrangements and outcomes should be explained clearly and simply.</p> <p>The system should promote consistent and predictable outcomes for ratepayers.</p> <p>The system should be administered consistently and efficiently.</p>
Rating arrangements are based on land value and use not ownership.	<p>The system should be equitable both vertically and horizontally. I.e. It should be mostly levied according to the value of the land (vertically equitable) and it should be applied consistently across like land uses (horizontal equity) independent of ownership.</p>
Rates are as affordable as possible.	<p>Rate decisions should be made in the context of good financial management and oriented to the local priorities for a community.</p>

Desired attributes	Underlying Principles
Councils assist ratepayers facing payment difficulty.	<p>The system should make it easy for ratepayers to pay their rates.</p> <p>The system should assist ratepayers facing payment difficulty and avoid causing harm.</p> <p>Councils should only take coercive action as a measure of last resort.</p> <p>Councils and ratepayers facing payment difficulty have a shared responsibility for establishing workable payment arrangements.</p>
Rate relief (other than for payment difficulty) is granted by councils only where a direct, proportionate and demonstrable benefit accrues to the public.	<p>Discretionary rate relief (of any form, except for hardship) granted by council should be:</p> <ul style="list-style-type: none"> • based on the recipient of the relief providing a broader public and/ or local community benefit; and • reported transparently to the local community.
Council uses the rating system to generate revenue and does not use it to pursue policy objectives that are more efficiently pursued using other policy instruments or by other tiers of government.	<p>The role of rates is to generate revenue.</p> <p>The rating system should not be used as a policy lever for objectives that can be better targeted using other policy levers (e.g. planning powers) or are more suitably addressed by other levels of government (e.g. income redistribution).</p>

These principles are applied to examine:

- concerns about rates raised through public and council forums around the State;
- public and council submissions received in response to the Review discussion paper released in July 2019;
- public responses to an online survey; and
- research into the design of rating systems nationally and internationally.

The principles also guide the Panel's conclusions and recommendations for improvement.

8

Foundations of the Rating System

8.1 Overarching Legislative Requirements for Rates

8.1.1 Background

The *Local Government Act 1989* is the source of councils' power to levy rates and contains the vast majority of requirements around how councils must go about raising them. Part 8 of the Act describes at a high-level what land is rateable, the different types of rates and charges that can be levied, what reductions in rates are allowed, the process for declaring rates and charges, and community consultation reporting requirements. Part 8 also considers some administrative detail about how rates must be paid.

The Act also includes a number of overarching objectives, without providing guidance on how councils should interpret them. Section 3C states that one of the objectives of councils is to *"ensure the equitable imposition of rates and charges"*. Additionally, S.136(2)(b) states that a council must *"pursue spending and rating policies that are consistent with a reasonable degree of stability in the level of the rates burden"* in order to comply with the principles of sound financial management. The legislation does not provide a definition of rates.

Detail about what rates are is variable in other legislation across Australia. Queensland's *Local Government Act 2009* describes rates and charges as *"levies that a local government imposes"*. The Western Australian legislation is similarly silent on what rates are or on principles for their application, while NSW merely specifies rates as a source of local government income. New Zealand legislation for local government rates does not define rates or describe principles for their allocation.

South Australian and Tasmanian legislation provides more guidance. The SA legislation states that rates constitute *"a system of taxation for local government purposes (generally based on the value of land)"*. Tasmania is the most specific of the Australian jurisdictions in the *Local Government Act 1993*, which states in s.86A:

"...that a council, in adopting policies and making decisions concerning the making or varying of rates, must take into account the principles that (a) rates constitute taxation for the purposes of local government, rather than a fee for a service; and (b) the value of rateable land is an indicator of the capacity of the ratepayer in respect of that land to pay rates."

8.1.2 Issues for Consideration

Participants of the consultation process generally perceived rates as a mix of a tax, a fee for service, or a community contributions charge; i.e. a hybrid tax. There were mixed community views and understandings of rates. Some considered them a tax, which provided revenue for councils to spend as desired. Others held that rates represented a fee for service, and conflated discussions of rates with a value for money consideration.

8.1.3 Conclusions

Clarity that rates are a tax is required.

Unlike taxation systems applied by the State and Commonwealth Governments which are administered by single agencies (the State Revenue Office and the Australian Tax Office respectively), the rating system is applied by 79 independent entities (councils). Without some form of guidance or direction in legislation as to what rates are and how they should be applied, it is likely that, over time, practices and perceptions about rates will vary across councils. The public understanding of rates may also be shaped within this context of inconsistency. Legislative guidance can also inform how a court may interpret rating issues in the circumstances of an appeal. The Panel has discussed the unique characteristics of rates in Chapter 7 and concludes that rates are best described as a tax for local government purposes. Legislation which clarifies rates as a local government tax may help to address many of the issues and concerns arising from different perceptions about what rates are.

The principles of good taxation should apply to rates.

The principles of good taxation, as embodied in the principles adopted by the Panel in Section 7.2.6, should apply to rates. The South Australian legislation provides a simple and clear direction for what rates are.

The legislation should provide for a regulatory framework for rates.

Many of the issues identified throughout the review which impact on the fairness and equity of the rating system relate to the absence of measures through which the State and the community can hold councils to account for their decisions about rates. Such measures require clearer specifications within the Act about the way in which the various tools and provisions for their use should be applied. Participants of the consultation process, frustrated with council practices that seem unfair or inequitable, often focus on the legislation, seeking more limitations to avoid an apparent lack of clarity and consistency. While this approach might result in greater consistency, it risks unduly limiting councils' discretion to use these tools well.

The Panel's preferred approach is to regulate better practice and to require greater transparency and accountability of councils. Communities should be able to see why and how the different rating tools are being used. The Panel has adopted a focus on transparency and accountability throughout the review, as embodied in the principles for an effective rating system outlined in Chapter 7. This approach provides a framework which can be monitored and audited by councils (e.g. through their internal audit programs) as well as by the Victorian Government. For clarity at this stage, the Panel concluded that the rating system should feature a regulatory framework. The rationale for this approach will be increasingly apparent through this Report.

8.1.4 Recommendations

Recommendation 1: That the *Local Government Act 1989* describe rates as a tax for local government purposes.

Recommendation 2: That the *Local Government Act 1989* establish a head of power for the Minister to make regulations that incorporate (i) the principles of an effective rating system outlined in Chapter 7, section 7.2.6 of this report and (ii) the other recommendations referencing regulations in this report.

8.2 Property Valuations and Rates

8.2.1 Background

The application of the current rating system starts with the property valuation. In Victoria, the *Valuation of Land Act 1960* requires for all land to be valued in three ways:

- **Site Value (SV)** is the amount for which the land alone might be expected to sell. It is also known as "unimproved value." At present, although this method of valuation is used by the Victorian Government to levy land tax, no council bases its rates on this method of valuation;
- **Capital Improved Value (CIV)** is the amount for which the land and improvements, such as buildings might be expected to sell; and
- **Net Annual Value (NAV)** which is the greater of either;
 - the estimated annual rent for which the land might reasonably be expected to be leased, less some expenses; or
 - five per cent of the capital improved value (CIV) of the land.

Before the 1989 Act, councils levied rates on either SV, NAV or a mixture of both (known as the 'shandy' system.) Net Annual Value was the most common valuation base in Victoria for the late 19th century. The CIV system began to be used in Victoria in the 1960s for valuations, enabled by new technologies and data

management techniques. The 1989 Act introduced CIV as a third option for rating for councils and, by the late 1990s, most councils had opted to move away from SV and NAV to CIV. The 1989 Act gave councils powers to freely determine property categories under which different rates could be levied if using the CIV base. (These different rates are called “differential rates” and are discussed in section 9.2).

All valued properties in Victoria must be issued an annual notice stating all three types of valuations on the property. This information is provided on the rate notice.¹⁷ The Act requires that a council uses only one of these valuation bases for determining rates for the whole of its municipality but is free to choose which one. The merits of the use of each valuation base in determining rates are contested.

The process of valuation.

When the Valuer-General of Victoria (VGV) values a property, their objective is to determine the likely market value of a property if it were to be offered for sale. A valuation depends on the property’s structure, age, level of maintenance, location and comparable market sales and rental information of similar properties in the area. Other data about properties are compiled, including the building types on the property, quality of soil (relevant for farm properties) and other relevant information to determine market value. Geographic Information System mapping is used to assist and complement the valuation process. Since 2018, property valuations have been undertaken annually in Victoria.

Valuation techniques used for local and state government property taxes and levies are known as “mass appraisal valuations”. This method uses statistical data analysis to allow a large number of properties to be valued within a short time period, while attempting to maintain levels of accuracy similar to a full market valuation which may be used for an individual property valuation and may involve a site visit and internal inspection. The mass appraisal valuation method does not entail a full internal inspection of the property. Large one-off or unusual property sales are automatically identified as exceptions so that they don’t skew other valuations excessively. Specialist properties are often subject to additional analysis as part of the mass appraisal valuation.¹⁸ The annual revaluation process is undertaken by private sector valuers contracted by the Valuer-General Victoria along with professional valuers employed by the Victorian Government. The valuations are subject to audit by the VGV and valuers are professionally liable for their work.

Ratepayers who believe that the valuation of their property is incorrect may object to a valuation within two months of the rates notice being issued. This may result in a full market valuation should the VGV determine that one is warranted. A council pays the costs of this new revaluation arising from an objection.

Supplementary valuations and revised rate notices.

A supplementary valuation is a revaluation of a property outside of the annual revaluation process. The *Valuation of Land Act 1960* specifies the circumstances in which a supplementary valuation may occur. These circumstances include:

- a change to a property resulting from natural disasters such as fire and flooding;
- demolition and improvements to a property such as an extension or new construction;
- changes to planning schemes that may affect the land’s value; and
- sale of lots following the sub-division of land.

See the breakout box at the end of this section for a discussion on related issues.

¹⁷ All councils in Victoria issue the valuation information on the rate notice except the Shire of Wellington that issues the valuation information separately. Councils have combined the two notices for many years to reduce costs.

¹⁸ See <https://www.propertyandlandtitles.vic.gov.au/valuation/council-valuations>

8.2.2 Issues for Consideration

Each of the three valuation bases for the allocation of rates have their supporters and detractors.

Proponents of SV consider it a superior base for rates and property taxation more generally because it is efficient and doesn't penalise the ratepayer for any improvements made to the land. They also argue that it best reflects the locational value of land, which is influenced by the local availability of public services and infrastructure such as roads.¹⁹ Council expenditures that improve living and business conditions are capitalised into the value of the land, not the improvements on the land. The submission by Prosper Australia argues that SV is more aligned with capacity to pay and the beneficiary principle than CIV. They further suggest that SV-based taxation can stimulate development which is sustained over longer periods.

Detractors argue that compared to CIV, SV does not correlate as well with overall wealth of the owner because wealthier owners are likely to have larger, more expensive properties (i.e. with more capital improvements) than less wealthy owners.

Advocates of CIV contend that it correlates more closely with a ratepayer's overall wealth and capacity to pay compared to SV and is therefore likely to be more equitable.²⁰ It was also claimed that CIV is easily understood by the general public as a measure of the value of a property because it is more closely correlated with market value, a concept with which most ratepayers are familiar.²¹

Finally, NAV is favoured by some councils because, owing to the way it is calculated, NAV tends to shift rate apportionment from residential toward commercial properties. At a more practical level, in council areas where a majority of properties are occupied through a lease, NAV offers a highly accurate information base on the properties to which rates are applied.

The process for objecting to a valuation is not easy to understand.

Some review forum participants reported that the valuation objection process is opaque and difficult to understand and use. A ratepayer must provide grounds for their objection which may include evidence such as recent sales data or other reasons considered valid.

Some participants noted that an objection to a valuation may result in a property's value being increased with a consequential increase in rates. This may prevent some people from objecting at all.

19 A recent paper that argued in favour of SV over CIV is Murray, Cameron and Hermans, Jesse, 'Land Value is a Progressive and Efficient Property Tax Base: Evidence from Victoria' Researchers.one 2019 (accessed 4 March 2020 <http://www.researchers.one/article/2019-11-13>). The Henry Tax review also advocated for a form of Site Value taxation over improved valuation bases.

20 See Abelson, P., 'Local Government Taxes and Charges', Applied Economic, 2006 (accessed 4 March 2020 <http://www.appliedeconomics.com.au/publications/papers/public-economics-finance/2006-local-government-taxes-and-charges.htm#TopOfPage>).

21 The NAV effect (compared to CIV) is the result of the definition of NAV in the *Valuation of Land Act 1960*. NAV is determined by 5 per cent of the CIV or the annual rental value. Commercial property must have a NAV derived from whichever of these is greater – other types of property do not. As a consequence, rental values of commercial property are often slightly higher than 5 per cent, leading to an increased weighting of commercial property's NAV as share of the total municipal property NAV compared to CIV.

8.2.3 Evidence and Analysis

Most councils in Victoria use CIV as their rating base. Five councils used NAV for rates in 2019. No councils used SV.

Chart 2 – Councils adopting net annual value

NAV Council				
Melbourne	Port Phillip	Yarra	Whittlesea	Glen Eira

The rate valuation base used across Australia (and New Zealand) is highly variable. Chart 3 below shows the different arrangements.²²

Chart 3 – Rate valuation bases (Australia and New Zealand)

	Vic	NSW	Qld	SA	Tas	NT	ACT	NZ
Valuation bases for rates	CIV, NAV, SV	SV, NV, CIV	Rural: UV Non-rural: GRV	CV, SV, AAV	LV, CV, AAV	UCV, AV, ICV	UV	LV, AV, CV

The evidence on the pros and cons of each valuation base is mixed.

Views are also informed by local preferences and legacy arrangements and not necessarily by evidence that any one valuation base is clearly superior to others in determining rates.

Almost all councils have moved to the use of CIV over the past 30 years.

In Victoria, the Act allows councils rating on CIV to levy a wider range of differential rates. The appeal of using differential rates has contributed to a shift by councils to CIV over a number of years.

A very small percentage of ratepayers object to the valuation of their properties.

A total of 9,328 objections have been made to the 2019 revaluations, which equates to 0.3 per cent of Victoria's 3.055 million assessments. It can take some months and even years to resolve some objections, with unique or specialist properties requiring further and lengthy consideration.

8.2.4 Conclusions

It would be preferable that the CIV method of valuation is used by all councils to raise rates.

All but five councils are currently using CIV as their rating base. A single valuation base for all councils would improve consistency and simplicity for the community at a system level, reduce boundary differences and make it easier to compare rates between councils. Furthermore, it is likely that the general public can understand the relationship between investment of capital in a property and increased value of the property. There is also a common belief that property owners who invest in improvements are more likely to have access to greater financial resources than those who don't. It is likely that other forms of valuation have less internal logic to the majority of property owners.²³

22 AV = Annual value, AAV = Assessed Annual Value, LV = Land Value, CV = Capital value, CIV = Capital Improved Value, GRV = Gross Rental Value, NAV = Net Annual Value, SV = Site Value, UCV = Unimproved Capital Value, UV = Unimproved Value, ICV = Improved Capital Value.

23 The NSW Independent Pricing and Regulatory Tribunal 2016 report 'Review of the Local Government Rating System' recommended the use of CIV as a valuation base for rates. They concluded that CIV performed better than unimproved values, especially in metropolitan areas, against principles of efficacy, equity sustainability and simplicity. See <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Local-Government-Rating-System/Local-Government-Rating-System?qDh=2> (accessed 19 February 2020)

Changing valuation bases is difficult for councils.

The experience of Maribyrnong City Council moving from NAV to CIV in 2019-20 illustrates the consequences of shifting bases. The council resolved to provide one-off compensation to some ratepayers who experienced dramatic increases in their rates bill as a result of the shift. To retain flexibility and ensure that decisions by a council are transparent, the Panel supports the retention of the three optional methods of valuation (noting one of these options - SV - has not been used for over a decade) with a requirement for a council to model and consult on a proposed change in order to mitigate unintended consequences for ratepayers.

There is confusion, misunderstanding and dissatisfaction with the method of valuation and the dispute arrangements.

While conclusions relating to the valuation process are not within the Panel's terms of reference, it is clear that confusion and dissatisfaction in the community could be reduced through better information about the valuation process and a clearer, easier way to dispute a valuation.

Supplementary Valuations

A supplementary valuation is a revaluation of a property outside of the annual revaluation process. The *Valuation of Land Act 1960* specifies the circumstances in which a supplementary valuation may occur. These circumstances include:

- a change to a property resulting from natural disasters such as fire and flooding;
- demolition and improvements to a property such as an extension or new construction;
- changes to planning schemes that may affect the land's value; and
- sale of lots following the sub-division of land.

Supplementary valuations are undertaken by the Valuer-General at the request of a council. Several participants of the consultation process commented that the current processes and calculations for supplementary valuations can be difficult for ratepayers to understand. (e.g., A supplementary valuation can result in a revised rate notice being sent to a ratepayer who may not know that a supplementary valuation has taken place or why.) Council participants commented that some supplementary valuations cost more to administer than the revenue resulting from the amended rates and they require specialised administration from senior rates officers.

Although, in the current context of annual general revaluation cycles, supplementary valuations may, in some cases, offer diminishing returns to councils and ratepayers, and some high growth councils may rely on extra income from supplementary rates. For example, in 2019-20, budgeted supplementary rate revenue in a large growth area council such as Wyndham City Council is 0.96 per cent of rate revenue. Brimbank City Council has budgeted 0.50 per cent of rate revenue resulting from supplementary valuations. Changing land use in the inner metropolitan area also has an impact, with Yarra City Council expecting an additional 1.03 per cent of their general rate revenue generated from adjusted rates due to supplementary valuations.

Supplementary Valuations cont'd

Undertaking a supplementary valuation ensures that rates can be adjusted up or down as soon as practicable after any change to a property. This makes it more equitable for the ratepayer when the change has decreased the value of their land and resulted in lower rates to pay and, possibly, more equitable for the community when the change has increased the value of the land and resulted in more revenue going to the council. Other uses of the supplementary valuation process are:

- Correction to rates after successful valuation objections; and
- Providing updated property information to emergency services, utilities and GIS mapping.

Currently, councils can choose whether or not to request a supplementary valuation. The costs associated with administering a supplementary valuation may reduce council's incentive to seek a supplementary valuation and issue a revised rate notice, especially in the light of annual valuations. Yet while annual valuations may lessen their use, supplementary valuations are important to respond to significant or material changes in values, and therefore rates, caused by changes to the property or its use. This is especially important following natural disasters or the destruction of property from fire.

The Panel concluded that supplementary valuations are necessary to ensure the most up to date property information is maintained and changes in the value of property can be assessed quickly so that rates can be adjusted in a timely way. Any difficulties in communicating the role of a supplementary valuation and the impact of a revised rates notice on ratepayers should be addressed by councils.

8.2.5 Recommendations

Recommendation 3: That Capital Improved Value and Net Annual Value be retained as the only options for valuation bases for the purposes of local government rates and that the *Local Government Act 1989* be amended to state that councils who move from using Net Annual Value to use Capital Improved Value as their rate base, must continue to use Capital Improved Value.

Recommendation 4: That the Valuer-General improve communication about the mass valuation system, including how it deals with unusual sales, and consider publishing his valuation methods online.

Recommendation 5: That the Valuer-General review and improve the accessibility of his dispute process for those who have a grievance.

8.3 Rating by Occupancy

8.3.1 Background

Rates in Victoria are levied on each "occupancy" within a municipality. In most cases, an "occupancy" coincides with its title, i.e. a residential property on a single title constitutes a single "occupancy" (such as a residence for a single person or family) even if currently vacant.

Conversely, in other cases a building on one title, such as an office building or shopping centre with different tenants across different levels, can have multiple "occupancies". The *Valuation of Land Act 1960* requires these cases to be valued as separate "occupancies" and the *Local Government Act 1989* requires that rates and charges be levied separately on each.²⁴ It is, therefore, common for a single title with two or more separate

²⁴ s158A - http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s158a.html

“occupancies” to receive two or more rate notices. There are also circumstances where several titles are occupied by the same person or for the same use, such as a farming business with several paddocks, each with their own title. The owner of the land remains legally liable for the payment of the rates, not the occupier, even if contracts (such as retail leases) require the occupier to make rate payments

An exception to the general rule of rating by occupancy arises with the rating of caravan parks. Caravan parks, which are sometimes advertised as ‘residential villages’ are treated differently to other parcels of land for rating purposes. All caravan parks are considered a single rateable property and the caravan park owner is the occupier²⁵. Such properties cannot be split up into separate occupancies and rated separately, even when a caravan park may have long-term tenants with a lease agreement in place with the owner.

8.3.2 Issues for Consideration

Occupancy-based rating may be costly.

There are some administrative challenges when rating by occupancy. For councils with many commercial properties, the administration of lease information to correctly determine occupancies can be costly and difficult. It requires obtaining lease information that must be collected from multiple sources and can change over time, thereby needing further work. Each council must administer its own complex data for rates which are based on occupancy as the underlying information source.

The increasing digitisation of services may provide opportunities for efficiency of rating.

It has been suggested to the Panel that, because Certificates of Title are centrally administered by the Victorian Government, there could be administrative efficiencies in levying rates by title rather than occupancy. The increasing digitisation of many government services and processes offers many opportunities to improve efficiency in local government through better information management between the State and local governments and through improved customer interfaces.

Caravan Parks and Single Occupancy Rating.

Some councils and submitters argued that the increase in long-term residents within Caravan Parks has led to inequity. They feel that these residents are not contributing through fixed charges (such as municipal charges and service charges), and that if individual sites are rated separately, the occupancies may be levied a more equitable portion of rates.

The view that this situation is not equitable was supported by people who live in retirement villages who perceive that they are in very similar living arrangements to those living as long-term residents in caravan parks yet are required to pay rates as individual occupancies.

8.3.3 Conclusions

Suggestions to rate by title rather than occupancy deserve further collaborative consideration by councils and relevant State agencies.

Improvements in digital information management and customer service functions provide an opportunity to better integrate State and local government systems to enable rating by title. The data held by the titles office could be used for rates, negating the need for councils to maintain their own occupancy records. While, at this point, the merits of such a change are unclear, the large information bases used for rating and the duplication of such systems across 79 councils would indicate that the issue warrants further examination.

25 s156 (3A) - http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s156.html

Caravan Parks should continue to be considered a single occupancy owing to their designated status in the Residential Tenancies Act 1997 and the nature of their operations.

The equity concerns raised by participants of the consultation process appear to arise when a municipal charge and/or a separate waste charge is levied by a council since these charges can only be applied to a single occupancy: the caravan park as a whole and not the individual tenants.

Retirement villages are different to caravan parks and 'residential villages'. The former allows for ownership and transfer through sale. The latter two property types are not assets owned by their residents and able to be sold by them. The complexities of separating a caravan park or residential village into separate occupancies may also be challenging.

8.3.4 Recommendation

Recommendation 6: That the Victorian Government undertake further analysis, and consultation on the merits of shifting from levying rates on occupancy to levying rates on the basis of land titles (through Certificate of Title).

8.4 Valuation Movements and Impacts on Rates

8.4.1 Background

Property values have been central to rates since the inception of the system. The effects of a general revaluation on an individual's rates are not straightforward since a reduction in a property's individual valuation may not necessarily lead to a reduction in rates. Valuations are the apportioning tool to assess the rates payable for each individual property in a municipality. A revaluation may result in the rates for some properties going up while others go down, depending on the property.

The change in rates following a revaluation is also affected by the level of differential rates, municipal charges or service charges applied. These rating tools can influence the amount to be paid, by compensating for or enhancing the effect of the valuation movement and, consequently, the amount in rates to be paid by the ratepayer.

The introduction of the rate cap in 2016-17 has resulted in a community expectation that an individual property's rates will move by the increase allowed by the cap. Yet this is not how the system works. The rate cap, set by the Minister for Local Government, limits the overall increase in rate revenue by applying a percentage increase to a council's average general rate and municipal charge. All other things being equal, individual property values that move by a different amount than the average amount will result in rate movements being either more or less than the percentage increase allowed by the rate cap.

Although the rate cap is outside of the Terms of Reference for the Panel, the lack of understanding by ratepayers about how the rate cap is applied has increased their focus on changes in their rates which may be caused by large valuation movements and, therefore, their perceptions about the fairness and equity of the system.

8.4.2 Issues for Consideration

Some participants of the consultation process have experienced large movements in property valuations as a result of recent markets and sales and an increase in their rates. Farmers, in particular, expressed concern that their rates, impacted by unpredictable increases in land value due to sales in their area, had increased to such a level in a short period that they had been unable to budget for them. Some participants also attributed high rate increases to the recent change to an annual valuation cycle. This issue was so concerning for rural councils and ratepayers that some advocated for abolishing the current property-based rating system and replacing it with a different revenue base.

8.4.3 Evidence and Analysis

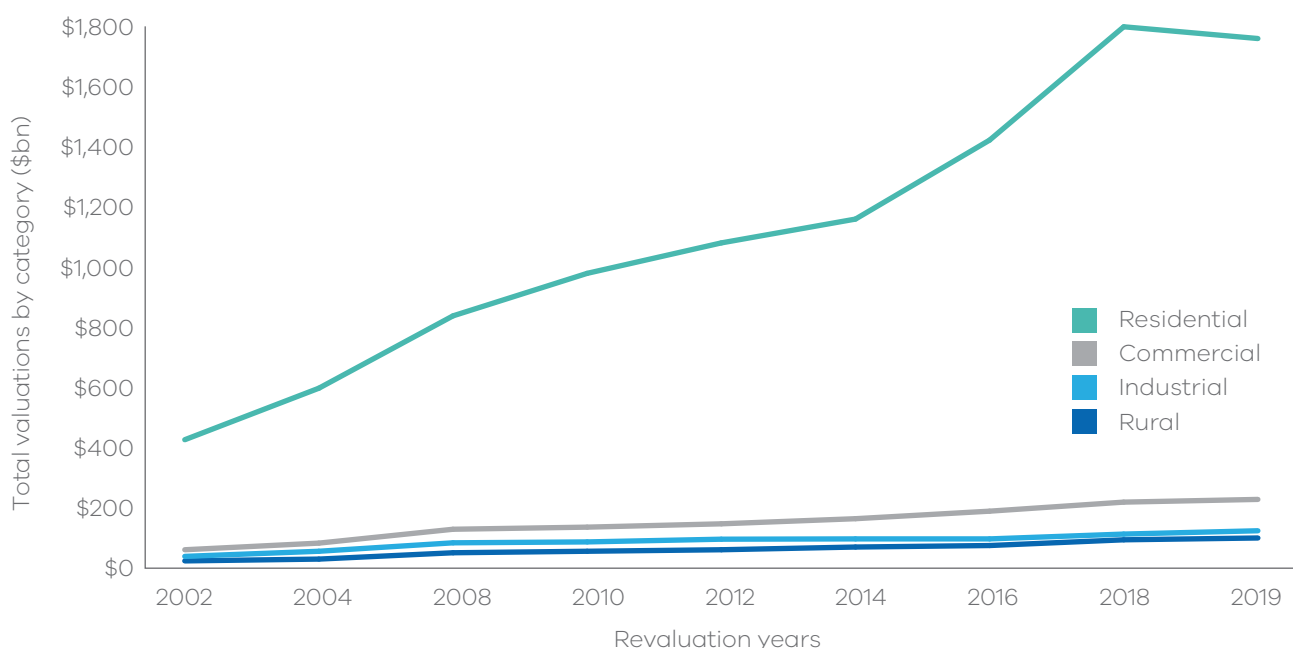
Large valuation movements driven by market movements can have large and unpredictable impacts on rates, sometimes known as 'bill shock.' The Panel heard of extreme cases in which valuation movements had been accompanied by rate increases of over 50%.

'Bill shock' is not specific to annual valuations. It was also experienced following biennial and four-yearly revaluations under the previous system. Further, the level of analysis is important when determining the impact of valuation movements on rates. Small average movements for a whole municipality or property type can mask large movements at the individual property level.

At the State level, property valuation movements across most major land use categories have been fairly uniform.

Chart 4 shows the overall valuation trend for the four broad property types in Victoria since 2002.

Chart 4 – Movement in capital improved values in Victoria 2002-2019

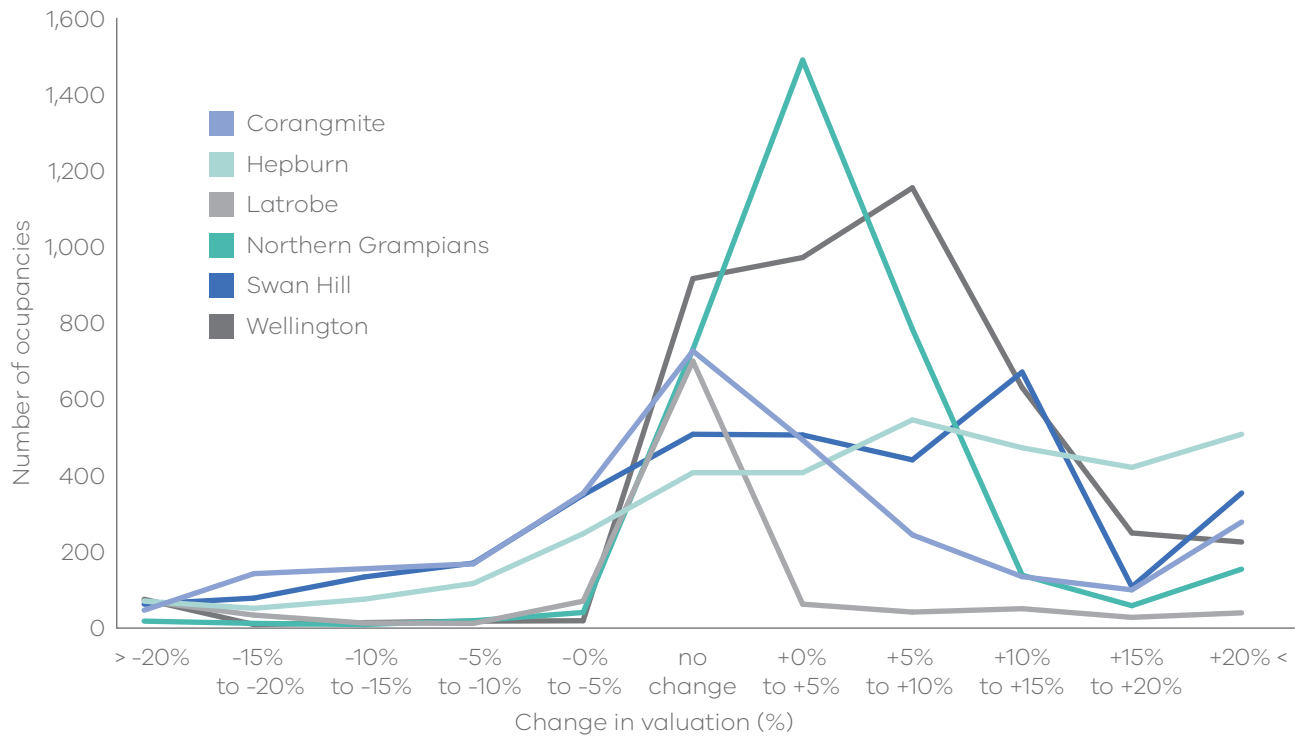


While there may be an average movement in the value of all properties at a high level, the movement of individual properties can vary.

Almost 3.1 million properties were revalued in Victoria in 2019. Average movements at the State or local government level can often hide the extent to which values for individual properties and specific local areas shift owing to recent sales. A total of 58,360 properties declined in value by 20 per cent or more from 2018 to 2019. Contrastingly, 128,306 properties increased in value by 20 per cent or more in the same year. 377,834 properties experienced no change in value from 2018 to 2019. In most circumstances, movements in the value of each property flow through to have some impact on its rates.

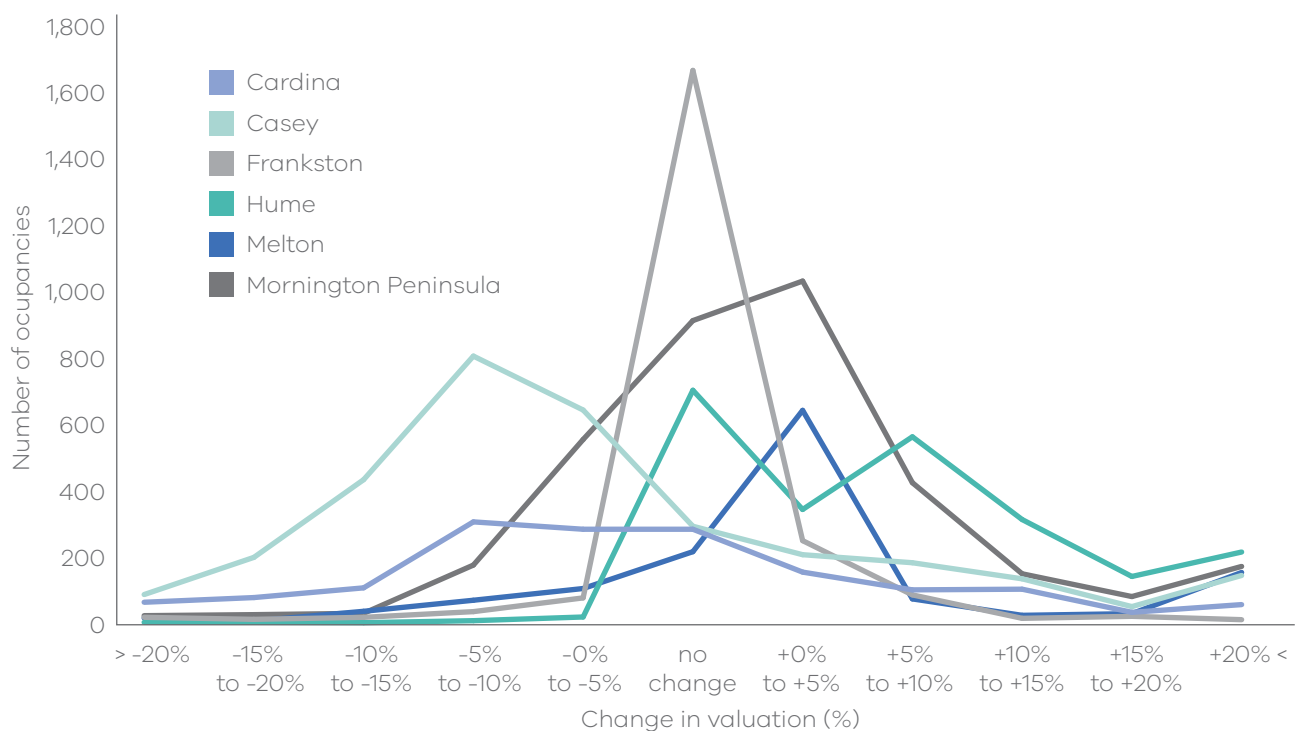
There can also be significant differences in valuation movements across property types in a council area. The following charts show the movements in values for different property categories for a selection of councils from 2018 to 2019. The left-hand scale in each of the charts shows the number of assessments, with the distribution of valuation movements in each council.

Chart 5 – Rural properties: valuation movements by number of assessments



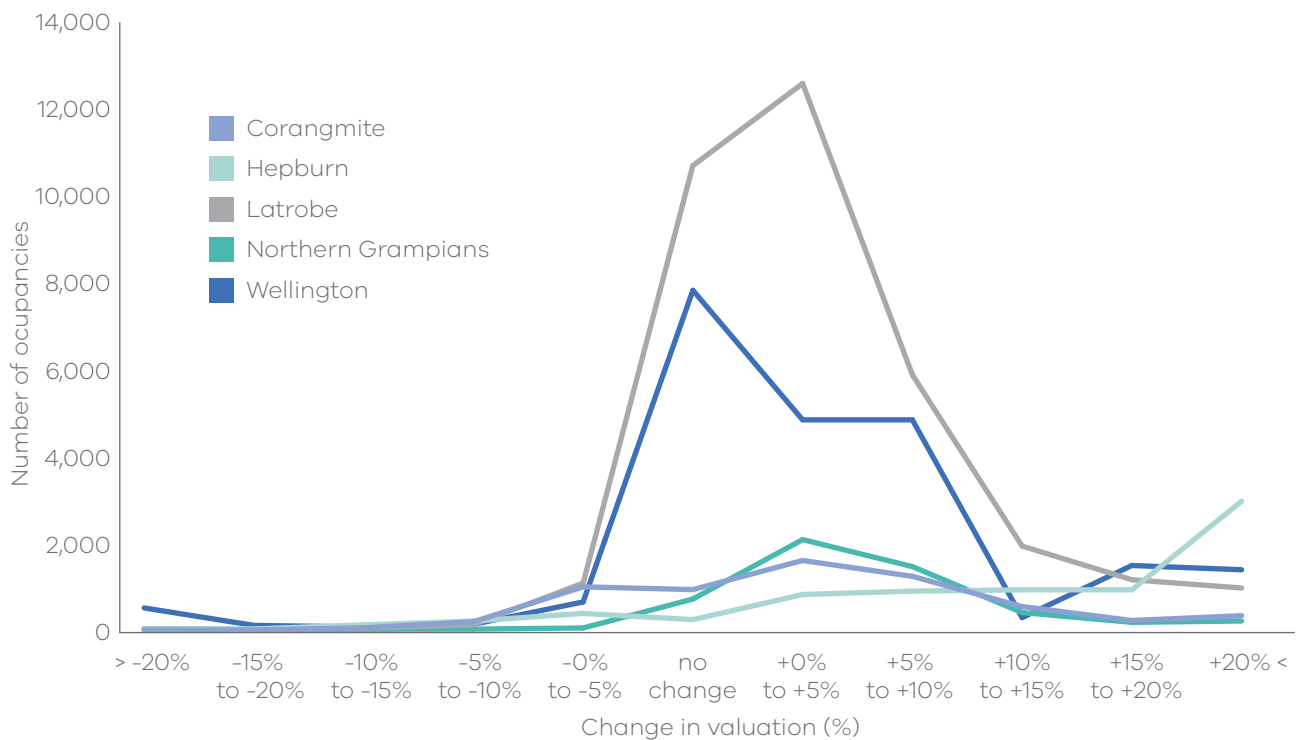
Source – Valuer-General Victoria, 2019 revaluation

Chart 6 – Commercial properties: valuation movements by number of assessments



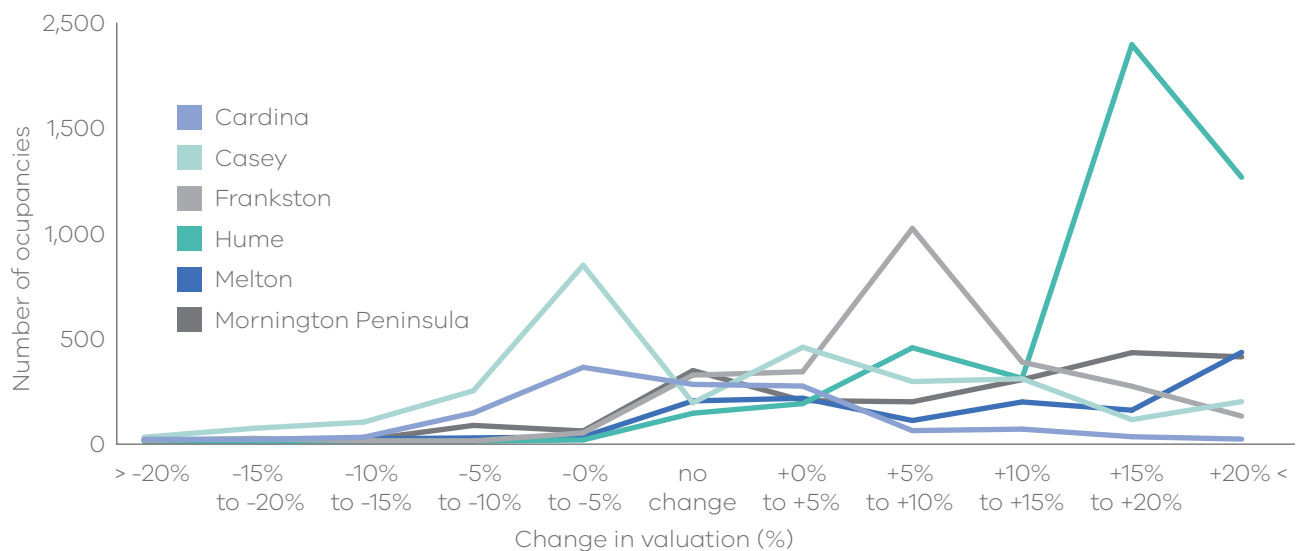
Source – Valuer-General Victoria, 2019 revaluation

Chart 7 – Residential properties: valuation movements by number of assessments



Source – Valuer-General Victoria, 2019 revaluation

Chart 8 – Industrial properties: valuation movements by number of assessments

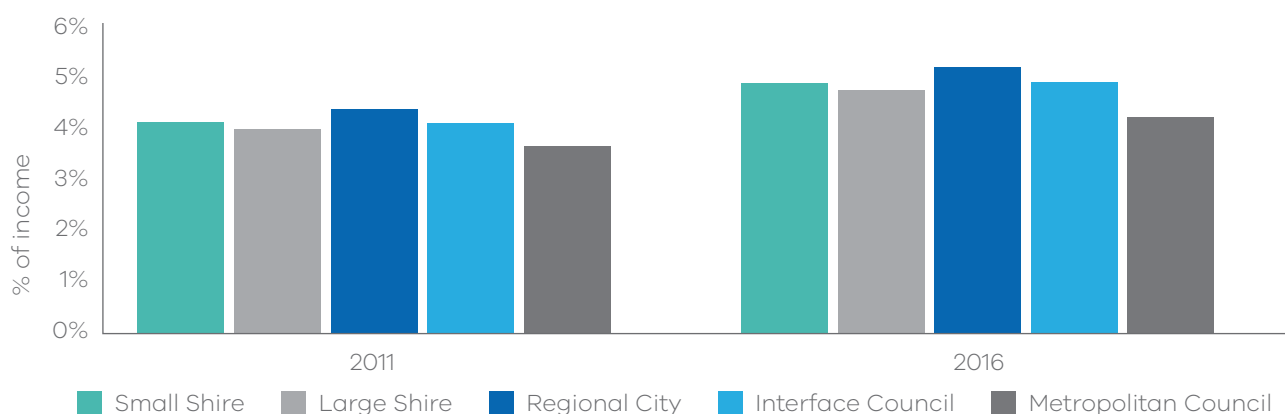


Source – Valuer-General Victoria, 2019 revaluation

There is some variation in average rate levels across Victoria.

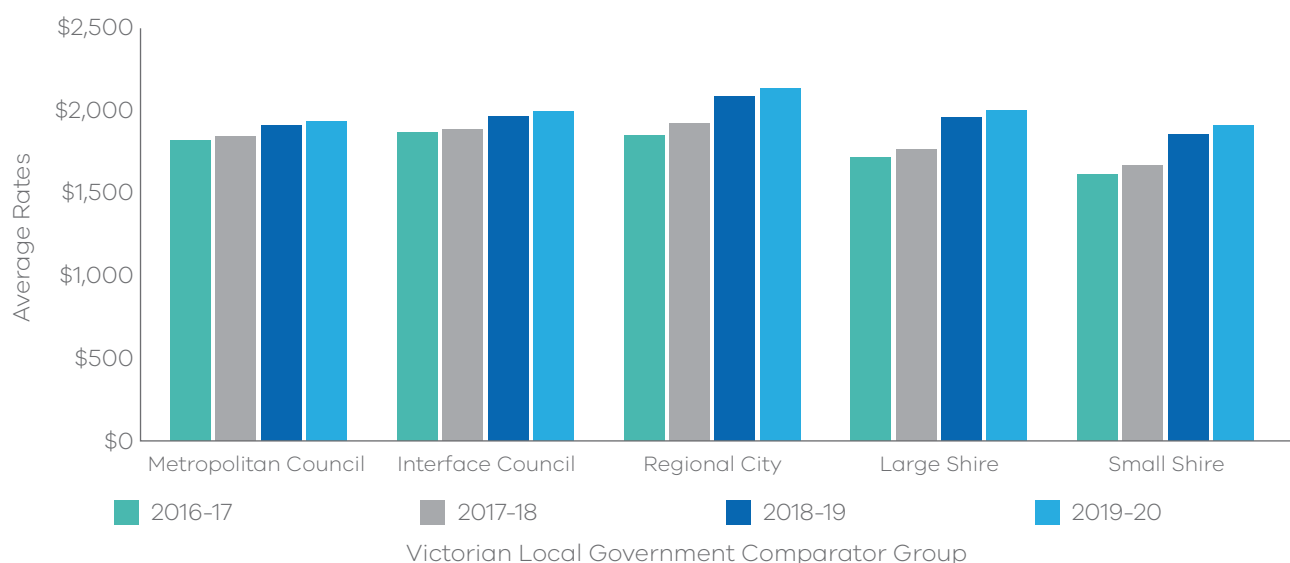
Chart 9 shows average Victorian household income spent on rates from the last two Commonwealth Census surveys and the rates data from the same years. It indicates the average rates paid per assessment in each of the council cohorts measured against the average household income in the combined council cohort areas. The data for this chart may also be found in Appendix One showing council level data as the Census data is broken down to the Local Government Area level. It is important to note that the household unit as used by the ABS for the Census and other surveys is not immediately equivalent to a residential assessment for rate purposes as many farm properties include a residential household.

Chart 9 – Average Victorian household income²⁶ spent on rates



Calculating average rates are one way of indicating the impact of rates. This is a common calculation that simply divides rate revenue by the number of properties levied rates. In reality, few properties actually pay this average amount, meaning it should only be considered indicative. In 2019-20 at a state-wide level, the average rates bill, comprising General Rates and waste (Service) charges, is \$1,971.

Chart 10 – Average rates per assessment 2016/17 – 2019/20



²⁶ The income measure used in this and all charts is the ABS' 'Weekly Equivalised Disposable Income' from ABS Catalogue 6523 - Household Income and Wealth, Australia'. This measure is utilised by the ABS to allow for comparisons to be made. Disposable income is the measure of income after income taxes and the Medicare levy is deducted. For further information see ABS 6553.0 - Survey of Income and Housing, User Guide.

“Average Rates” can also be represented by determining the average residential occupancy and applying the relevant rate in the dollar, as well as the municipal charge and Service Charges for waste disposal. This method also gives a very broad snapshot of what an “average” residential ratepayer could pay in their municipality.

The data shown in Chart 11 compares a sample of Metropolitan Councils and Regional Shires and assumes each occupancy receives a comparable waste service (240 litre bin collection). The average valuations are calculated through differential rates category data where possible or using the uniform rates where not.

Though a broad comparison, it provides some insight into the average rates payable. There is a clear difference in average property values between many metropolitan Melbourne councils and other parts of Victoria. Concerns about this difference were a constant theme expressed by rural ratepayers who often paid roughly comparable amounts in rates to metropolitan ratepayers though their property values were significantly lower.

Chart 11 – Rates payable for average residential property values

Council Name	Average Residential Valuation	Rates Payable
Benalla Rural City Council	\$245,642	\$2,096
Boroondara City Council	\$1,440,928	\$3,153
Campaspe Shire Council	\$298,893	\$1,967
Casey City Council	\$601,637	\$1,909
Gannawarra Shire Council	\$190,838	\$1,810
Greater Dandenong City Council	\$586,262	\$1,344
Hindmarsh Shire Council	\$116,828	\$1,163
Hobsons Bay City Council	\$810,766	\$1,959
Manningham City Council	\$993,198	\$2,270
Mansfield Shire Council	\$353,599	\$1,647
West Wimmera Shire Council	\$543,435	\$1,902
Whitehorse City Council	\$922,686	\$1,534

The Panel heard from many ratepayers that they considered the disparities in rates most prevalent where similar rate liabilities across different councils were levied despite property values being quite different. Commonly, this was expressed with a view that a property valued double that of another in a different municipality was paying a similar amount in rates. While this is a characteristic of the rating system, in nonetheless remains a strongly held perception. Chart 12 below shows this based on hypothetical residential properties valued at \$400,000 and \$700,000 and residential rates from the 2019-20 year from each of the listed councils.

Chart 12 – Rates payable for hypothetical residential property values

Council	Rates payable on a \$400,000 valuation	Rates payable on a \$700,000 valuation
Benalla	\$2,880	\$4,404
Boroondara	\$1,694	\$2,114
Campaspe	\$2,401	\$3,691
Casey	\$1,379	\$2,168
Gannawarra	\$3,134	\$5,033
Greater Dandenong	\$1,027	\$1,537
Hindmarsh	\$2,648	\$4,220
Hobsons Bay	\$1,085	\$1,724
Manningham	\$1,242	\$1,762
Mansfield	\$1,777	\$2,618
West Wimmera	\$1,523	\$2,315
Whitehorse	\$665	\$1,164

Data in Chart 13, based on the Australian Bureau of Statistics' most recent report, Household Expenditure²⁷ (2015-16) shows the average Victorian household's weekly equivalised disposable income²⁸ across quintiles:

Chart 13 – Average household's weekly equivalised disposable income

	Average income
Lowest	\$406
Second	\$661
Third	\$898
Fourth	\$1,193
Highest	\$2,055
All Households	\$1,041

Chart 14 applies a range of possible annual rates to the income figures of Chart 13 to indicate the percentage of a household's weekly equivalised disposable income spent on council rates. At the extremes, a \$3,000 rate bill for the lowest income quintile would represent around 14 per cent of household income and \$1,000 annually in rates for the highest income quintile would be less than 1 per cent of household income. Given the average rate bill in 2019-20 is just under \$2,000 per annum, we can see how this impacts households across the income quintiles.

27 ABS, 6523.0 – Household Income and Wealth, Australia, 2015-16

28 Equivalised income can be viewed as an indicator of the economic resources available to a standardised household. For a lone person household, it is equal to income received. For a household comprising more than one person, equivalised income is an indicator of the household income that would be required by a lone person household in order to enjoy the same level of economic wellbeing as the household in question.

Chart 14 – Percentage of weekly equivalised disposable income spent on council rates

Income quintile	Annual rates				
	\$1,000	\$1,500	\$2,000	\$2,500	\$3,000
Lowest	4.7%	7.1%	9.5%	11.8%	14.2%
Second	2.9%	4.4%	5.8%	7.3%	8.7%
Third	2.1%	3.2%	4.3%	5.4%	6.4%
Fourth	1.6%	2.4%	3.2%	4.0%	4.8%
Highest	0.9%	1.4%	1.9%	2.3%	2.8%
All Households	1.8%	2.8%	3.7%	4.6%	5.5%

The Panel heard from many pensioners about the impact of rates. The maximum fortnightly age pension for a single person is \$933.40 per fortnight, while those living as a couple receive \$703.50 per fortnight (each).²⁹ Rates as a proportion of the age pension range from 4.1% for \$1,000 to 12.3% for \$3,000 for a single age pensioner. For couples living on the age pension, rates as a proportion of this income range from 2.7 % for \$1,000 to 8.2% for a \$3,000 rates bill.

The ratio of average income to average rates indicates that small shires and regional cities are paying, on average, a larger proportion of their income for rates.

Chart 15 shows average rates in each council cohort compared to the same income data used previously. This Census data from 2016 is also provided at the local government level. This is matched to the average rates in each council for the 2016-17 year. The relationship between the two figures is presented as a ratio.

Chart 15 – Ratio of average rates (2016-17) to average weekly equivalised disposable household income

	Average Ratio	Average Income	Average Rates
Small Shire	4.8%	\$651.16	\$1,625.69
Large Shire	4.6%	\$733.26	\$1,729.72
Regional City	4.8%	\$740.10	\$1,861.42
Interface Council	4.2%	\$869.33	\$1,879.56
Metropolitan Council	3.6%	\$1,015.27	\$1,833.18

These averages indicate that small shires and regional cities are paying, on average, a larger proportion of their income on rates. This is despite the rates being, on average, lowest in small shires. These figures should be considered indicative only, as the ratio is a result of varying rates and incomes. Importantly, rates are not based on income but on the value of property.

²⁹ <https://guides.dss.gov.au/guide-social-security-law/5/1/8/10>

Rates based on property values may not always correlate with income which can be drawn from many different sources.

Ratepayers with high incomes do not always own high-value properties and vice versa. However, the data does indicate that, at a general level, higher levels of wealth do broadly correspond with property values, i.e. rates based on property values generally correspond with the principle of vertical equity.³⁰ Nevertheless, such a system can produce outliers, including from large property valuation movements.

Some councils have offered rebates to compensate for the effect of large increases in value and subsequently rates.

Valuation averaging could reduce the effect of year-on-year valuation movements on rates but there are some drawbacks which must be considered.

A valuation averaging mechanism could reduce the impact of a large increase or decrease in valuations on rates payable in the year of that large valuation movement. Rather, the impact would be spread over 3-4 years (depending on the length of the averaging period). Averaging may also add confusion for ratepayers as they would be presented with their current property value as well as the rolling average value on a rate notice. Additionally, supplementary rates could add complications to calculating averages. However, these issues could be managed with effective communication and information.

Councils in Queensland can choose to use the average of 2 or 3 years of valuations to calculate rates.³¹ This could be explored in Victoria.

8.4.4 Conclusions

Rural ratepayers appear to pay a higher proportion of their income, on average, in rates.

While very few people pay average rates, the average rates payable in rural councils are slightly lower than those paid in regional cities, metropolitan councils and interface councils. However, the impact of the average rates is potentially higher owing to the significantly lower average household income in rural and regional Victoria.

Alternatives to property value-based rates also have impacts on equity.

A number of options were canvassed by some participants of the consultation process as alternatives to valuation-base rates (described in Chapter 7). These options were generally proposed to improve the fairness and equity of local rating arrangements. Nevertheless, as concluded in Chapter 7, all the alternative proposals have other potential impacts on equity and the autonomy of councils. Many are also likely to entail high costs of administration or the need for more intrusive investigatory powers compared to property valuation-based rates.

30 See for example South Australian Institute for Economic Studies, 'The Correlation Between Income and Home Values: Literature Review and Investigation of Data' 2004. (available at <https://www.lga.sa.gov.au/webdata/resources/files/IncomeandHomeValuesFinalReport1.pdf>).

31 The valuation averaging mechanism is available to councils in Queensland as an option in their legislation, and the averaging cycle can be 2 or 3 years. It is currently used by Brisbane City Council. When used, rates are based on the lowest of either the rolling average or the most recent valuation. Property revaluations may be annual in Queensland, however the frequency of the valuations is at the discretion of the Queensland Valuer-General. Councils with few property transactions in a year may not have a revaluation done, and some councils have the same values used for rates for several years.

Offering rebates to compensate for the effect of large increases in value and rates should be considered with caution.

Such decisions must be considered in relation to the implications for equity across the whole municipality. It could be argued that the ratepayer in “bill shock” as a direct result of a higher valuation owns an asset which has significantly appreciated in value. If property markets indicate stability in a location over time, at some point this “stored” wealth is likely to be realised. A deferral may be another tool to consider in these circumstances (see Chapter 10.4 – Deferrals).

The use of valuation averaging is worthy of further consideration by the Victorian Government.

However, such consideration should be mindful that the move to an annual revaluation cycle from the 2018 year and onwards may also serve to reduce large movements resulting from a revaluation undertaken every two or four years.

8.4.5 Recommendation

Recommendation 7: That the Victorian Government examine the merits of a valuation averaging mechanism to reduce the impact of large changes in valuations on rates.

9

Making General Rates More Transparent

All rateable properties in Victoria are required to pay some form of general rates. Under the current arrangements councils raise general rates through an ad valorem rate on the value of a property. This can take the form of uniform or differential rates. Councils also have the option to include a fixed component to their rates through a municipal charge.

9.1 General Rates on Property Values

9.1.1 Background

The simplest form of ad valorem rates is the uniform rate. This is raised by a single rate in the dollar³² being applied to the valuation (using either SV, CIV or NAV valuation methods) of all properties in the municipality.³³

In the 2019-20 financial year, 13 Victorian councils raised their ad valorem rates through a uniform rate while 66 councils chose to apply differential rates. Of the 13 councils that use a uniform rate, three councils are using NAV as their valuation base, while of the 66 that use differential rates, two have adopted NAV (Melbourne and Whittlesea).

Chart 16 – Which methods of rating do councils use?

Type of Rating	Number of Councils
Uniform	13
Differential	66

9.1.2 Issues for Consideration

Section 3.1 of the Panel's What we Heard report outlines the various concerns that people have with using property valuation as the base for rating. Some of these were highlighted in the Introduction and in Chapter 7 of this report. Those of particular relevance in relation to uniform rates based on property values (and property value-based rates more generally) are outlined below.

There were concerns that there is a disconnect between rates and capacity to pay.

There were concerns that the highest and best use market value of land and, therefore rates, are driven up by increased urbanisation or intensification of land production even though the ratepayer may not want to sell his or her land to realise that "value."

³² S.160 of the Act allows for a uniform rate. This means a council applies a single percentage (the 'rate in the dollar') to all properties in the municipality to raise general rates.

³³ See Chapter 8 for a discussion of the different valuation bases and their effect on rates.

There were concerns about an uneven wealth tax.

A number of participants felt that the wealth attributed to the ownership of the property is being taxed more heavily in councils with small rate bases and with large infrastructure demands, typically, rural and regional councils. This is particularly problematic when the average income in these areas tends to be lower.

There were concerns that rates are a discriminative input tax.

Concerns were raised (particularly by farmers and retirees) that rates appear to tax some factors of production (i.e. land) but not others and some forms of capital investment (e.g. a retirement village home) and not others (e.g. a home in a lifestyle/residential village).

Council participants, ratepayers and other stakeholder submissions have also identified the problem of the “asset rich and cash poor.” Many councils advised that they use differential rates as a tool to address this issue for particular categories of land types where this is a common problem.

Use of a uniform rate implies that a council is content to use the annual property valuation alone to determine the apportionment of rates in a municipality. Although this approach is simple to administer and understand, it has downsides. Estimated property valuations are only a proxy for overall wealth and capacity to pay, a key concern raised through the consultation process. The Act provides a number of rating tools for addressing perceived inequities with a uniform rate. The most commonly used tool is the application of differential rates which is discussed in the following section.

9.2 Differential Rates

9.2.1 Background

Differential rating was discussed in Victoria for a decade before the Parliamentary debate of the 1989 Bill and was eventually adopted in the Act to provide a means for a council to adjust the rating system in a manner that it considers equitable given the circumstances of its local community.

If a council chooses to use CIV as its rating base, the Act allows the council to levy differential rates using criteria determined by council and in accordance with certain requirements.³⁴ Though councils may apply as many differential rates as they consider necessary, the highest differential rate levied by a council in a given year is restricted to being no more than four times its lowest differential rate.

The legislation also allows for the issuance of Ministerial Guidelines for the use of differential rates³⁵ covering their objectives, suitable uses and types and classes of land appropriate for their use. Guidelines under this provision were issued in 2013.³⁶

If councils use the NAV or SV as their rating base, their options for applying differential rates are limited to farm land, urban farm land and residential land only. These are known as Limited Differential rates.³⁷

A council's criteria for determining what type of rate applies to which type of land must be described in the council's Annual Budget. The Act provides for an appeal mechanism which allows a dispute over the application of a rate to be heard and determined in VCAT. The appeal rights are limited to whether the correct differential rate category has been applied, not the level of the rate itself.

³⁴ s.161(2)

³⁵ s.161(2B)

³⁶ See https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0022/74821/Ministerial_Guidelines_for_Differential_Rating_April_2013-PDF.pdf

³⁷ S.161A of the Act provides for limited differential rates which can be used if the council does not use CIV as their valuation base for rates.

9.2.2 Issues for Consideration

Submissions from councils and ratepayers alike were largely supportive of differential rates as a concept, though the opinions of how they are currently applied varied widely. Council participants were almost unanimous in the view that differential rates provide flexibility for councils to apply the rating system more fairly and equitably for a range of reasons including addressing valuation movements, lack of access to council services and capacity to pay.

However, ratepayers across both metropolitan and rural Victoria expressed a number of concerns about the application of differential rates by councils. Some of the views relating to differential rates outlined in Section 3 of the Panel's What We Heard Report are:

- Land used for primary production should pay lower rates otherwise rates are an unfair input tax to the farming sector;
- Farmers should pay lower rates in the dollar because they have less access to council services than other ratepayers and they are not provided the services they need;
- Councils substantially increase rates on some ratepayers (such as commercial properties) through a higher differential rate in order to lower rates on others (such as residential ratepayers) for political gain;
- Lower differential rates for some ratepayers (such as farmers) have led to higher rates on residential properties in rural areas;
- Councils do not appear to use evidence to justify differential rates;
- Councils' decisions about why and how they use differentials are not transparent to the community;
- Though differential rates are supported by councils, they are not easily understood by ratepayers; and
- Concerns about council's decision making appeared to be related to a general lack of trust by the community in council governance, financial planning and management.

9.2.3 Evidence and Analysis

There is limited evidence and mixed analysis of the pros and cons of the use of differentials.

New Zealand's 2007 Shand Inquiry identified the following common reasons why differential rates are used there:³⁸

- Increase the incidence of rates on business properties;
- Decrease the incidence of rates on rural properties; and
- Ease the burden on high-value properties.

The Shand Inquiry commented that *"...it is extremely difficult to assess the distribution of benefits with any reasonable degree of accuracy"* and *"...the allocations (of differential rates) often appear to have no reasonable relationship with relative benefits or costs."*³⁹ The inquiry made a recommendation that differential rates be abolished, one that was not adopted by the NZ Government. The more recent New Zealand Productivity Commission's Local Government Funding and Financing Inquiry made a broader finding in the context of decision making about rates and fixed charges, including differential rates: *"Councils often make*

38 New Zealand Local Government Rates Inquiry Panel, "Funding Local Government", 2007, Section 9.96.

39 Ibid. p.133

rating decisions in a non-transparent manner that fails to explain the basis for setting rates and suggests a confused consideration of benefits, affordability and willingness to pay”.⁴⁰

Other reviews have been more circumspect about their merits. The 2016 IPART Review recommended the introduction of differential rates for residential properties on the basis of the flexibility they provided to councils, albeit with protections to promote equity and transparency.⁴¹ The 2015 Victorian Parliamentary Inquiry into the sustainability and operational challenges of Victoria’s rural and regional councils found “rating differentials are applied in varying ways by different councils, leading to frustration and anger among ratepayers.” The Henry Tax review also made brief comment on the use of differential rates, and their potential to impinge on the overall efficiency of rates.⁴²

There is variation in definitions of land categories used for differential rates in Victoria.

While current legislation allows councils to develop unique definitions for categories of differential rates, they are similarly grouped across councils with broadly common definitions, descriptions and application. The most common categories of differential rates categories in use are for land described as “Residential”, “Farm”, “Commercial”, “Industrial” and “Vacant”, with farmland generally being levied the lowest rate in the dollar. Many councils supplement these basic definitions with additional qualifiers (e.g. “rural-residential”) or apply more specific or unique criteria, sometimes levied on few or single assessments, targeting specialist properties or a designated geographical area.

The number of differential rates in use by councils varies considerably.

Twenty-six councils applied six or more differential rates in 2019-20 (see Chart 17). Some of these rates are highly specific in nature. For example, they applied to a geographic area or to particular property addresses.⁴³

Chart 17 – Number of differential rates categories adopted per council during 2019/20

Number of differentials	1 (uniform)	2	3	4	5	6+
Number of councils	13	4	6	14	16	26

There is a lack of clarity about rationales and evidence for using differentials.

A review of rating strategies and annual budget documents, which must contain the precise criteria for applying differential rates, showed that across the 66 councils using differential rates, their application is usually justified in very general terms as a means to “improve equity”. There is generally no evidence on how the differential rate would achieve this objective. The level of information available to communities is clearly a determinant of the level of their engagement with council on policy issues. It would therefore be very difficult for communities to engage with the council on rate setting in general and differential rates in particular. While formal public submissions can be made under the Annual Budget process, the depth of this engagement is questionable despite the fact that councils are making rating decisions with a widespread material impact on their ratepayers.

40 New Zealand Productivity Commission, “Local government funding and financing: Final report”, 2019, p.164.

41 See New South Wales Independent Pricing and Regulatory Tribunal (IPART) ‘Local Government Rating System Review’ 2016, Chapter 5.

42 See Australia’s Future Tax System, p.258

43 In some instances’ councils have presented differential rates in their budgets with the same rate in the dollar applied in a given year.

The most commonly stated objectives for the current application of differential rates (where stated at all) are to:

- Compensate ratepayers perceived as not having capacity to pay;
- Decrease the impact of large movements in valuation causing large increases in rates to particular groups; and
- Compensate for perceived lack of access or use of services by particular groups.

However, there is little evidence reported by the council to justify these conclusions.

In addition, the use of differential rates specific to 'vacant' land (also described as 'derelict' by some councils) has grown over the past two decades, with 30 councils currently applying a differential rate in some form to vacant or derelict land rate in 2019-20. Some councils explained these rates as "incentivising development", though no evidence that such rates contributed to this outcome was provided.

There is considerable variation in the ratios applied from lowest to highest differential rates.

The average ratio difference across the 66 councils between the lowest and highest differential rates is 2.51 in metropolitan areas and 2.35 in rural and regional areas, meaning that councils, on average, determine that some properties should be paying more than twice the rate in the dollar than others.

Chart 18 – Differential rates ratios over residential rates

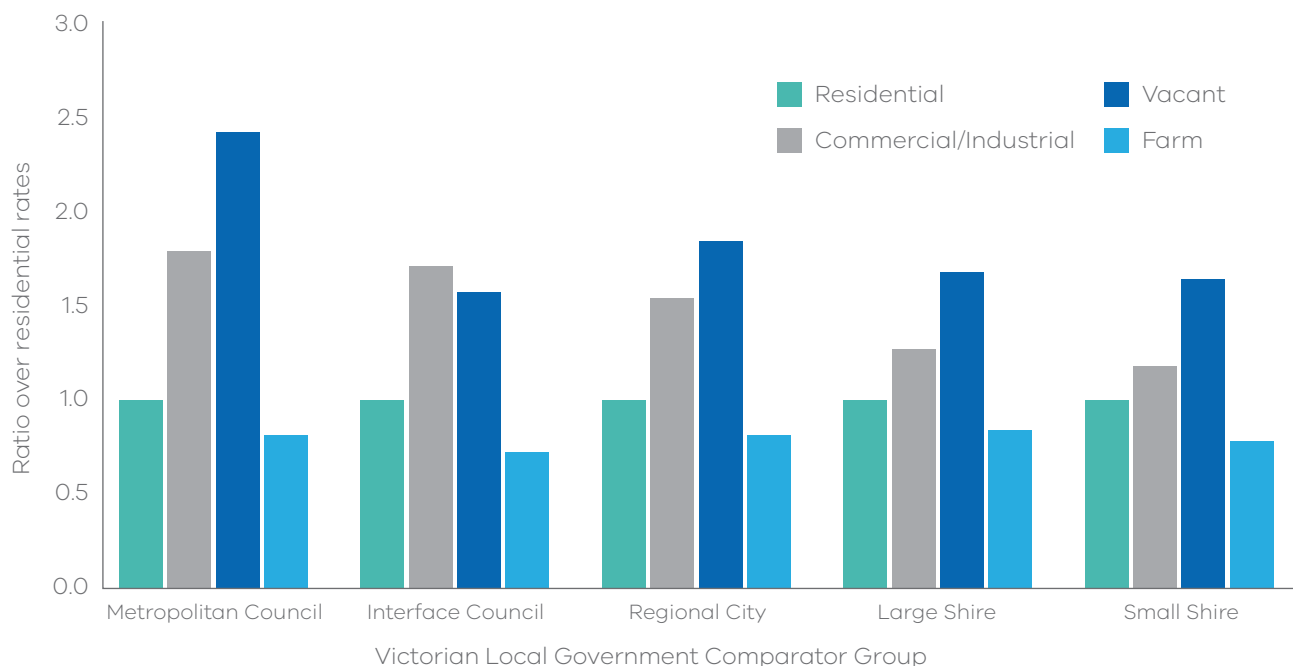


Chart 18 shows council cohorts and their use of four of the most common differential rate categories. The average ratio (left-hand scale) shows the variation from the 'residential' rate (set at '1'). Farm land is on average subject to lower rates in all the cohorts, while commercial/industrial land and vacant land are on average subject to higher rates. While average rates may not represent all individual situations, at a broad level they can be indicative of council decisions and practices over time.

Differences between the highest and lowest rate in the dollar within councils appear idiosyncratic.

In 2019-20, two adjoining rural shires in the western regions of Victoria levied differential rates on “urban vacant land” and “residential land” at 2.2 and 1.6 times that of farmland respectively, with a third adjoining council adopting a uniform rate. Across the 24 regional shires, the ratio of highest to lowest differential rates varied from 2:1 to 4:1 (see Chart 19).

Chart 19 – Differential rating ratios – lowest to highest – rural and regional councils

Ratio	# Councils
<2.0	8
2.0 – 2.9	13
3.0 – 3.9	1
4.0	2

Some rates are applied to very few or specific properties.

Currently 31 councils apply a total of 56 differential rates which apply to fewer than 100 occupancies. Of these there are 25 rates that apply to fewer than 20 occupancies each.

Examples of highly targeted differential rates in three councils are “Petroleum Production Land” that applies to one assessment, a differential rate for farms that covers five assessments, and a differential rate for “residential development” that applies to nine assessments.

There is variability in the way that councils determine the differential rates.

Some councils advised that they ensure that certain percentages of general rate revenue are collected from particular categories of properties and adjust differential rates annually to ensure that this percentage is maintained. For instance, a council may determine that 30% of their rate base should be collected from commercial occupancies and 70% from all others.

The practice of ensuring that a certain percentage of the revenue is collected from particular categories of properties weakens the relationship between property valuations and rates payable for all ratepayers. It may have quite different impacts at the individual property level because, while the values in property categories may move in an average direction in a given year, valuation movements can be highly variable at the individual assessment level and average movements cannot be assumed to uniformly apply across a property category or municipality.

Changes in differentials applied to broad categories can have a variable impact on individual assessments.

The data on differential rate ratios over the past 7 years shows that councils often make annual adjustments to rates that affect ratios, especially between categories such as farms and commercial and industrial assessments (see Appendix One for the past 7 years of data). This practice is often done to compensate for valuation movements of these property categories.

Charts 5 to 8 show how many occupancies are affected by valuation variances between +/-20% within rural and commercial categories in a selection of councils. Industrial and residential property movements are included for context. Many of these councils all applied a differential rate to these broad categories of land in 2019-20. It indicates the breadth of assessments that can be affected by council decisions regarding differential rates.

For example, if a property's value is reduced by 20 per cent following a revaluation but the municipality sees an average of seven per cent increase in value across the property category as a whole, the alteration of differential rates may see the individual property experience the effect of a reduction in rates owing to both the change in valuation and the decision by a council to change the differential rate. The same effect can occur to increase rates.

Therefore, a council decision to make a relative adjustment to a differential rate (e.g. increasing the ratio of the farm land differential rate to residential land differential rate) on a broad category will have very different effects on individual properties within the category owing to the disparate movements in values.

Differential rates tend to become "locked in".

Although in theory a council reviews its differential rates every year in the context of their budget, the Panel was informed that once differential rates are introduced on particular land categories, it is very difficult for councils to remove them in subsequent years without political resistance. Some councils also indicated that their differential rate categories had been in place since the amalgamation of councils in the early 1990s. There is also a legislative consideration for councils to ensure stability in rates which may also limit the extent to which their application is more fully reviewed in the context of changing community needs.

The 2013 Ministerial Guidelines for differential rating have not improved the application of differential rates.

Council participants of the consultation process agreed that the existing guidelines for the application of differential rates are not helpful to them. The Guidelines indicate uses for which differential rates are considered appropriate or require consideration and uses for which they are not appropriate. The Minister may exercise his/her power to prohibit a rate only when it is being used in a manner that is "not appropriate."⁴⁴ For example, the Guidelines state that a council must "give consideration" to a differential rate for farm land and retirement village land, however do not specify that a council must apply this differential or what actions constitute "consideration".

Since 2013, the Minister has exercised the power to prohibit a rate on one occasion to prevent differential rates being applied to electronic gaming machine venues. However there appears no clear mechanism for monitoring or accountability for non-compliance. As described above, highly specific rates continue to be levied by councils, seemingly contradictory with the intentions of the guidelines that such rates be considered with caution.

Most rural and regional councils apply differential rates to farm land.

In rural and regional Victoria there are long standing council applications of differential rates to reduce the rates of farmland relative to other property types. In these communities, discussion with the Panel about differential rates and their application on farmland was directly connected to other issues regarding council expenditure, governance and the relationship between rates paid and perceived access and use of services.

The submission from the Victorian Farmers Federation (VFF) argues that, since the average rates paid for farmland amount to a larger dollar amount than that paid for residential land and other commercial land, the application of a differential rate should be compulsory for all farmland on the grounds of equity and capacity to pay. The VFF claims there is no direct relationship between the value of the land and the capacity of the owner to pay that larger sum and that, generally, the occupants of farm properties use few council services.

⁴⁴ The power to prohibit is in S.161(4) of the Act. It specifically allows the Minister to prohibit a council (through an Order in Council from the Governor in Council) from declaring a rate if the Minister considers the rate inconsistent with the Guidelines. These specific rates are: electronic gaming machine venues or casinos; liquor licensed venues or liquor outlet premises; business premises defined whole or in part by hours of trade; fast food franchises or premises; tree plantations in the farming and rural activity zones; and land within the Urban Growth Zone without an approved Precinct Structure Plan in place.

The VFF did not specify an exact amount of relative discount that should be applied, nor did it specify what types of farms should be considered eligible.

The Commonwealth Department of Agriculture (DoA) conducted surveys for 2016-17 and 2017-18 into different farm business costs, including rates. Chart 20 below shows the average amount paid in rates by different farm business types, and Chart 21 shows local government rates as a percentage of the total cash costs of the same farm business types. Both charts use the Victorian data set from the DoA surveys.⁴⁵

Chart 20 – Average rates payable by farm type – Victoria

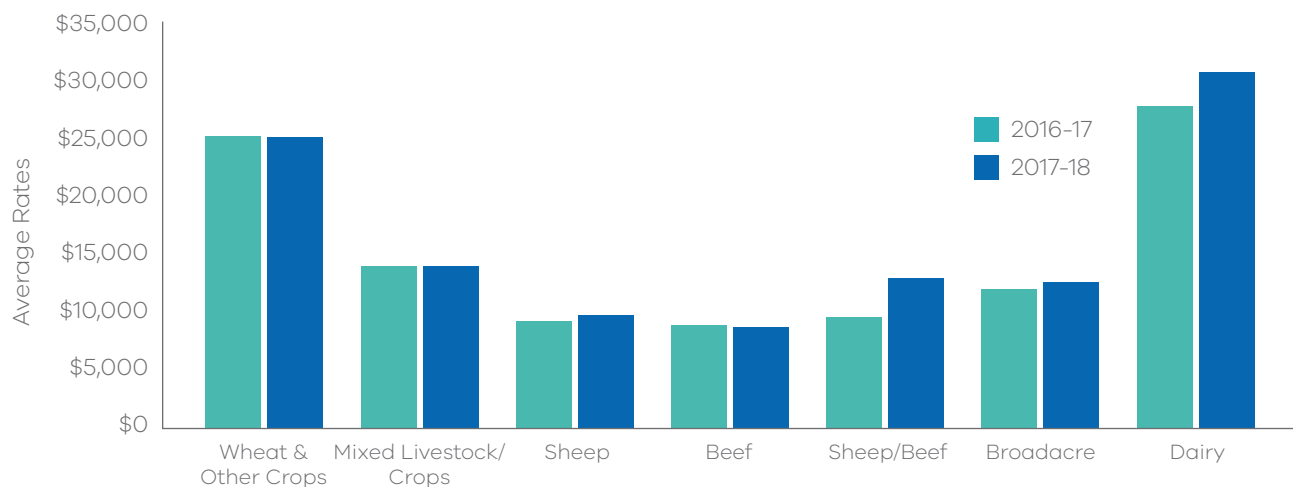
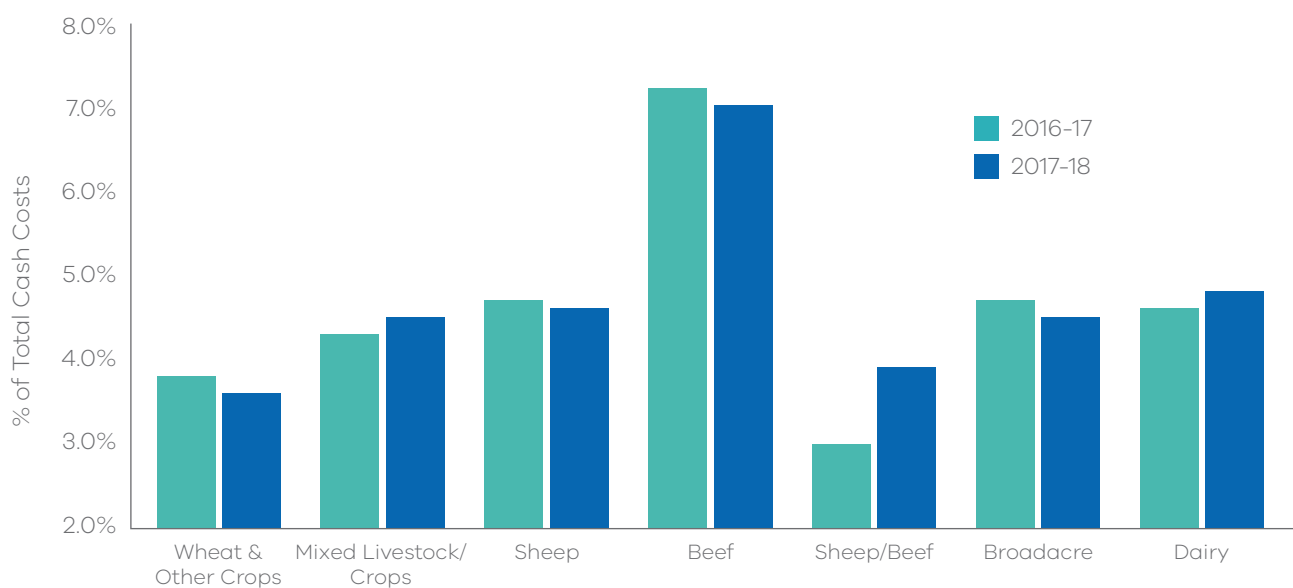


Chart 21 – Rates as a percentage of total cash costs – Victorian farming businesses



⁴⁵ See <https://www.agriculture.gov.au/abares/research-topics/surveys/farm-survey-data>. The data from 2016/17 and 2017/18 are the only years that are available.

Charts 20 and 21 demonstrate that differential rates applied to a broad category of “farm land” may have a wide range of consequences depending on the type of farm business in a municipality.

These impacts can be further complicated where councils have multiple farm rates for different types of farms. In 2019-20 four councils applied multiple differential rates to farms. The rates are distinguished by land size, whether the farm is in a growth area or the farmland is irrigated or non-irrigated.

On average, rates for commercial and industrial assessments are either similar to or higher than farm assessments.

Charts 22-24 show average rates payable where councils have used differential rates for farming, commercial and industrial occupancies over the past four financial years.

Chart 22 – Average rates per farm assessment 2016/17 – 2019/20

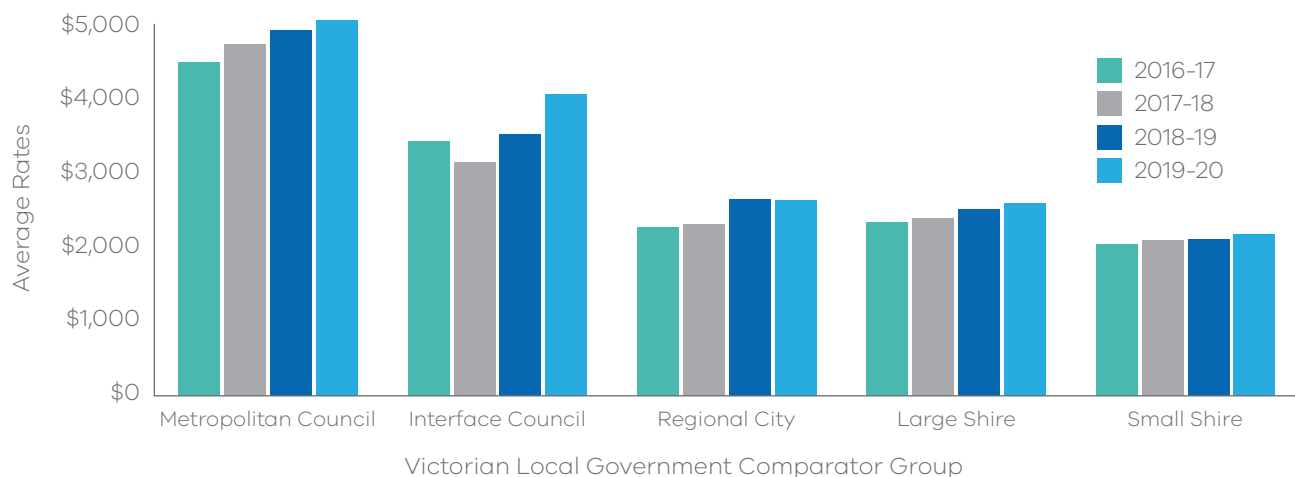


Chart 23 – Average rates per commercial assessment 2016/17 – 2019/20



Chart 24 – Average rates per industrial assessment 2016/17 – 2019/20



In metropolitan areas, the ratio differences between lowest and highest are more pronounced. In other areas, the highest rates are most often applied to “vacant”, “derelict”, “commercial” or “industrial” land and the lowest rates are most often applied to farmland, residential land and retirement village land. The average ratio of differential rates levied within metropolitan councils is 2.9, varying between a multiplier of 1.1 and 4.0. Only two councils currently levy rates on some assessments at the limit allowed by the Act. (i.e. four times that of the lowest in the same municipality).

There is variation in “rating effort” for different business types across different council types.

The Victorian Government’s Know Your Council website allows users to access consistent information regarding the performance of Victorian councils. One of the financial measures described on the website is councils’ rating effort, which is rate revenue as a proportion of property values⁴⁶ in a municipality.

How councils treat different property sectors can be compared by calculating the rating effort of each property sector for the five Victorian Local Government Comparator Groups (VLGCGs) as shown below in Chart 25.⁴⁷ These figures show that councils apply a higher rating effort to commercial and industrial occupancies than to farm occupancies.

Chart 25 – Rating effort by sector and VLGCG 2019-20

	Farm		Commercial		Industrial	
	2013-14	2019-20	2013-14	2019-20	2013-14	2019-20
Small Shire	0.40%	0.36%	0.61%	0.52%	0.64%	0.53%
Large Shire	0.33%	0.32%	0.51%	0.50%	0.50%	0.50%
Regional City	0.32%	0.35%	0.68%	0.56%	0.68%	0.57%
Interface Council	0.23%	0.19%	0.47%	0.39%	0.47%	0.39%
Metropolitan Council	0.20%	0.16%	0.39%	0.38%	0.43%	0.39%

46 Figures taken from councils with differential rating categories only.

47 The rates data for Whittlesea City Council has been omitted due to their use of NAV which would skew this data significantly.

Rating effort acts as an indicator of how much in rates a council is collecting from different categories of occupancies. The properties used for non-farm businesses are being rated higher, on average, than farming businesses across all types of councils. Although the reason for such a distinction between farming businesses and all other businesses is unclear, it appears consistent with attempts to address concerns about the capacity to pay or the access to services of farmers.

In regional cities average rates are consistently higher over time for commercial and industrial occupancies than farms. This is inconsistent with claims that farms pay higher rates than other businesses in these areas. Chart 25 shows that the rating effort of commercial occupancies is higher than farming occupancies when assessing the "rating effort".

9.2.4 Conclusions

The use of differential rates is popular with councils and some members of the community.

Differential rates provide councils a degree of flexibility to raise revenue and also an apparent means to address particular local issues. However, it appears that there is lack of clarity about why councils use them, whether they are the right tool to achieve the intended policy objective and whether the intended policy objective is really the role of the council.

Application of differential rates to broad categories of property can produce inequitable outcomes within and across categories.

Addressing capacity to pay concerns and differing use of services are commonly stated objectives by councils for applying differential rates. Yet, to make informed decisions about capacity of ratepayers to pay rates and their use of council services, councils would need to have knowledge of their personal financial information and a record of services they have used. This is not information that a council can easily acquire, if at all.

Applying differential rates to broad categories of property without this individual ratepayer level of evidence is problematic in relation to ensuring equity. Capacity to pay would likely vary significantly across or within categories of ratepayers, including business categories such as commercial and industrial which commonly attract high Differential rates due to perceived higher capacity to pay.

Using category averages of income or turnover compared to rates paid to inform decisions can also be misleading. More specific data on smaller cohorts of ratepayers are needed to be confident that differential rates are not causing more problems than they are solving.

In other words, attempts by councils to improve equity by using differential rates to compensate for higher total amounts in rates on large land holdings such as farms, large movements in valuation or perceived higher capacity to pay by ratepayers, may lead to inequitable outcomes.

More targeted rating tools such as special rates and charges, rebates, waivers, deferral of rates or financial hardship arrangements, while incurring higher administrative costs and requiring more intrusive processes to ascertain the assistance required, are likely to be more appropriate to address capacity to pay or special benefit situations. These methods may be less attractive to councils as they have a direct impact on revenue rather than redistributing rates among ratepayer cohorts. However, they allow for more accurate targeting of ratepayers in real need without impacting others. The 2018 introduction of annualised general revaluations may also potentially assist by beginning to smooth valuation volatility.

Use of differential rates seem to be used where some ratepayers perceive less value for their rates.

The view that "disproportionate" rates levied on some ratepayers justifies a low differential rate in the dollar, appears to be based in a belief that rates are a fee for service and that the amount paid by each ratepayer should roughly equate to his or her perceived service consumption; a value for money perspective. This is inconsistent with the fundamental principle that rates are best treated as a tax, not a fee for service.

Decisions about differential rates lack evidence and rigour.

It appears that most councils do not obtain the evidence to fully understand the actual capacity to pay of individual ratepayers or categories of ratepayers to more fully understand impacts on equity when they make decisions about differential rates. Evidence rather than assumptions about these impacts will improve council decisions in relation to the use of differential rates and reduce unintended impacts on equity and fairness of the system.

There is insufficient public information and engagement in decisions about differential rates.

There is no current obligation on a council to disclose the range of differential rates applied, or their specific rates in the dollar, on a ratepayer's notice. Ratepayers must examine the council's annual budget document to understand how a differential rate is applied to their property relative to others in the same municipality.

There is limited justification in council documents such as rating strategies and budget documents for differential rates.

There is a lack of information about the objectives, related evidence, arguments for and evaluation of differential rates. Current rating strategies generally do not demonstrate the use of income data or present other facts that could inform decisions. It would be expected that if a capacity to pay rationale was made by a council to justify a differential rate then some evidence on ratepayers' capacity to pay would be provided to support that rationale.

Improved transparency about the objectives for differential rates, evidence that such rates are likely to achieve the objectives, and information on the impact of the intended rates on the rest of the community would assist in engaging communities in debate and discussion on their application.

There is little evidence that differential rates are systematically reviewed to ensure their continued use is appropriate to the circumstances of the community.

Although some council participants advised that they regularly review differential rates, it would appear that such reviews are not commonplace outside of the formal annual budget process. The data suggests that the land categories for differential rates have remained mostly stable while the ratios between the differentials are often adjusted. Given the fact that there is political resistance to change and a legislative requirement to ensure stability of rates in the absence of any requirement for rigorous evidence and review of a differential rate, it is not surprising that differential rates tend to endure.

Rates are generally an inefficient tool to pursue policy objectives.

The Panel has determined that a key attribute of an effective rates system is that councils use rates to generate revenue and not to pursue policy objectives that are more efficiently pursued using other policy instruments or by other tiers of government (see Chapter 7).

Rates make up only 3 per cent of the taxes⁴⁸ raised in Australia and therefore have a relatively insignificant impact on wealth redistribution and financial welfare which is generally the role of Commonwealth and State Governments. Furthermore, it could be argued that other tools are more suitable to address impacts of valuation movements. For example, it may be more appropriate for a council to design a rebate scheme or offer a deferment arrangement for such circumstances, both of which can be targeted precisely to the individual ratepayer.

48 Including federal, state and local taxes.

Councils find the Ministerial Guidelines for differential rating to be unhelpful in applying differential rates.

Given the findings discussed above, it is clear that most councils have not adopted the best practice approaches outlined in the 2013 Ministerial Guidelines for differential rating. In fact, many council participants of the consultation process advised that they are unhelpful.

The status of the document as “guidelines” is problematic in that its contents are aimed at restricting councils from applying a differential rate for electronic gaming machines and several other specific uses, when S.161(2) of the Act otherwise permits councils to do so.⁴⁹

9.2.5 Summary

It is important to improve practices relating to the application of differential rates through evidence-based decisions, transparency, regular review and evaluation and accountability for best practice across the sector. Existing legislated limitations should continue to apply to differential rating. The recommendations that follow provide a framework for improving practice and accountability across the sector.

9.2.6 Recommendations

Recommendation 8: Retain the existing provisions under the Act for councils using Capital Improved Value as their rating base, to apply differential rates and for councils using Net Annual Value as their rate base, to apply limited differential rates only.

Recommendation 9: Retain the current limitation in the Act that the highest differential rate be no more than four times the lowest differential rate in a municipal district.

Recommendation 10: Replace the existing Ministerial guidelines on differential rating with a legislated requirement for councils to comply with regulations as proposed in Recommendation 2 of this report.

Recommendation 11: That the regulations proposed in Recommendation 2 should outline the steps to be taken when determining differential rates. These steps should include:

- Stating the objectives of the differential rates.
- Assessing the appropriateness of a differential rate against the range of other tools available to councils to meet the stated objectives.
- Collection and analysis of data and evidence in relation to the impacts on all land types of setting the differential rates.
- Assessment of the proposed rates against the principles underpinning effective rates systems which are outlined in Chapter 7 of this report.
- Assessing the proposed rates against the council’s strategic plan and strategic priorities of the council.
- Providing information to communities on the outcomes of steps 1-5 above in a public rating strategy document and in the budget papers.
- Meaningfully engaging communities in rates decisions.
- Regularly reviewing and auditing differential rates against the proposed regulations and reporting on these.

⁴⁹ The 2013 Ministerial Guidelines for Differential Rating state that it is not appropriate to apply a differential rate on: electronic gaming machine venues or casinos; liquor licensed venues or liquor outlet premises; business premises defined whole or in part by hours of trade; fast food franchises or premises; tree plantations in the farming and rural activity zones; and land within the Urban Growth Zone without an approved Precinct Structure Plan in place.

Recommendation 12: That the Victorian Government investigate community views in relation to a requirement that annual rate notices must display the range of differential rates applied by council along with the rate applied to the assessment on the rate notice. This should be undertaken as part of the action required to implement Recommendation 45.

Recommendation 13: Appoint a suitably qualified and experienced authority to monitor and report publicly to the Minister on the compliance of councils' rating strategies with the regulations.

Recommendation 14: Ensure that local councils continuously improve appropriate application of differential rates and receive training to support them in meeting this goal.

9.3 Municipal Charges

9.3.1 Background

The provision for a municipal charge within the Act allows a council to raise up to 20 per cent of the general rate revenue by levying a fixed amount on all properties in the municipality to cover some of the administrative costs of council. This provision was included in the 1989 Act, replacing the "minimum rate" which had been in place since the 19th century. This mechanism allowed councils to levy a minimum amount payable by all properties in a municipality.

The Single Farming Enterprise (SFE) Exemption allows a farming business to be exempted from multiple municipal charges if the farming business (enterprise) operates across multiple properties.⁵⁰ The properties need not be adjoining to qualify for the exemption. The provision was added into the Act in the *Local Government (General Amendment) Act 1993* and aligned the municipal charge provisions with the arrangements for the then State Deficit Levy applied from 1992 to 1995. Although the levy was repealed over 20 years ago, the single farming enterprise exemption has remained and is available to farming businesses on application. It was also adopted for the State Fire Services Property Levy in 2012.

9.3.2 Issues for Consideration

There are mixed views about the fairness of the municipal charge.

Several rural and regional council participants and farmers expressed support for an increase in the allowable limit for a municipal charge from 20 per cent to 50 per cent of rates revenue. Such an increase in the limit was seen as reducing rates on higher value assessments. A contrasting view was expressed by other councils, with some describing it as a 'granny tax' due to its higher impact on the owners of lower valued residential properties. The concept of all properties making a contribution toward municipal rates through a fixed amount was generally supported by council and community participants of the consultation process in rural areas.

Some council participants advised that their council's use of the municipal charge is mainly to offset the effect of *ad valorem* rating on higher valued property such as large farms.

The current legislation lacks guidance about what costs may be recovered through a municipal charge.

Many participants pointed out that the current legislation is unclear and lacking guidance about the purpose of a municipal charge and what costs should be covered. As a result, council documents do not generally clarify costs to be covered or their calculation methods for the municipal rate.

⁵⁰ S.159(3) of the Act

9.3.3 Evidence and Analysis

Of the councils applying a municipal charge, most are rural.

A municipal charge averaging \$194.65 per property was levied in 2019-2020 by 39 councils. Of these, 31 of the councils are rural and regional. The municipal charges levied ranged from \$20 (Maribyrnong City Council) to \$348.24 (Moirā Shire Council). The councils of Mitchell, Murrindindi, Indigo and Towong set \$300 or more.

The method councils use to determine the charge is unclear but generally the charge is low.

While several councils appear to have adjusted their municipal charge by CPI (or the rate cap) in recent years, others have not, maintaining the same charge over several years. Although a council is limited to raising no more than 20 per cent of the general rate revenue with a municipal charge, the average amount raised by the councils that used it was 10.37 per cent in 2019-20.

The use of the municipal charge is declining.

Six councils have ceased applying the charge since 2013-14. Although the effect of the different levels of charge applied could be quite different across the State, it is not evident that detailed modelling of the impact has been undertaken by councils and presented to their ratepayers.

The impact of a fixed charge can be significant on the rates of low valued properties particularly when differential rates are applied to the ad valorem component.

A rationale for the repeal of the minimum rate requirement in 1989 was related to the fact that some rural and regional councils were increasing the charge to a point where the impact on low valued properties was significant⁵¹. Appendix Two provides an example of a hypothetical Victorian council's rate base and shows how the addition of a municipal charge affects the allocation of rates when differential rates are also in use along with the impact on lower valued properties.

The SFE exemption provides a reduction in rates for farming businesses.

All things being equal, the single farm enterprise exemption provides a reduction in rates for farming businesses operating across multiple titles, when a municipal charge is declared by the councils in which their land is located. There are equity implications of this mechanism.

9.3.4 Conclusions

There is insufficient transparency about what costs are being covered by the municipal charge and how it is calculated.

The Act does not make clear what costs are appropriate to be covered by the municipal charge, nor is it generally possible to determine exactly what the administrative costs of various services are in growing and developing service portfolios.

The decision to apply the municipal charge affects all ratepayers. Its impact on all ratepayers should be considered carefully and its purpose and impact should be transparent to them. There is no process by which to monitor or enforce compliance with the legislation. Unless it is actually tagged to a particular municipal cost, it should be named for what it is; a fixed component of rates. Its purpose and justification should be transparent and included in rating strategies and budget documents.

51 See Victorian Parliamentary Debates, Legislative Council, Thursday 21 November 1991, p.1553-56.

The single farming enterprise exemption is inconsistent with horizontal equity.

The single farming enterprise exemption is a highly specific arrangement which is inconsistent with the principles underpinning an optimal rates system. In particular, the exemption for one type of business enterprise (farming) does not appear to address the principle of horizontal equity when considering all enterprises. There are other businesses (and residential uses) that can operate across multiple titles, but the current legislation features an exemption for farming enterprises only. If the exemption is retained in the Act, for consistency of application, all occupancies operating across multiple titles within a municipality should be entitled to this exemption.

If the municipal charge is intended as a minimum contribution to a minimum level of service for every property, exempting some properties is not equitable or fair in the absence of any community benefit in return.

The municipal charge shifts the rate burden from higher-value properties to lower-value properties (i.e. it is regressive).

Although it is true that the municipal charge is regressive, as long as there is a substantial ad valorem component of the total rates, the system will still be consistent with the principal of vertical equity. The question of whether municipal charges are 'fair' is unavoidably a subjective judgement and, therefore, it is a political judgement to be made by the council as the representatives of the community. However, it is important to ensure that council processes for deciding whether to apply a municipal charge are transparent to the community it is representing and are based on effective engagement with the community.

There is a case for a fixed component in the rating of properties.

Councils incur significant fixed costs in the delivery of services to their communities. Fixed charges are a normal part of pricing structures in non-competitive, essential service sectors. These sectors are usually subject to price regulation. The pricing rules allow service providers to set fixed charges that reflect their fixed costs. The rules limit a service provider's discretion by requiring that the total revenue collected from fixed charges cannot exceed the total fixed costs incurred by the business (but it can be less).

Whether it is fairer to recover fixed costs through a fixed charge or whether they are fully or partly recovered through a variable charge levied on property values, is a decision best left to councils (in consultation with their communities). No compelling arguments were presented to the Panel for lowering or raising the 20 per cent limit currently restricting councils' discretion when setting the fixed municipal charge.

9.3.5 Recommendations

Recommendation 15: That the municipal charge be replaced by an optional 'fixed charge' without a legislative reference to a council's administrative costs.

Recommendation 16: That the maximum amount that may be raised in general rates by way of a fixed charge remain at 20 per cent.

Recommendation 17: That the Single Farming Enterprise Exemption from the municipal charge be reconsidered against the principle of horizontal equity across all enterprises.

There are a variety of ways for councils to reduce rates on a property. The current legislation provides for the use of waivers, rebates, concessions and deferrals. In addition, the legislation specifies some properties as being exempt from rates. Each of these have different application processes and effects on council revenue.

An exemption from rates which is specified in legislation is known as a statutory exemption (s.154). A property that is exempt is excluded from the rating base (all rateable properties) in the municipality and therefore is not included in any calculation of rates apportionment or any other considerations, such as the rate cap calculation. Councils must therefore raise their revenue from general rates from fewer rateable properties.

Rebates and concessions (s.169) are a repayment to a property owner of part or all of the rates they owe. The criteria for rebates and concessions include the preservation or restoration of certain types of building, and to support development of the municipal district (or part of the district). In all cases rebates and concessions must provide a benefit to the community as a whole. The granting of a rebate or concession does forgo revenue. The Victorian Government also provides funds to reimburse councils in providing a rate reduction to eligible pensioners, which is effectively applied as a “waiver” and detailed under s.171 (see below).

A deferral (s.170) is an agreement by the council and the ratepayer to delay the whole or partial payment of rates for a period after its due date. The Act allows for interest to be charged on the debt. The deferral agreement can be for a defined period or ongoing. When agreeing to a deferral, the council does not relinquish its claim on the rates owed, which remain a charge on the property and will accumulate until paid.

A waiver (s.171, 171A) is a decision by a council to relinquish its claim (in part or full) on the rate debt owed by a ratepayer, resulting in foregone revenue. Waivers can also be provided to support property owners in financial hardship.

10.1 Statutory Rate Exemptions

10.1.1 Background

All land is considered rateable in Victoria, except where specified as exempt in the Act. Chart 26 lists the types of entities and properties currently subject to an exemption from rates in Victoria through statute. Generally, exemption criteria relate to the ownership and/or the use of the land.

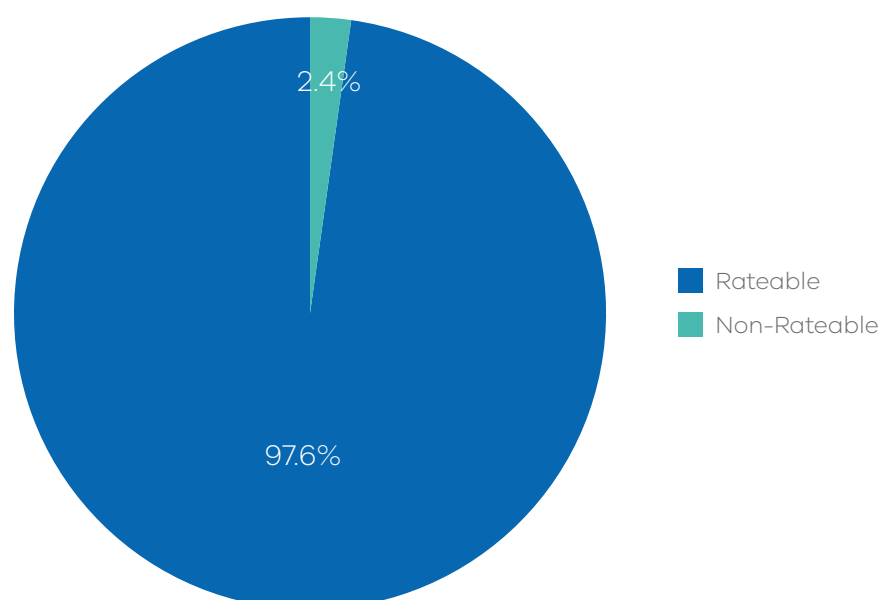
Chart 26 – Statutory rate exemptions

Type of land or use	Reference to legislation in LGA 1989	Examples
Unoccupied Crown (State) land, or council land used exclusively for public or municipal purposes	S.154(2)(a) and (b)(i) and (ii)	State forests and state parks, council owned properties, public cemeteries, government owned buildings and facilities, water corporations, public schools, public hospitals and health services
Crown land leased to a rail transport operator	S.154(3A)(a) and (b)	Passenger transport operators, rail freight operators

Type of land or use	Reference to legislation in LGA 1989	Examples
Exclusively charitable	S.154(2)(c)	Churches and church owned properties, schools (independent and religious but not including government schools), universities, other education providers, community health care services, community halls (i.e. scout halls) and facilities, community camps, employment and disability services, many not-for-profit organisations
Residences of ministers of religion and education and training of ministers of religion	S.154(2)(d)	Residence of a minister, a manse
Mines	S. 154(2)(e)	Land where a mining tenement is in place
Returned Services League (RSL) clubs	S.154(2)(f)	Returned Service League clubs and sub-branches. This includes halls, meeting rooms and other uses operated by the club, including entertainment and hospitality services.

Chart 27 – Portion of non-rateable land in Victoria

Rateable vs Non-Rateable Land in Victoria by CIV - 2019/20
(excludes Government Land)



Source: Victorian Valuer-General

Chart 27 estimates the percentage of land in Victoria (by value) that is non-rateable and therefore excluded from the rateable land base. This does not include exempt Crown or council owned land.

The data is sourced from the Victorian Valuer-General and is estimated from the category of non-rateable land subject to the Victorian Government's Fire Services Property Levy.⁵²

⁵² The data set of non-rateable land that is subject to the FSPL is the most accurate available proxy for rate exempt properties in Victoria apart from the individual council rate database records that the Review did not have access to.

10.1.2 Issues for Consideration

There are concerns about the ongoing relevance and increasing number of statutory exemptions.

It was generally felt that the existing provisions enable exemption for land use that would not widely be considered charitable, based on ownership of land by a not-for-profit (NFP) entity.

Some council staff felt that as a result of the breadth of existing exemption criteria, exempt land is growing and that this has had an impact on the rating base.

Council participants were confused about the basis for a charitable exemption.

Under legislation, exemptions must be applied to properties which are for “exclusively charitable use.” However, this term is difficult to apply in the context of many of the contemporary activities of charities.

Commercial activities at Returned Services League (RSL) Clubs were of concern

Many of the participants and submitters regard some RSL activities as potentially harmful to communities (in particular, the use of electronic gaming machines). They also compete with local hospitality businesses which do pay rates.

The RSL Victoria submission drew the Panel’s attention to a 2001 decision of the Supreme Court of Australia that RSLs and all sub-branches (including those that offer gaming activities) are exempt from paying rates in accordance with the Act and that without the rates exemption, the welfare work of the RSL would be seriously affected.⁵³

The exemption for mining land was questioned or opposed by many people.

It is unclear to participants in the public forums, why a for-profit enterprise which sometimes had detrimental consequences to council roads and infrastructure should be subsidised by local ratepayers.

The Mineral Council of Australia submitted that in the normal course of mining activity, mining companies are often not the owners of the land. They claim that where they do own land, rates are paid and where they lease the land from a private owner the rates are paid by the landowners.

The submission also noted that the policy rationale for the exemption is the recognition that minerals are owned by the Crown, not the mining license holder, that mining does not use many council services and that many mining companies make considerable contributions to and provide employment for their local communities.

Exemptions for commercial-style activities were questioned by many people.

Consultation participants generally agreed that even where the property owner was classified as a not-for-profit property owner, rates exemptions should not apply to income-producing activities that compete with the activities of for-profit businesses. This included exemptions for universities which compete to provide accommodation and private education, private training providers, private schools, and aged and health care providers which compete with for-profit providers.

53 The case referred to is *RSL v Latrobe Shire Council* [2001] VSCA 122 <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSCA/2001/122.html>. The case found that the exemption provided to Returned Service League clubs and sub-branches extended to all their activities on land.

There were mixed views on whether the responsibility for determining and administering exemptions should rest with councils.

A small number of council attendees felt that exemptions were “political” and invited lobbying by ratepayers, while the community perceived a lack of transparency in council decision making. These discussions highlighted the circumstances where exemption criteria are set out in statute but applied and administered by 79 different entities. Differences in interpretation can emerge in this context and public confusion can result.

Community housing providers advocated for rate exemptions for publicly owned and not-for-profit community housing providers.

Submissions from several community housing providers cited their Federal charitable status and argued that community housing providers (including those which provide services to poor or vulnerable groups, as well as Aboriginal housing associations) should be exempt from having to pay rates.

The Victorian Department of Health and Human Services (DHHS) paid \$116 million in rates in 2018. Submitters argued that the DHHS should also be exempt and that these funds would be better spent on addressing homelessness through the provision of more affordable housing.

10.1.3 Evidence and Analysis

The proportion of rate exempt land varies across councils.

Rate-exempt land (excluding state or crown land) is estimated at 2.4 per cent of the total land value in Victoria. However, the available evidence suggests that this proportion can vary at individual council level from 12.2 per cent in Towong to 0.5 per cent in Colac-Otway (see Chart 28 below).

To better understand the effect of exemptions on councils’ rate bases, rates payable on non-rateable land were estimated using 2019-20 data for non-rateable land subject to the Victorian Government’s Fire Services Property Levy. This data was considered a reasonable proxy for rate-exempt land because it includes most of the land that is currently rate exempt under S.154(2) but excludes state owned or crown land.

The lowest rate in each municipality in 2019-20 was applied to determine a conservative estimate of the amount of rates that otherwise may have been collected from these properties. This estimate should not be treated as potential additional rates revenue since an exemption results in redistribution of rates rather than a loss of revenue. The estimate simply enables a comparison with rates on rateable properties and may assist in understanding the impact of exemptions and its variation between councils.

Chart 28 – Percentage of non-rateable land by Council⁵⁴

Council	% Non-Rateable (based on values of non-rateable land that is subject to the Fire Services Property Levy)	Estimate of Rates “reallocated”
Benalla	1.8%	\$275,270
Colac Otway	0.5%	\$234,137
East Gippsland	2.1%	\$1,304,159
Greater Geelong	1.7%	\$6,871,965
Greater Shepparton	4.2%	\$5,112,788
Hindmarsh	11%	\$84,389
Horsham	1.5%	\$353,270
Hume	1.1%	\$1,927,769
Kingston	1.3%	\$1,618,007
Maribyrnong	2.0%	\$1,894,243
Melbourne	5.2%	\$16,400,625
Mornington Peninsula	0.9%	\$1,433,273
Nillumbik	1.1%	\$728,968
South Gippsland	0.9%	\$437,725
Surf Coast	0.8%	\$640,812
Swan Hill	2.4%	\$880,511
Towong	12.2%	\$912,614

Source: Victorian Valuer-General, 2019 revaluations

Legislation relating to Victorian Government tax exemptions does not explicitly define the term “charitable”.

The Victorian State Revenue Office (SRO) applies charitable exemptions using the four heads of charity from common law. These were derived from *Commissioners for Special Purposes of Income Tax v Pemsel* (1891-1894) in the UK (the ‘Pemsel’ case). This 19th century judgement set out a definition of charity which has been used ever since, with a large body of case law referring to it in Australia and other countries. Under Pemsel, charitable purposes include:

- The relief of poverty;
- The advancement of education;
- The advancement of religion; and
- Other purposes beneficial to the community not falling under any of the preceding heads.

⁵⁴ The Panel was only able to access data on exempt land value that provides a close approximation. This is drawn from the Victorian Valuer-General’s data on land that is not rateable but subject to the Victorian Government’s Fire Services Property Levy (FSPL). The data on exempt land values does not account for unincorporated land such as ski resorts in the Victorian Alps and French Island which are included in council totals in the dataset. This is why the figures for Alpine, Mansfield Murrindindi and Bass Coast Shire Councils are significantly higher than other councils and not included here. The figure for Towong Shire Council (12.2%) is also higher than other councils, however it is not clear from this data set as to the makeup of this exempt land, other than it being non-rateable but subject to the FSPL.

Exemptions from Victorian taxes are predominantly tied to charitable purposes which draw on the four heads of charity for interpretation.

A brief summary of charitable exemptions under selected Victorian taxes is provided below:

- Payroll tax: Under the Payroll Tax Act 2007, wages are exempt where paid by a religious institution/public benevolent institution/non-profit whose dominant purpose is charitable/benevolent/philanthropic/patriotic, (excluding government schools/educational institutions). Some additional guidance on interpreting the exemption is provided through a 2012 State Revenue Office Payroll Tax Bulletin on commercial activities considered “directly” related to the charitable purposes of an organisation, for which wages would be exempt.
- Land tax: Land (or a part of land) is exempt if owned/used by a charitable organisation and used exclusively for charitable purposes. However, land used by a charitable organisation for commercial purposes is not exempt.
- Land transfer duty: Exemptions are provided for transfers of land to a corporation, body or person established for a charitable purpose, or for a declaration of trust to be held on trust for a charitable purpose. “Charitable” is defined under the four heads of charity. The exemption also requires that the eligible entity does not exist for profitable purposes.
- Motor vehicle duties: Exemptions are only provided for registration/transfers of vehicles in the name of a charitable institution used to convey incapacitated persons.

Although the SRO provides some detail about how they interpret Victorian tax exemptions, there is still an element of case-by-case decision making required. As a consequence, the SRO issues private rulings regarding a number of exemptions each year.

Rate exemptions in other Commonwealth jurisdictions and New Zealand are based on varying criteria.

Legislated rate exemptions in other Australian states and territories (and New Zealand) also contain criteria for exemptions which vary between type of land use, form of occupancy or ownership. For simplicity, the following table collates exemptions granted into general categories.

Chart 29 – Key rate exemptions provided by Australian States and New Zealand

	Govt. Land	Charitable Use*	Religion**	Indigenous Land	Transport [^]	Conservation	Mining
VIC	✓	✓	✓		✓		✓
NSW	✓	✓	✓	✓	✓	✓	✓
ACT	✓	✓	✓	✓			
QLD	✓	✓	✓	✓	✓		
NT	✓	✓	✓	✓	✓		
WA	✓	✓	✓				
SA	✓						✓
TAS	✓	✓		✓		✓	
NZ	✓	✓	✓	✓	✓	✓	

* Victorian legislation also separately exempts ex-servicemen (RSL) clubs, however other states and territories do not list them separately from other charitable institutions.

** Where properties used for a religious purpose are listed as a separate exemption

[^] Public land used for transport infrastructure, including toll roads and railway lines.

While South Australian legislation has fewer legislated rating exemptions it has an extensive list of rebates, provided through subordinate legislation, for specified properties. Unlike exemptions in other states which are excluded from the revenue base, the cost of these rebates is incurred by the council as an expense. The affected properties include:

- Health services
- Community services
- Religious services
- Public cemeteries
- Royal Zoological Society of SA
- Educational purposes
- Discretionary purposes

In practice, the South Australian arrangements have similar outcomes to other jurisdictions but take a different legislative path.

There is variation across Australia in relation to exemptions for Indigenous land.

While rate exemptions are provided for Indigenous land in several Australian states, Victoria, Western Australia and South Australia currently do not provide rates exemptions for land used or managed by Indigenous people.

The *Victorian Traditional Owner Settlement Act 2010* is the current legislative framework in this state for developing Native Title Settlements.⁵⁵ Currently, Recognition and Settlement Agreements made under this legislation only apply to public land. This is a rapidly changing area of law and is likely to be subject to further discussion in the years to come, including how such Agreements interact with the rating system.⁵⁶

New Zealand provides property tax exemptions for land used by Indigenous people, with provisions made in their Local Government (Rating) Act 2002 for land which is used for purposes such as (but not limited to) customary land, meeting places, and reservations.⁵⁷

The legislation does not provide for exemptions for public or community housing, but some councils provide an exemption.

Public and community or social housing services provide access to housing for people who are unable to access accommodation in the private rental market. Victorian Governments for many years have supported such services through funding and direct provision of housing.

DHHS budgeted \$116 million in 2019-20 to pay for rates on its portfolio of public housing properties. Such public housing has never been exempted from rates once occupied, owing to such housing being used for the purposes of private residence. Similarly, social and community-owned housing which provides private residences for low-income people does not receive an exemption.

⁵⁵ See https://content.legislation.vic.gov.au/sites/default/files/7d159c58-0605-354c-922b-ea4e3c772dfd_10-62aa024%20authorised.pdf

⁵⁶ A useful summary of the effect of the legislation is Parliament of Victoria, 'Land and Water Rights of Traditional Owners in Victoria', Research Paper No. 3, Department of Parliamentary Services, 2018. (<https://www.parliament.vic.gov.au/publications/research-papers/send/36-research-papers/13877-land-and-water-rights-of-traditional-owners-in-victoria> - accessed 5 February 2020).

⁵⁷ <http://www.legislation.govt.nz/act/public/2002/0006/latest/DLM133512.html#DLM133513>

The Act provides for councils to offer an optional rebate or concession (not an exemption) to a registered housing agency or provider.⁵⁸ It is, therefore, up to councils to determine if such housing warrants consideration for rate relief provided through a rebate mechanism.

The Panel was provided with an example of a social housing provider being granted rate exemptions on its properties in some councils and not in others. This different interpretation of the legislation highlights the lack of certainty arising from the current exemption provisions. What is clear however, is that in all circumstances of public or community housing, the properties are being used for the purposes of private and exclusive residence, though some councils are choosing to consider the status of the property owner (in this instance a charity) as grounds for exemption.

10.1.4 Conclusions

Exemptions from rates offer tangible support for organisations that provide services to communities in need.

Australia has a long history of providing tax concessions for charitable bodies and NFP organisations at all levels of government. Such tax support may be in recognition of:

- NFP organisations provide goods and services with broad public benefits that may fill a gap in private markets. These benefits can be direct (such as providing legal advice to the homeless) or indirect (such as organising community sporting activities);
- NFP organisations may be more effective service providers than government or for-profit organisations, given their unique relationship with the section of the community they are servicing; and
- The activities of NFP organisations often supplement, or complement, existing government programs, potentially reducing government spending in the corresponding area.

The Henry Tax Review noted that: *“Much of the support provided to the NFP sector is delivered through tax concessions. These concessions are an important and longstanding source of financial support for the NFP sector and assist NFP organisations to further their philanthropic activities and objectives.”*

There are broader community impacts from exemptions.

The purpose of an exemption from rates (or a tax more generally) is to reduce the financial impost on an owner or user of land. The broader impact is a reduction of the council rate base from which the exempt assessment is excluded, and a cross-subsidy paid by other ratepayers in a municipality to make up the revenue that would have been paid if the assessment were not exempt.

Current rate exemptions have expanded over time.

In addition to the religious, educational and poverty relief activities traditionally associated with charity, there has been growth in the past 30 years in other not-for-profit organisations, particularly community service and health providers, who are generally also exempt from rates.⁵⁹

In the absence of legislative clarity, case law has informed legal advice to councils and rating practices. Legal advice for councils can often be expensive and inconclusive, owing to the broad application of “exclusively

58 S.169(1D) states ‘a Council may grant a rebate or concession in relation to any rate or charge, to support the provision of affordable housing, to a registered agency.’ A registered agency is defined in the Housing Act 1983.

59 See for example: Productivity Commission, Contribution of the not-for-profit sector, research report, 2010 which discusses the growth of the Australian not-for profit sector in depth.

charitable” as well as the uncertainty of rate exemption provisions in emerging situations.⁶⁰ The costs of challenging applications for exemptions can be greater than providing an exemption. Councils may be reluctant to risk their funds in rates disputes. For comparison, Commonwealth and State taxation systems require significant resourcing to administer exemptions. For example, the SRO issues approximately 100 private rulings annually for land tax exemptions, each requiring significant administrative support.

The concept of “exclusively charitable” is unclear and can have negative implications for rates equity.

Many properties receive rates exemptions due to the charitable status of the owner. However, it is not always easy for councils to determine whether the use of these properties is ‘exclusively charitable’. A charity may, in addition to undertaking traditional charitable functions, provide services which compete with for-profit providers. Whether or not the profits from such activities are raised to support other charitable activities, issues of equity and competitive fairness arise when properties with similar use but are owned by for-profit providers, are liable for rates while properties owned by not-for-profit or charitable providers’ are not liable.

The use of “exclusively” as a qualifier⁶¹ to “charitable” is unique to Victoria and has been in place since the 1946 Local Government Act. As a result, other jurisdictions have a broader application of charitable status for rate exemptions than intended by the Victorian legislation.

Charitable exemptions in Victoria currently extend to private schools, universities and other educational institutions, colleges and training organisations because the advancement of education is one of the major “heads of charity” under common law. Many schools and education and training organisations are not offering services free or at nominal cost to students and sometimes they are operating commercial enterprises on the land while retaining rate exemptions. Many other activities falling under the current broad definition of charity, such as the provision of hospital and related health services, may also be operating commercially to varying degrees.

There are implications for equity when local communities are subsidising the rates of organisations whose services may be exclusively available to consumers who pay fees which are comparable with a broader private market (such as a private fee-paying hospital run by a charity or a private school). These are magnified further if the consumers of the services reside in other municipalities or jurisdictions and the subsidised organisations provide little or no benefit to most local ratepayers. This system can also undermine competitive fairness between exempt entities that compete with commercial entities undertaking similar activities.

60 Two key cases in considering specific rate exemptions in Victoria are *National Rail Corporation Ltd v Melbourne City Council* [2002] VCC 5 (19 April 2002) <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCC/2002/5.html> and *Bayside City Council v Telstra Corporation Limited* [2004] HCA 19. The latter case involved multiple Victorian and NSW councils levying rates on telecommunications companies installing infrastructure on poles. See <http://eresources.hcourt.gov.au/showCase/2004/HCA/19>. A key Victorian case considering the meaning of exclusively charitable use and rate exemptions is *Association of Franciscan Order of Friars Minor v City of Kew* [1967] VicRp 89; [1967] VR 732 (Available at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VicRp/1967/89.html>)

61 An exemption is described in the Act as: Any part of land, if that part is used exclusively for charitable purposes (S. 154 (2)(c)). The Act notes that land is not used exclusively for charitable purposes if it is separately occupied and used for a purpose which is not exclusively charitable (S.154 (4) (a)); a house or flat on the land (S.154 (4) (b)); is used as a residence; and is exclusively occupied by persons including a person who must live there to carry out certain duties of employment (S.154 (4) (b) (i) and (ii)); it is used for the retail sale of goods (S.154 (4) (c)); it is used to carry on a business for profit (unless that use is necessary for or incidental to a charitable purpose) (S.154 (4) (d)).

The use of the Commonwealth's charities register does not easily assist in defining "exclusively charitable use".

Some council submitters advocated the use of the Commonwealth's Australian Charities and Not-for-profits Commission (ACNC) register, which applies the Commonwealth Charities Act 2013 in criteria for charitable exemptions, since it offers a transparent method to determine eligibility. However, this would not change the current situation in which a mix of ownership and land use considerations inform decisions.

It is evident from the South Australian experience that although codifying exemption circumstances in detail can provide more certainty, the approach can add complexity owing to the need for lengthy schedules of exempt property types in regulations. This approach fails to respond readily to emerging or new land uses over time.

Exemptions based on ownership or occupancy are not optimal.

In some cases, exempt status arising from ownership is specifically defined in the legislation, such as for RSLs and unoccupied crown land. A rate exempt property can, under the current arrangements, enjoy a financial benefit from the community's contribution to services and infrastructure by virtue of the legal status of the owner rather than their direct and visible contribution to the community. One participant put this very simply when she pointed out that the State is effectively forcing her to make a financial contribution to an organisation that she does not wish to support. Designating exemptions by reference to specific ownership can foster negative public conversations about the exempt entity and ratepayers in the community. The use of land rather than its ownership or occupancy was regarded as a better consideration for determining exemptions by almost all consultation participants.

Many current exemptions are historical and have not been subject to meaningful review.

Many exemptions appear to be legacies for which it was difficult for the Panel to discern a consistent rationale. They were legislated at different times, for different purposes. Some of them have no discussion in second reading speeches and Parliamentary debates. However, while times and societal norms may change, exemptions in legislation remain unless Parliament determines to change them. In the case of tax and rate exemptions, such change is rare and difficult.

Public and community housing should remain rateable.

Public housing is a form of Victorian Government subsidy to an individual for his or her exclusive private use of a property. State owned land leased on a commercial basis or for exclusive use is not currently eligible for an exemption. Tenants of the property have access to municipal services, paid for by the ratepayers, like any other property occupier. A rate exemption would, in effect, require the ratepayers in a municipality to provide a subsidy for public housing, a service provided by the State.

Similarly, community housing associations and Aboriginal housing associations, while not-for-profit and meeting many of the current criteria to be considered charitable, are providing a service which is exclusive in nature to an individual recipient. A private residence, even if publicly funded by the Victorian Government or subsidised by a not-for-profit organisation, primarily accords a benefit to the individual occupant, but not directly to the broader community. Council support for low-income residents of public and community housing may be supported through more direct assistance to the individual or direct support to the organisations themselves.

In addition, the principles underpinning an optimal rates system, as outlined in section 7.2.6, make it clear that the rating system should not be used as a policy lever for objectives that can be better targeted using other policy levers or are more suitably addressed by other levels of government. Public housing is a Victorian Government responsibility. The State has already acknowledged that community housing organisations should pay rates. Councils can provide rate relief to community housing providers through a rebate or concession if such a policy addresses community need. While the Panel notes that public and community housing providers may require more government assistance, this should be provided by the State and only from a council through a voluntary rebate or concession.

There are no exemptions for charitable organisations under the Fire Services Property Levy.

The Victorian Government's Fire Services Property Levy extends to many properties that are exempt from local government rates and state land taxes in recognition that the levy pays for a specific service and that all property owners benefit to some degree. Given the nature of many local government services, it is possible to apply a similar assertion with regard to council rates, i.e. that all properties receive some benefit.

The ambiguity of the exemption arrangements may lead to variation in practices by councils, with potential impacts on equity.

This kind of variation gives rise to a risk that entities that may be eligible for exempt status under the exclusively charitable use criteria (or should receive an exemption in the eyes of the community) may not be receiving rate exemptions from some councils, and some current exemptions may not accord with contemporary community views. Without reform, this potentially inequitable situation will continue.

The current statutory exemptions do not meet the contemporary community expectations of equity and a new framework is needed.

The development of contemporary approaches to charities and tax exemptions has been the subject of many inquiries and commissions in common law jurisdictions such as the UK, Canada, New Zealand and Australia in past decades.⁶² A concept that emerges in this literature is the concept of public benefit.⁶³

Following many years of work, the Commonwealth *Charities Act 2013* described the purposes of public benefit as: preventing and relieving sickness, disease or human suffering; advancing education; relieving the poverty, distress or disadvantage of individuals or families; caring for and supporting the aged or individuals with disabilities and advancing religion.⁶⁴ These purposes are then applied to defining a charitable entity as one that exists for the purposes of public benefit. To qualify as a charity, the entity must be not-for-profit. The Charities Act 2013 further describes 10 charitable purposes⁶⁵ that, while according with the 19th century concept of the four heads of charity, provide greater certainty and clarity.

The Commonwealth legislation relates to broad consideration of charitable entities and their activities in all areas of life and different types of taxes. In the context of local government rates, the subject of the tax is property. The Panel concluded therefore that when considering an exemption from rates, it is the activity on or

62 A useful summary of much of this work is found in Not-for-profit Project, Melbourne Law School, 'Defining Charity: A Literature Review' 2011. Available at <https://law.unimelb.edu.au/centres/ccl/research/major-research-projects/defining-taxing-and-regulating-the-not-for-profit-sector-in-australia-law-and-policy-for-the-21st-century/nfp-publications>.

63 Significant reports and commissions proposing the use of a public benefit test for tax exemptions and concessions include: Meeting the Challenge of Change: Voluntary Action in the 21st Century ('Deakin Commission') England and Wales, 1996. The 1997 Scottish Commission on the Future of the Voluntary Sector in Scotland, ('Kemp Commission') also considered the concept of public benefit. In South Africa, the Ninth Interim Report of the Commission of Inquiry into Certain Aspects of the Tax Structure of South Africa: Fiscal Issues Affecting Non-Profit Organisations ('Katz Commission') recommended the use of a category of 'exempt public-benefit organisation' with a range of sub-criteria underpinning this. Available at <http://www.treasury.gov.za/publications/other/katz/9.pdf>

64 *Charities Act 2013* (Commonwealth) S.7. The report that formed the basis for this Act was (Commonwealth Department of Treasury) Report of the Inquiry into the Definition of Charities and Related Organisations. Australia 2001. Available at https://trove.nla.gov.au/work/33957823?q&sort=holdings+desc&_id=1583366658352&versionId=46629759

65 These are: the purpose of advancing health, advancing education, advancing social or public welfare, advancing religion, advancing culture, promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia, promoting or protecting human rights, advancing the security or safety of Australia or the Australian public, preventing or relieving the suffering of animals, advancing the natural environment or, any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the (above) purposes and the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country. See Charities Act 2013 Part 3, Division 1, Section 12.

use of the property that should be central, not the owner or the category of land. The use of a property is also highly visible, offering the possibility of objective tests. The 2016 NSW IPART review of rates came to a view that:

*“General exemptions **should be based on land use not land ownership**, and land used for commercial or residential purposes should not be exempt, regardless of who owns it. This would help to ensure that land used mainly to deliver private benefits pays its fair share of rates.”*

The view that rate exemptions should only be provided in exchange for a public benefit was also strongly supported by participants of the consultation process for the Victorian Rating Review.

A public benefit principle should inform future rate exemption criteria.

Linking the use of the land with the concept of “public benefit” would ensure that future exemptions could be visible and tangible to the broader community. Use for public benefit would entail a measure of public access to (or free availability of) the benefits provided by the land use. A not-for-profit purpose for the use of the land should also be included in a public benefit test. The Panel considered current statutory exemptions against this broader principle of land use for public benefit below.

Crown Land used for municipal or public purposes: Approximately 40 per cent of Victoria’s land area is crown land and a large portion of this is exempt from rates. Exempt land includes a wide variety of land types and uses. State forests, public schools, hospitals and land with other government buildings are the most common. The value of all non-rateable Crown land in Victoria was approximately \$29 billion in 2019.⁶⁶ This equates to 1.27 per cent of the value of Victorian rateable property. In a majority of circumstances, such land is held for public purposes to benefit the community. Its valuation can also be difficult unless it has been leased previously. Such land, owned by government and used for public purposes is, in effect, owned by the public and therefore accords with the principle that public benefit is a key criterion for considering exemptions from rates.⁶⁷

Residences of ministers of religion and places for their education and training: This exemption was added into legislation after World War II and has been retained ever since including in the current Act. These exemptions were questioned during the consultation, especially since a residence provides an exclusive benefit, even if the advancement of religion more broadly can have a public benefit. Further, in contrast with the exemption for such residences, the Act prevents other land used as an exclusively occupied residence from being considered exempt charitable land. This exemption would not meet the principle of public benefit described above owing to its private or exclusive use.

Mining: The exemption was inserted into the first Local Government Act of 1878. The provision has remained unchanged since. The rating exemption may be considered to support mining in Victoria, although, given its relatively small value compared with taxes paid to State and Federal governments, it is doubtful that the exemption would influence such decision-making. While mines provide jobs and attract spending to the area of their location, this can be said of any business. There appears to be no broader public benefit provided by mines. The exemption for mines is not consistent with the principle of public benefit nor the principle of horizontal equity in the context of all other businesses in a municipality paying rates. Arguments against retaining this exemption include:

- Mining is a commercial activity on land and therefore should be treated similarly to other commercial activities on land that is rateable.

66 Source: Victorian Valuer-General 2019 revaluations

67 The Act includes some qualifications on the exemptions for Crown land: S154(3) which specifies some circumstances where public purposes are not grounds for exemption. These are of a legacy nature and appear to ensure that public uses that were predominantly of private or exclusive benefit or use are liable for rates. In general, Crown land that is leased for private or commercial purposes is liable for rates.

- Quarries (extractive industries), which are covered by a different license in Victoria, are rateable.
- Mining activities use municipal services like other land uses; and
- Most other states in Australia (except NSW and SA) do not offer such a rating exemption.⁶⁸

Land leased to a rail transport operator or a rail freight operator: The exemption for land used by rail transport and freight operators was added through the *Transport Amendment Act 1998*, allowing such transport operators, which are commercial entities, to be exempt from rates. Toll roads are also afforded a rates exemption under their respective Acts.⁶⁹ These exemptions were made more general under the *Major Transport Projects Facilitation Act 2009*, which provides for leased and licenced crown land used for major projects under that Act to be exempted from rates.

While such infrastructure projects may have State significance, the ratepayers of a municipality where they are located are effectively subsidising them on behalf of the State through rates. Many of these projects incur significant costs to communities both financially and in terms of reduced productivity and inconvenience for many years. While offering a service to the public, toll roads are used for a fee which contributes to the revenue of the for-profit operators. It appears, therefore, that this exemption is not consistent with a broader public benefit.

Returned Service League Clubs: The exemption for RSL clubs has been in place since the 1920s and further defined in the post-WWII period to extend to sub-branches of RSLs. The scope of the exemption has been interpreted broadly by the courts, resulting in the extension of exemption to land used for all activities by RSL clubs, such as entertainment and hospitality, which compete with similar commercial activities. While the traditional functions of the RSL and its sub-branches provide an important public benefit, it is difficult to see how an exemption for the commercial uses of RSL land requiring payment of market prices to access, can be justified on the basis of public benefit. Furthermore, there is now considerable research demonstrating economic and social costs to the community of gambling.⁷⁰ The accessibility of EGMs in some RSL clubs may not only be incurring market-competing costs by the individual users, but broader costs to the community.

It is possible to apply a relatively simple and consistent approach to assessing public benefit.

The concept of public benefit may be applied through a test for future statutory rate exemptions. This test should specify the elements of public benefit that accord with contemporary ideas of charity and ensure such use is of direct benefit to the public. The elements of a future rate exemption criteria should be as follows:

- Exempt land must be used for the public benefit;
- Exempt land must not be used for the purposes of either:
 - distribution of profit to members or shareholders by the entity using the land, either during operation or at wind-up; or
 - generating market rental return; and
- Exempt land must be used for the direct provision of a service or good that is available to the public or an appreciable portion of the public free of charge or with a nominal charge.

68 The 2016 NSW IPART Review of the Local Government Rating System recommended that mines should be rateable and that a differential rate should be levied that reflected the cost for the council of providing services to the mining properties. See p.145.

69 The *Melbourne City Link Act 1995* s.96(4) and *EastLink Project Act 2004* s.254.

70 See for example: Productivity Commission 2010, *Gambling*, Report No.50, Canberra, see also Armstrong, A. & Carroll, M. 2017, *Gambling Activity in Australia*, Melbourne, Australian Gambling Research Centre, Australian Institute of Family Studies.

These criteria draw on work from many Commonwealth countries from the 1970s to the early 2000s to develop a unifying principle of public benefit to determine tax exemptions. In the context of local government rates, a single form of taxation on property, the exemption test is confined to activity that is taking place on a property. The test is also highly visible and allows ongoing verification of the exemption rather than the status of the owner.

The first two elements of the test draw on established concepts of “public benefit” and “not-for-profit”. The recommended framework also seeks to address circumstances where a property owner, who might otherwise be exempt, is leasing out their property at a competitive market price.

The third element is built upon the concepts of public or open access and non-restrictive availability. Earlier, the Panel noted that public housing, while providing a greater public good, offers an exclusive and private benefit for a tenant. This should preclude eligibility for a rate exemption. Likewise, this final element of the public benefit test ensures that an exemption is granted to acknowledge altruism for the broader public expressed as availability to all without charge or with a nominal charge only.

The current Australian Tax Office (ATO) definition of “nominal charge” for commercial activities conducted by charitable entities is less than 50 per cent of market value or, for accommodation services provided by charitable entities, under 75 per cent. This definition allows for transparent benchmarking. Where a rateable property provides a verified public benefit for only a part of the property or a restricted period of time, this could be recognised through a council community benefit rebate (see Chapter 10.3) determined by applying the same test.

Finally, the public benefit test on the use of the land removes the need for highly specific land categories based on ownership. Further work is required to operationalise the public benefit test through regulations to ensure consistent application across the sector.

Examples.

- A warehouse and logistics company rents a space to charities for a peppercorn rental. The charities sell second-hand clothing to concession card holders at below market cost. Even though the land is owned by a commercial enterprise, the use of the land meets the further elements of the public benefit test, so the property is exempt from rates.
- A community club has a clubroom and a bar and restaurant facility. The community club would enjoy an exemption on the clubroom portion of the assessment (as a separate occupancy) as it meets the public benefit test (including free access to an appreciable portion of the general public). However, the bar/restaurant occupancy would no longer be exempt from rates as it is commercial in nature and offers services at market prices.
- A church, mosque, synagogue or temple is a property used for religious worship and advancing religion, an example of public benefit. If the property is open and available for all worshippers, does not charge a compulsory fee for entry and is not used for the generation of profit or market rental return, these properties will be rate exempt.

Introducing a public benefit test would impact some existing exemptions.

The Panel recognises that the implementation of the proposed public benefit test for rate exemptions would likely result in some currently exempt properties becoming liable for rates, either partially or in full. The following table indicates the potential impact:

Chart 30 – Impact of a public benefit test

Currently exempt	Potentially rateable under the proposed test?
State forests and state parks, council owned properties, public cemeteries, government owned buildings and facilities (state and local), public water corporations, public schools, public hospitals and health services	No
Metropolitan rail operators, freight rail operators	Yes
Churches and church owned properties, schools (independent and religious), universities, other education providers, community health care services, community halls (i.e. scout halls) and facilities, community camps, employment and disability services, many not-for profit organisations	Yes, for some uses – independent and religious schools charging market level fees, portions of universities and other education providers, offices and commercial premises of not-for-profit and community organisations, and community halls and facilities charging market level fees
Residence of a minister, a manse	Yes
Mining land	Yes
Returned Services League clubs and sub-branches. This includes halls, meeting rooms and other uses operated by the club, including entertainment and hospitality services.	Yes, for some uses such as commercial entertainment and hospitality uses

Summary of conclusions relating to statutory rate exemptions.

The current legislated exemptions appear to reflect different policy intentions over many decades and do not present as coherent or aligned with contemporary community expectations. Legacy arrangements have continued for many years without scrutiny resulting in elected councils and their communities having inadequate visibility of the exemptions in place in their municipalities. This lack of transparency is concerning. Equity considerations are best undertaken with all the required information at hand. The consultation raised a number of related concerns about many activities currently occurring on exempt land. As one participant in a public forum stated, rate exemptions should be informed by a modern conversation.

There would be significant benefits from the removal of all statutory exemptions. It would create a simpler system, reduce administration and dispute costs, remove some of the confusion caused by the “grey areas”, acknowledge that all properties receive benefit from local government services and infrastructure and remove competitive advantage for exempt entities operating in commercial markets. Some support for ratepayers could still be possible on a case-by-case basis. For example, a rate rebate or council grants could be more targeted mechanisms for councils to extend a financial benefit to a particular ratepayer.

Nevertheless, rate exemptions have a place and should be retained if tied to the use of land providing a direct public benefit. Land owned by the Crown and local governments and used for public purposes meets the criterion of public benefit by default. Furthermore, retaining the non-rateable status of crown land that is unoccupied or used for public and municipal purposes avoids the taxation of one level of government by

another and the administrative complexity that could arise from rating land that is often difficult to value. The rating of council land used for municipal purposes also makes little sense as a local government would be effectively taxing itself.

Any further rate exemptions should be considered against a robust public benefit test of land use.

10.1.5 Recommendations

Recommendation 18: Retain the current rate exemptions for crown or council land that is unoccupied or used for public or municipal purposes.

Recommendation 19: Repeal ownership-based and lessee-based criteria for the purposes of rating exemptions, including those for mining, rail operators, and residences or places of education for ministers.

Recommendation 20: Repeal the exemption for land used exclusively for charitable purposes.

Recommendation 21: That further rate exemptions in legislation be determined by the use of the land, not its occupancy or ownership.

Recommendation 22: In accordance with Recommendation 21 of this report, include the following criteria for a public benefit test in the legislation:

- exempt land must be used for the public benefit; and
- not for the purposes of either distribution of profit to members or shareholders by the entity using the land, either during operation or wind-up; or
- market rental return; and
- for the direct provision of a service or good that is available to the public or an appreciable portion of the public free of charge or with a nominal charge.

Recommendation 23: That the regulations (see Recommendation 2) include:

- a process for applying for, assessing and deciding on exemptions on the basis of the criteria in Recommendation 22; and
- a requirement for information to be made available to the community through budget papers and annual reports on the application process, the assessment process, the decision-making process, the number of assessments provided with an exemption, the reasons for the decisions on exemptions, an estimate of the revenue reallocated to the rateable base due to exemptions, and the review date of exemptions.

Recommendation 24: That the regulations (see Recommendation 2) require exemptions to be reviewed at least 2 years after the election of a council and that an audit of the compliance of an exempt entity with the criteria for exemption is undertaken every two years.

Recommendation 25: That the approach to exemptions recommended above is designed and implemented in consultation with councils and stakeholders to ensure that adjustments can be made to the operation of the entities affected to maximise their opportunities for exemptions.

Recommendation 26: That further work be undertaken to consider the rating treatment of land use by traditional land owners.

Recommendation 27: That the Victorian Government reconsider providing for local government rate exemptions in other legislation (such as the *Major Transport Projects Facilitation Act 2009*) and only provide rate exemptions by applying the public benefit criteria recommended above.

10.2 Waivers

10.2.1 Background

Waivers are a mechanism to allow a council to renounce its claim (in part or whole) on a rate liability, as well as any charges and interest owed. The Act specifies two forms of waivers:

- S.171 allows a council to provide a waiver to a person on the basis of financial hardship. Commonwealth pensioner card holders and Department of Veteran's Affairs (DVA) card holders are eligible to apply, though this form of waiver is limited to the rates and charges and any interest owed on the principal place of residence of the applicant. In addition, a council can make other classes of persons eligible for application by a resolution of council.
- S.171A allows for a council to provide a waiver to any person in financial hardship on application. There are no restrictions on the type of property which such a waiver may relate.

A waiver results in a loss of revenue to council. In essence, it is a council cost and budgeted rate revenue will be adjusted accordingly.

10.2.2 Issues for Consideration

Few councils grant waivers and only very occasionally. Their use is specifically to address hardship of groups or individuals. Although the instrument may be appealing to address payment difficulties and hardship issues for individual ratepayers, the consequent loss of revenue could create challenges for broader equity.

Council rate administrators can also apply waivers in an indirect and opaque way by waiving interest owed for any unpaid rates after the due date. Although this is probably not a material issue in most circumstances, it is a governance issue.

10.2.3 Evidence and Analysis

Councils have little incentive to apply a tool for dealing with hardship which reduces their revenue. Consequently, the use of waivers is limited as is any public reporting on them.

The exception to this is the application of the pensioner rate rebate, which is funded by the Victorian Government, but processed as a waiver by councils. There are no impacts on budgeted council rate revenue from the State municipal rate concession.

10.2.4 Conclusions

Although waivers are a useful tool to deal with hardship, they come with a cost to revenue. The legislation provides sufficient discretion to councils on the use of waivers in relation to hardship. For example, a council may require an applicant for a waiver to give further particulars in relation to their application. The Act also provides for penalties for falsifying claims.

While the legislation provides for the use of waivers, there is no guidance to councils about the process by which eligibility is determined. Processes relating to dealing with payment difficulty and hardship are discussed in Chapter 11.

10.3 Rebates and Concessions

10.3.1 Background

The Act details the reasons for which councils may provide rebates and concessions.⁷¹ These include:

- assisting the proper development of the whole or part of the municipal district;
- preserving buildings or places in the municipal district which are of historical or environmental interest;
- restoring or maintaining buildings or places of historical, environmental, architectural or scientific importance in the municipal district; and
- supporting the provision of affordable housing, to a registered agency.

Though there is no definition provided in the legislation for “concession” or “rebate,” the terms are sometimes used by councils (e.g. in budget documents) to describe what the legislation would deem a “waiver”. The common dictionary definitions of the two terms are that a concession is a reduction in rates for a certain category of person and a rebate is a deduction or refund of a sum paid by a person. Importantly, the granting of a rebate or concession does forgo council revenue.

When granting a rebate or concession, the Act also requires a council to specify the benefit to the community as a whole resulting from the rebate or concession.⁷²

Municipal rates concession for pensioners.

The most well-known rates concession is provided to eligible pensioners and applied through the *State Concessions Act 2004*. The arrangements for this concession are complex as the concession is formally provided in the form of a waiver, the cost for which councils are reimbursed by the Victorian Government. In the 2019-20 year, the Victorian Government budgeted \$116 million dollars towards providing rating concessions to pensioner and Department of Veteran’s Affairs (DVA) concession card holders.

As with rating waivers, and unlike rating exemptions, rebates and concessions (with the exception of the municipal rates concession for pensioners) are not mandated by state legislation; rather, they are granted at the discretion of councils.

The pensioner concession scheme, paid for by the Victorian Government, is implemented by local government through the waiver instrument. Set by the Victorian Government, the amount is 50 per cent of the rates payable, up to a maximum of \$235.15 for the 2019/2020 financial year.

10.3.2 Issues for Consideration

Some councils report that they are reluctant to expand the use of rebates and concessions owing to their impact on revenue. They are, in effect, an expense for the council and entail some consideration of the benefit or service that the council and the community are receiving in return.

Some councils provide additional support to pensioners through additional rate reductions. The City of Yarra, for example, offers an additional \$187.10 rebate for pensioners in 2019-20. The City of Port Phillip offers an additional rebate of up to \$170. The Cities of Maribyrnong and Melbourne offer an additional \$194.30 and \$117.58 respectively in 2019-20. This practice is confined mostly to inner-metropolitan councils.

Several submissions to the Panel noted that there is inconsistency across councils in the application of concessions and rebates for community housing associations. These are the result of councils making their own policy decisions.

71 http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s169.html

72 See S.169 of the Act

10.3.3 Evidence and Analysis

Rebates and concessions provide rate reductions for a series of specific purposes but require, in all cases, that there must be an identified benefit to the broader community. Further, the Act specifies a set of conditions that relate primarily to the preservation of buildings. The broadest criteria provide that councils may use a rebate or concession to 'to assist the proper development of part of the municipal district'.⁷³ This conceivably allows councils a wide range of possibilities in designing rebates and concessions.

Many councils use these powers to offer rebates for specified activities. The most common in use appear to be environmental in nature, such as providing a rebate for planting trees on a property, weed and pest reduction or other land rehabilitation activities.⁷⁴ Typically, there is an obligation for the rebate recipient to provide some evidence of compliance with the rebate requirements. Some rebate-related activities such as tree planting may therefore entail council expenses associated with audits and property visits.

10.3.4 Conclusions

There is an opportunity to expand the purposes of rate rebates to that of public benefit, as defined by the public benefit exemption test proposed in Section 10.1.

Provision of a rebate or concession could allow council to support activities which provide a benefit to its community and better align the goals of rate exemptions with the goals of rebates. They could, in effect, provide their own partial "exemption" in the form of a rebate. The proposed public benefit test for exemptions (See section 10.1) could be applied in a similar way through rebates to accommodate instances where rateable properties provide a service or good that is a public benefit to the municipality. In effect, this would become a public benefit test specific to the local community. Some examples of this could be the offer by a ratepayer of otherwise private facilities to the public for hire at below market cost, or recreational space free to the public for designated times.

These circumstances align with the general principle of public benefit being related to the outcomes of the use of land. Rebates and concessions allow a council to effectively "purchase" goods, services or outcomes for the benefit of their community; the "purchase" price is represented by the value of the rebate.

It behoves the council to consider the specific use in question and ensure a linkage between this and the strategic aims of the council as articulated in the council plan. Reporting on council rebates and concessions and how they align with the council's priorities and plans for the community, auditing to ensure compliance with the stated purpose and evaluating and reporting on their impacts are important ways to ensure transparency and improve community understanding and support for council decisions.

⁷³ See S.169(1)(d) of the Act

⁷⁴ Many councils offer rate rebates linked to an environmental activity. City of Greater Bendigo currently offer a rate rebate on the Site Value of land covered by a Trust for Nature covenant named 'Bushcare Incentive Program'. See <https://www.bendigo.vic.gov.au/Services/Environment-and-sustainability/Environmental-Grants-and-rebates>. Another example is the Shire of Nillumbik's Sustainable Agriculture Rebate. See <https://www.nillumbik.vic.gov.au/Environment/Grants-rebates-and-incentives/Other-rebates-and-incentives-for-landowners>.

Pensioner concessions may not promote equity across Victorian councils.

The pensioner concession is applied as a fixed amount irrespective of the municipality or the value of the individual property⁷⁵. This concession is also based on a status granted by the Commonwealth that excludes the family home from asset testing. Further discussion of the equity considerations related to pensioner concessions is provided in chapter 10.4 – Deferrals.

10.3.5 Recommendations

Recommendation 28: That the criteria for a rebate or concession under the Act be expanded to include properties providing a public benefit. Such benefits could be defined by the public benefit test for exemptions in Recommendation 22 of this report.

Recommendation 29: That a rebate or concession for a public benefit must align with the Council's current Council Plan and that councils be required to report, audit, review and evaluate their decisions in relation to rebates and concessions.

10.4 Deferrals

10.4.1 Background

Under the Act, councils can allow rates payments to be deferred where they consider that making payment would cause financial hardship. The Act provides broad powers for councils to offer deferment for any length of time, up to any amount, and charge interest up to the value of the penalty interest rate set by the Attorney-General. Deferments can be offered to any person. "Person" is not defined under the Act, suggesting that businesses as well as individuals could be eligible. The key provisions of the Act are summarised in Chart 31 below.

Chart 31 – Key provisions relating to deferment under the Act

Section (S)	Summary of provisions
S. 170 (1)	Councils may allow partial or full deferral of rates where they consider that paying rates would create financial hardship for the applicant. Councils may charge interest on deferred amounts.
S. 172	The penalty interest rate is set by the Attorney-General (currently 10%) ⁷⁷ however the legislation allows councils discretion to apply any rate up to this maximum amount.
S. 170(3)	Councils can require repayments of deferred amounts if they consider that payment would no longer cause hardship, or if the land changes hands.

⁷⁵ This is due to the concession being provided in the form of an amount up to 50 per cent of the rates which is a capped amount.

⁷⁶ <https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values>

10.4.2 Issues for Consideration

Councils report that deferrals are rarely sought by ratepayers.

A small number of councils commented that deferrals were rarely sought by ratepayers. Where it was discussed by ratepayers at all, they were concerned that councils may seek high interest on deferred rates or that repayment of deferred rates could be required at any time. Ratepayers felt this created uncertainty in times of hardship. Some suggested that people may be reluctant to erode equity in their homes (e.g. because they want to transfer the property to their children.) Other forum attendees noted there could be stigma or confidentiality issues in asking council for payment arrangements. However, some participants suggested that rates should be deferred for some ratepayers in times of hardship such as drought.

Deferrals are considered an appropriate response to hardship by some.

The submission from Westjustice commented that rate deferrals are an appropriate response to hardship and should be more widely used, with specific application to anyone on a low income. Prosper Australia made a number of suggestions, including that councils should reduce the use of exemptions, rebates and concessions in favour of deferrals. Prosper also supported deferrals for individuals until the property's sale and short-term deferrals for farm properties suffering from drought, low commodity prices, etc. The submission recommended that the State establish a Public Financial Corporation to administer deferral schemes centrally.

Other issues considered by the Panel.

While deferrals were mentioned infrequently, community discussions around differential rates and financial hardship suggest a view that council has a clear role in alleviating financial hardship for individual and business ratepayers. Deferrals may have a place in addressing these circumstances. In particular, deferrals may be an appropriate way to support ratepayers who possess high-value assets but do not have the cash flow to pay for rates. (This cohort is commonly described as being 'asset-rich, cash-poor').

10.4.3 Evidence and Analysis

Use of deferrals by councils appears to be limited.

As discussed in Chapter 11, councils have varying practices in publishing formal hardship policies and advising ratepayers on how to apply for deferrals and other hardship assistance. Eight councils reported having current deferral amounts during the consultation, and five councils had total liabilities ranging between \$200,000 and \$300,000.

A number of states in Australia grant powers to councils to offer rate deferrals.

Differences between jurisdictions include eligibility criteria, the indexation (i.e. interest) rate applying to deferred rates, and the amount that can be deferred. A number of schemes are summarised in Chart 32 below.

While little data is available on take-up rates of deferrals, the comparable Commonwealth Pension Loans Scheme, which allows pensioners to leverage their equity in real estate for small to medium size loans at a low rate of interest, is only expected to see take-up by 6,000⁷⁷ participants across Australia over the four years from 2018-19.

⁷⁷ Commonwealth Department of Social Services – 2018-19 Budget fact sheet, <https://www.dss.gov.au/publications-articles/corporate-publications/budget-and-additional-estimates-statements/more-choices-for-a-longer-life-finances-for-a-longer-life>.

Chart 32 – Comparison of deferral schemes in Australia – selected jurisdictions

Jurisdiction (scheme)	Target cohort/purpose	Value of deferral/loan	Interest rate	Length of deferral
VIC (rates deferrals)	Anyone for whom paying rates would cause hardship.	The whole or part of payable rates and charges.	Up to 10% p.a. (the State penalty interest rate).	Until council considers the payment no longer would cause hardship, or until the debtor no longer owns/occupies the relevant land.
IPART (NSW) Inquiry recommendation (State-run rates deferral)	Pensioners.	Suggested amount of up to \$1,000 per annum, indexed annually. Existing pensioners could choose to continue receiving the existing \$250 rebate. NSW Government would pay the deferred amount to councils and act as lender to the pensioner.	Interest levied at NSW government's 10-year borrowing rate.	Loan could become due when property ownership changes.
SA (rates postponement)	Where payment of rates would cause hardship; or to assist a business in the area; or to alleviate anomalies from valuations. Separate provisions exist for age pensioners (who must hold a State Seniors Card).	For most ratepayers, value of rates payment in whole or part. For age pensioners, in relation to their principal place of residence, all rates in excess of first \$500.	For most ratepayers, council borrowing costs. For age pensioners, 1% p.a. + council borrowing costs.	For most ratepayers, as council sees fit. For age pensioners, until the land title is transferred (unless the ratepayer pays off the debt in advance).

Jurisdiction (scheme)	Target cohort/purpose	Value of deferral/loan	Interest rate	Length of deferral
WA (rates deferment)	Pensioners who are owner-occupiers.	If rates are unpaid (partially or in full) by the due date, they are automatically deferred. Pensioners can also inform authorities if they wish to defer rates. A rebate may be foregone in some cases.	No interest is incurred.	Generally, rates become payable if the ratepayer dies or the land changes title.
ACT (rates deferral) Note: The ACT does not have councils, rates are charged by the State government.	Pensioners, applied to their principal place of residence.	In addition to receiving a rebate, ratepayers can apply to defer payment of all or part of the balance of total rates after the rebate is deducted.	0.91% (Jan–June 2020) simple daily interest.	As determined by the ACT Revenue Commissioner.
Commonwealth (Pension Loans Scheme) Note: not rates-related , included here as example of a reverse mortgage-style scheme in Australia.	Age pensioners.	Combined pension + loan payments cannot exceed 1.5 times the maximum pension rate. Payments vary by age and the level of equity in Australian real estate.	Currently 4.5% per annum.	If there is an outstanding loan after the recipient's death, repayment is generally sought from the estate after 14 weeks.

Tax deferrals can be used to assist asset-rich, income-poor property owners.

In addition to findings from the Review consultation process, several recent inquiries including the 2010 Henry Tax Review⁷⁸ and the 2007 Shand Report⁷⁹ support deferrals as a method of assisting “asset-rich, cash-poor” payers of property taxes. A key advantage of rate deferrals is that the benefits of ready cash may be enjoyed by the recipient, while not impacting on other ratepayers through a rate increase. The 2016 IPART inquiry⁸⁰ and 2019 report of the New Zealand Productivity Commission⁸¹ suggest that deferrals can assist older homeowners in particular.

78 Australia's Future Tax System, 2010, Part 2 – Volume 1, p. 266

79 Funding Local Government, 2007, p.204

80 IPART Inquiry, p.127

81 New Zealand Productivity Commission, Local government funding and financing: Final report, 2019, P.218

10.4.1 Conclusions

Deferrals offer a more targeted method of ratepayer assistance than some rating tools currently in use.

Compared to other rating tools such as differential rates or municipal charges, deferrals allow councils to provide targeted assistance to ratepayers in payment difficulty, including “asset-rich cash poor” ratepayers. As discussed in Chapter 9, most councils do not provide supporting evidence when setting differential rates. During the consultation process the Panel found more than one instance of a broad differential category (such as farm properties) being used to support a very specific group (such as property used for horticulture.)

As another example, Victorian Government rates concessions are currently provided to pensioner card holders and Department of Veteran’s Affairs card holders. These card holders are granted concessions based on Commonwealth Government criteria that exclude significant assets, such as the family home, from wealth tests. This means that concessions are provided indiscriminately to people with relatively high capacity to pay as well as people with relatively low capacity to pay.

In contrast, councils can assess eligibility for deferrals on a case-by-case basis. This means that rate assistance can be provided to those who need it, rather than to a broadly defined cohort of ratepayers about whose capacity to pay there is no reliable information. A considered deferral arrangement, supported by a published policy with clear criteria, could allow a council to address a range of ratepayer circumstances where paying rates would create short-term or long-term payment difficulty. Such an arrangement could be offered to a wide range of ratepayers including businesses. For example, a council could defer all rate payments on a property until its sale to assist concession card holders in need.

A State financed deferral scheme may face challenges.

The submission from Prosper Australia recommended that deferment should be administered by the State at scale to exploit lower borrowing costs. This approach also overcomes any need for councils to borrow to fund deferrals. However, a state-based scheme would reduce the ties between council and ratepayer. If a ratepayer defers rates and the cost is borne by the State, the incentive for councils to set affordable and equitable rates may be diminished.

Councils and the State should consider ways to promote rate deferrals to improve equity and revenue outcomes in the rating system.

The Act provides councils with broad powers to offer deferrals, but they are used infrequently. While the exact reasoning is unclear, the main barriers to increased use of deferrals appear to stem from low promotion of deferrals by councils and a lack of ratepayer knowledge and certainty about deferrals. Nevertheless, deferrals could be a more equitable and targeted way to assist ratepayers in payment difficulty at no cost to other ratepayers.

Councils should make decisions on deferrals autonomously, and to suit circumstances from council to council. However, the State may have a role to play to improve awareness of deferrals and provide a starting point for councils to consider deferrals more widely. This could be through providing high-level guidance on design considerations for deferrals.

10.4.2 Recommendation

Recommendation 30: That the Victorian Government publish guidelines and a public communication strategy on deferral schemes aimed at supporting councils to promote deferrals to address capacity to pay issues.

11

Unpaid Rates and Payment Difficulty

11.11 Background

Although the Act currently provides councils with powers to defer or waive rates in whole or in part for ratepayers experiencing payment difficulty, it does not outline how or when these measures are to be used, or whether they must be offered at all. While this provides flexibility to councils to establish policies and practices suitable for their communities, it can also result in variation and uncertainty for ratepayers.

Additionally, the Act enables councils to charge interest on the unpaid balance, initiate legal action for recovery in the Magistrates' Court, and to sell (or claim) land to recoup rates and charges not paid.

Chart 33 – Summary of current arrangements for deferring or waiving rates.

Section (S.)	Summary of provision
S. 170	Councils may allow deferral of part or whole of a rate liability. Without considering expanded definitions within individual policy documents, these sections allow councils to rescind the deferment through written notification. Council only needs to 'consider' the person's circumstances before requiring payment, and no specific legislation or guidelines exist to advise councils on appropriate use.
S. 171A	Financial hardship waivers are available to ratepayers if councils allow them and using any criteria they choose to set. The final requirement before any amount is waived, is that a resolution must be passed by council. The use of the term 'may' in the legislation grants councils the freedom to construct policy suited to their municipality. S.170 of the Act also specifies that councils can offer waivers for financial hardship relating to a principal place of residence.
S. 172	The penalty interest rate is set by the Attorney-General (currently 10%) ⁸² however the legislation effectively allows discretion to councils to apply any interest rate up to this maximum amount.
S. 180	Council may recover unpaid rates and charges in the Magistrates' Court or by suing for debt. The Act also details how to deal with payments received from occupiers on behalf of ratepayers.
S. 181	Payment arrangements are mentioned once in the Act in relation to rates and charges, amongst legislation detailing how to sell (or claim) land due to unpaid rates. There is no definition for them or how they are to be applied. In practice this is often set by council policies, or as an ad-hoc agreement between ratepayer and administration officers.

Thinking about fairness.

The Review's Discussion Paper and framework for analysis (see Section 7.2) set out the Panel's thinking about fairness and how it should be applied. The fairness of the rating system should be determined by the process and conduct associated with how it is administered by a council. Principles underpinning a fair rating system are:

⁸² <https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values>

Consistency: The system should promote consistent and predictable outcomes for ratepayers. It should be administered consistently and efficiently. Ratepayers in like circumstances should be confident they will be treated on like terms by the council. Rating arrangements and outcomes should be explained clearly and simply. The rating system must be applied transparently so councils can be held accountable for their decisions.

Consideration: The Act provides councils with the power to recover unpaid rates and charges by suing for debt in the Magistrates' Court. These more coercive powers should only be deployed after the council has made all reasonable efforts to engage (and assist) ratepayers to meet their liabilities. The system must also be flexible to meet different and changing ratepayer circumstances. A council should be able to have regard to a ratepayer's circumstances and act reasonably in these circumstances. That is, a 'one size fits all' set of council administrative rules are unlikely to work for a person in payment difficulty or financial hardship.

Transparency: Councils should provide ratepayers with information on their decisions, the processes for coming to their decisions and the impact of their decisions on their individual rates; and

Accountability: Ratepayers should have access to all the information required for them to assess the fairness and integrity of the system.

Payment difficulty and financial hardship.

It is important to distinguish between payment difficulty and the more specific concept of financial hardship. Financial hardship is currently specified in the Act as the basis for considering the waiver or deferral of rates and charges for which a ratepayer is liable (see Sections 10.2 and 10.4). While not specifically defined, the term is used in many Australian taxation systems to describe a circumstance where payment of a compulsory charge or tax would likely cause harm to the person. This is discussed further below in Section 11.1.3. Payment difficulty is a broader term denoting an inability to pay a debt on time that may or may not include reasons of financial hardship. The term is used in Victoria by the Essential Services Commission (ESC) throughout the *Electricity Industry Act 2000* and *Gas Industry Act 2001*. The term is not further defined in these Acts but denotes a broader range of circumstances that may be faced by a customer who owes money for essential services and is unable to pay on time.⁸³

A council's process for dealing with a ratepayer who may be in payment difficulty or placed into financial hardship by payment of rates is where the consideration of fairness is most important. The rates system must ensure that all ratepayers contribute their share, but the provisions for waivers and deferrals do recognise the role that rates can play in relation to financial hardship. Ratepayers in payment difficulty should have the opportunity to access assistance early. This assistance is part of a shared responsibility between the ratepayer and the council to work together towards payment of rates in a way that is reasonable for both parties.

11.1.2 Issues for Consideration

Council and ratepayer participants of the consultation process have inconsistent views on the fairness of hardship processes.

Council participants claimed that their systems for dealing with financial hardship work well and that few changes were required. However, ratepayers who had experienced financial difficulty and turned to their councils for assistance had quite a different view. Chart 34 outlines the varying views expressed to the Panel.

⁸³ A payment difficulty framework was developed by the Essential Services Commission in their review of the Energy Code 2016. See <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code/energy-retail-code-review-2016-customers-facing-payment-difficulties>.

Chart 34 – Consultation – financial hardship, debt recovery, deferrals

	Public Views	Council Views
Financial Hardship	<ul style="list-style-type: none"> • General lack of awareness of council policies on financial hardship and debt recovery policies. • It is difficult to access policies (if they exist) and apply for hardship and often they feel like councils “change the rules”. • Applying for rate relief is confronting and potentially embarrassing, especially in small towns with close communities where confidentiality is potentially at risk and there is limited capacity to provide relief. • Financial counsellors and individual ratepayers described the council process for dealing with financial hardship as being intrusive. The Financial and Consumer Rights Council believes that councils should assume more direct responsibility for dealing fairly and sensitively with rate payers in financial hardship instead of referring people to financial counsellors. 	<ul style="list-style-type: none"> • No concerns about their hardship arrangements, and many councils expressed satisfaction with them. • Waving interest is common, but it’s very rare to waive rates. • There is limited capacity for small councils to provide rate relief due to the need to raise revenue from a very small rate base.
Deferrals	<ul style="list-style-type: none"> • This issue was rarely raised in public forums. One attendee noted that councils may seek a high interest rate on deferred rates (10% p.a.), which can compound to a large sum over 10-12 years. • Deferral schemes can be called in at any time, creating uncertainty and lack of security for the ratepayer. • Community participants from the farming sector suggested that deferral of rates on farms should be possible during times of hardship, such as drought. However, other community participants preferred concessions and waivers over deferral of rates because interest on the deferred debt is incurred over time. 	<ul style="list-style-type: none"> • When a low value property has rates deferred, the rates can be higher than the value of the land. • Deferring rates does not help with cash flow, especially in smaller councils.

	Public Views	Council Views
Debt Recovery	<ul style="list-style-type: none"> • Councils have a culture of “antagonism” towards people in debt and are seen as litigious when pursuing outstanding debt. They may place caveats on properties too quickly, when there is no need for this legal approach. • There is insufficient capacity within councils to deal effectively with hardship. It is generally dealt with in rates departments by staff whose role is to collect rates rather than to provide sensitive social intervention. 	<ul style="list-style-type: none"> • Councils sometimes pursue a matter to Magistrate’s court to trigger a response by an unresponsive ratepayer. • Cost of lodgement of a claim has increased. • Sale of property is a last resort, and not at all for principal place of residence. Selling properties is bad for areas with a declining population. • Collection of rates through sale of land is difficult when valuations are low, and costs are high to recover.

There is no requirement for councils to apply best practice in dealing with payment difficulty.

Although the MAV offers guidance on financial hardship, providing principles, templates, guidelines and other resources to assist councils to effectively and consistently manage ratepayer hardship, implementation by councils is voluntary and variable.

The contemporary view of debt recovery suggests that good outcomes are achieved by working effectively with the ratepayer.

The submission by the Australian Institute for Commercial Recovery Practitioners (AICRP), a group representing debt collection agencies and individuals, stated:

“Besides being unacceptable and simply cruel, unfair or inequitable conduct by a recovery professional rarely results in success. Rather, such behaviour by an agent causes deep anxiety and stress and ensures that a debtor disengages further and does not pay.”

The AICRP’s comments reflect a contemporary view of debt recovery that suggests good outcomes are achieved by the recovery professional, the debtor and the council working together to ensure a mutually acceptable outcome.

Councils are reluctant to use all available powers to collect unpaid rates and charges.

Feedback from the consultations and some council submissions indicates that while councils are generally willing to engage with debt recovery agencies and lodge claims in the Magistrates’ Court, they are generally reluctant to progress selling, or claiming land under s.181 of the Act (as discussed below.) Their reluctance is increased in situations where the ratepayer uses their property as their principal place of residence (PPR).

11.1.3 Evidence and Analysis

The incidence of financial hardship among ratepayers is not clear.

Council responses to the consultation survey did not provide sufficient information about debt collection practices to determine any common themes across the sector relating to the practices or to determine the extent of hardship applications, payment agreements, court outcomes and other relevant information.

It is useful to compare council policies and practices with utility companies, which are considered to have well-developed mechanisms for addressing payment difficulty (while still allowing debt recovery) and are subject to oversight by the ESC.⁸⁴

While no data was available for study from councils, data from the ESC showed that electricity and gas companies, which are subject to regulated assistance arrangements, provide assistance to 5.5 per cent of all residential customers. For water authorities, the corresponding figure is 6 per cent. Similar figures are likely in local government.

It is useful to compare council practices with the Commonwealth and Victorian Government's taxation systems' approaches to financial hardship and debt recovery.

As the Panel has adopted the approach that rates are most usefully treated as a tax (see section 7.6), other taxation agencies' methods can offer insight on how unpaid amounts should be dealt with:

- The Australian Taxation Office discusses financial hardship provisions as well as what occurs when "stronger action" is pursued.⁸⁵
- The State Revenue Office also covers financial hardship and comments on the difference between "Inconvenience vs Serious Hardship" when making payments.⁸⁶

Both agencies have detailed information available to the public discussing all levels of hardship support and enforcement for the non-payment of taxes (up to and including bankruptcy).

The billing and recovery process is the context within which payment difficulty issues arise and are addressed.

The billing and recovery processes are the result of a combination of legislative provisions and council practices. There is no specific timeframe within which the process occurs. The process is detailed in Chart 35 below:

Chart 35 – The council billing and recovery process



Annual Rate Notices – The first Valuation and Rates notice of the year is issued, which itemises charges and instalment due dates.

Instalment Notices – Instalment notices are provided for payment in four instalments. If a ratepayer is permitted to make payment in full, this must be paid by 15 February in a given year. Councils may choose to issue reminder notices before any due date.

84 Victorian Energy Retail Code 2019 - <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-policies-and-manuals/energy-retail-code>

85 <https://www.ato.gov.au/General/Paying-the-ATO/If-you-don-t-pay/>

86 <https://www.sro.vic.gov.au/hardship-relief-land-tax>

Final Notices – If a ratepayer misses an instalment payment, councils may issue final notices warning of impending collection activity if payment is not made. If this is not successful, emails and phone calls are often made by council to remind the ratepayer of outstanding payments.

Solicitor's Letter – If payment is not received, councils may arrange for a solicitor to issue a letter to advise ratepayers of impending legal action. Due to the availability of specialist providers, some councils also use collection agencies to follow up with emails and phone calls to ratepayers.

Lodgement of a "Complaint" in the Magistrates' Court – If payment is not received or a payment arrangement is not made, a council may proceed to issue a complaint (or "claim") in the Magistrates' Court. The cost, ranging from \$544.10 to \$2,456.80⁸⁷ is often immediately added to the ratepayer's debt balance. In addition, Section 172 of the Act allows a council to charge interest on unpaid rates, calculated at the rate fixed under section 2 of the *Penalty Interest Rates Act 1983*. The penalty interest can also be applied to the debt. The ratepayer is served documents which allows them to lodge a defence to this claim.

Judgement – If a defence is not lodged, then a judgement (or "court order") is obtained from the court. This immediately affects the credit rating of the ratepayer.

Other powers made possible by judgement – If a judgement is obtained, council may then use a suite of powers to enforce the debt, including:

- The Sheriff attending the ratepayer's home to claim certain possessions, which may be sold by council to recover the debt;
- Requiring the ratepayer to attend court for an oral examination, which entails the ratepayer providing the judge with an explanation for not paying and personal financial details to enable an assessment. This may result in a court-enforced payment plan. Should the ratepayer not attend, the court may issue an arrest warrant on the ratepayer for contempt of court, resulting in a brief period of imprisonment;
- Wage garnishing to force payment of the debt through direct access to a portion of the ratepayer's earnings. This is difficult to apply without employment information;
- Applying a caveat on the property's title to prevent the ratepayer from selling the land;
- Garnishing any rent owed to the ratepayer by a tenant or occupier as payment of the debt, either in full or in part, depending on the amount of rent paid by the occupier to the owner; and
- Selling or claiming the land if the debt is outstanding for three or more years.

Rates and charges are a first charge on the land which the current owner is liable to pay⁸⁸ under any circumstances.

Rates debts will not be excused in the event of bankruptcy and are, therefore, uniquely secure. Under any circumstances, if the owner sells or transfers the property, the debt is required to be paid as part of the settlement process.⁸⁹

There is variation in whether and how councils publish a hardship policy.

The results of a desktop analysis of councils' policies in relation to payment difficulty and financial hardship are outlined in Chart 36.

87 <https://www.mcv.vic.gov.au/news-and-resources/publications/civil-and-general-costs-ready-reckoner>

88 S156(1) & S156(6) - http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s156.html

89 S175(1) - http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s175.html

Chart 36 – Councils with hardship policies

Hardship Policy	Number of Councils
No published financial hardship policy	29
Hardship policy contained within published rating strategy	5
Have a published hardship policy	45
Total	79

The council policies reviewed are highly variable in the level of detail and quality, with many simply providing reference to the legislation and no guidance about ratepayer entitlements or what might be required in order for a ratepayer to receive assistance. Policies did not describe when, or on what basis, councils would apply any provisions under Section 172 of the Act relating to the penalty rate of interest on any debt owing.⁹⁰

The lack of detail on hardship provisions of most councils would make it difficult for ratepayers in hardship to understand whether they are eligible for rate relief, how to apply, what they can and can't apply for and what process they might expect.

Chart 37 below shows the number of council policies reviewed which provided no information at all, a reasonable level of information or simply stated that the applicants will be dealt with on a case-by-case basis. This desktop review covered key options and elements relating to payment difficulty or hardship.

Chart 37 – Review of council policy details

	Reasonable Level of Detail	Case-by-Case Basis	No Detail Available
Deferments	12	30	37
Waivers	22	14	43
Penalty interest	24	3	52
Payment arrangements	4	24	51

Councils provide far less information to ratepayers about payment difficulty and financial hardship processes than utility companies.

Since 2016, utility companies operating in Victoria have been subject to the results of the Energy Retail Code review which reformed, modernised and implemented provisions for dealing with people experiencing payment difficulty.⁹¹ While utility provision is not directly comparable to the business of councils, these more modern practices relevant to dealing with customer payment difficulty or hardship provide a useful comparison with council practices.

⁹⁰ 16 councils stated in their policies that they will apply the maximum interest rate in all situations.

⁹¹ <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-policies-and-manuals/energy-retail-code/energy-retail-code-review-2016-customers-facing-payment-difficulties>

The hardship policies of 13 water companies⁹² and 13 electricity/gas companies were reviewed. Seven companies published inadequate or inaccessible information. The remaining 19 had easily locatable hardship policies on their websites that were readily understandable to a layperson, comprehensive in detail about what hardship is, what provisions are available, how to apply for assistance and how applications are assessed, what the company's obligations are, customer responsibilities, and any legal action that may occur against customers who ignore requests for payment.

Some utility companies also publish information regarding financial assistance, staff training to assess hardship claims, the level of security and privacy granted when entering into arrangements, and the responsibilities of the company and the customer. This level of information is generally not provided by councils.

Examples of the local government sector's better policies that were relatively easy to locate online, and contain a reasonable level of information, included:

- Boroondara City Council,⁹³
- Central Goldfields Shire Council,⁹⁴
- Indigo Shire Council,⁹⁵
- Knox City Council,⁹⁶ and
- Monash City Council.⁹⁷

The practice of utility companies in dealing with hardship is instructive when considering the potential for improvement of council processes of recovery of rates and dealing with people in payment difficulty. Compared to councils, utility companies appear to provide more assistance to customers experiencing payment difficulty and more accessible and understandable information about what qualifies for financial hardship.

For example, the hardship policy of Energy Australia explicitly includes short-term or long-term hardship caused by factors such as death in the family, household illness, family or domestic violence, unemployment or reduced income, the options that are available for those undergoing hardship and how to apply for assistance. The information is prominent on their website and informs customers, prior to application, about options and potential outcomes.

Council guidance is largely limited to advising customers to call council to discuss their position. Information on how to apply for deferments and waivers, or to access differing penalty interest rates, is largely unavailable in a published form.

92 Barwon Water, Central Highlands Water, Coliban Water, East Gippsland Water, Gippsland Water, Goulburn Valley Water, GWM Water, Lower Murray Water, North East Water, South Gippsland Water, Wannon Water, Western Port Water, Western Water

93 AGL, Alinta Energy, Click Energy, Dodo, Energy Australia, GloBird Energy, Lumo energy, Momentum Energy, Origin, Powershop, Red Energy, Simply Energy, Tango Energy

94 <https://www.centralgoldfields.vic.gov.au/files/sharedassets/public/rates/debtcollectionpolicy2015.pdf>

95 <https://www.indigoshire.vic.gov.au/About-your-Council/Council-documents/Policies/Financial-Hardship-Policy>

96 https://www.knox.vic.gov.au/Files/Rates/Rates_and_Charges_Hardship_Policy.pdf

97 <https://www.monash.vic.gov.au/About-Us/Rates/Hardship-Policy>

Although councils indicate reluctance to sell (or claim) property due to unpaid rates and charges, they appear to be less reluctant to seek an order from the Magistrates' Court.

Although most councils did not provide information about the number of properties sold to recover rates in the last five years, the 11 councils responding to the survey question stated that they had sold up to four properties per year.

The reputational issues associated with selling a property were clearly important to local councillors who participated in the consultation process. This was especially concerning for councillors in smaller communities where valuations and capacity to pay may be low. The Local Government Inspectorate recently reported that uncollected rates and charges in Yarriambiack Shire Council was 12 per cent of their rating revenue in 2018-19, while the average figure in the sector was 4 per cent.⁹⁸

Despite these concerns from councillors, it appears that there are increasing numbers of applications to the Magistrates' Court. The Westjustice submission notes a study undertaken by the Footscray Community Legal Centre and the Federation of Community Legal Centres showing that councils were the number one user of the Magistrates' Court judgement order process in 2012. Anecdotal evidence from rates managers and other council participants of the consultation process indicates that the court order applies more pressure on the ratepayer than other less formal processes such as phone calls, reminder notices and letters from lawyers. In addition, they do not incur the expense of such attempts because they add the cost of the application to the debt and it is paid by the ratepayer.

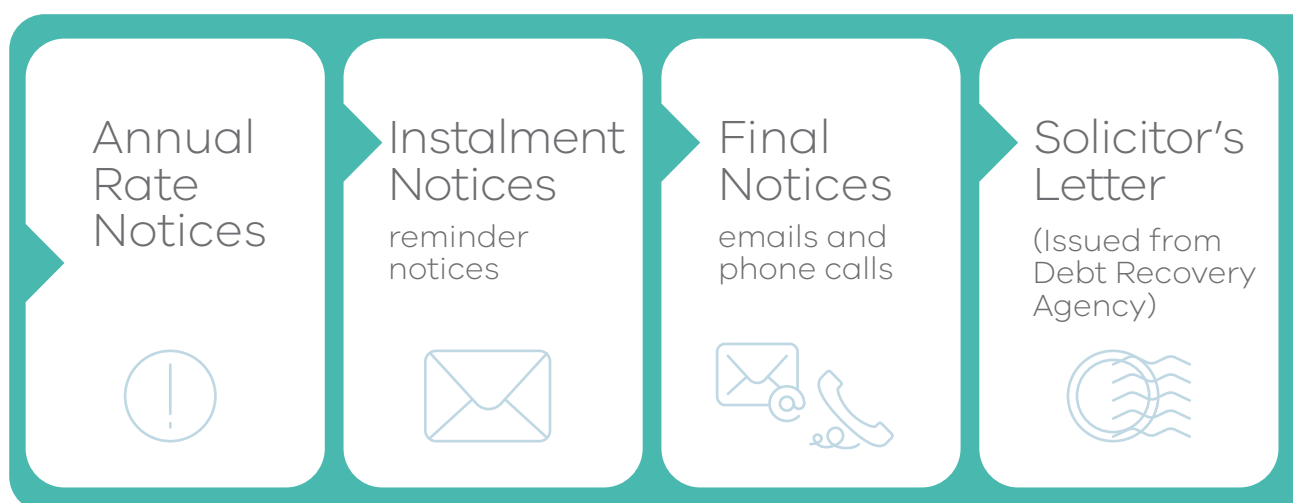
Westjustice argues that this approach does not distinguish between ratepayers simply refusing to pay and those experiencing genuine hardship and potentially overwhelmed by their debt and other contributing factors. The latter are likely to be intimidated by the action and less likely to be able to appear in court to explain their position.

Long-standing administrative practices drive customer experience following non-payment of rates.

While analysing the billing and recovery process, the Panel identified the issues in Charts 38 and 39 below.

Chart 38 – The rates billing process

The Billing Process

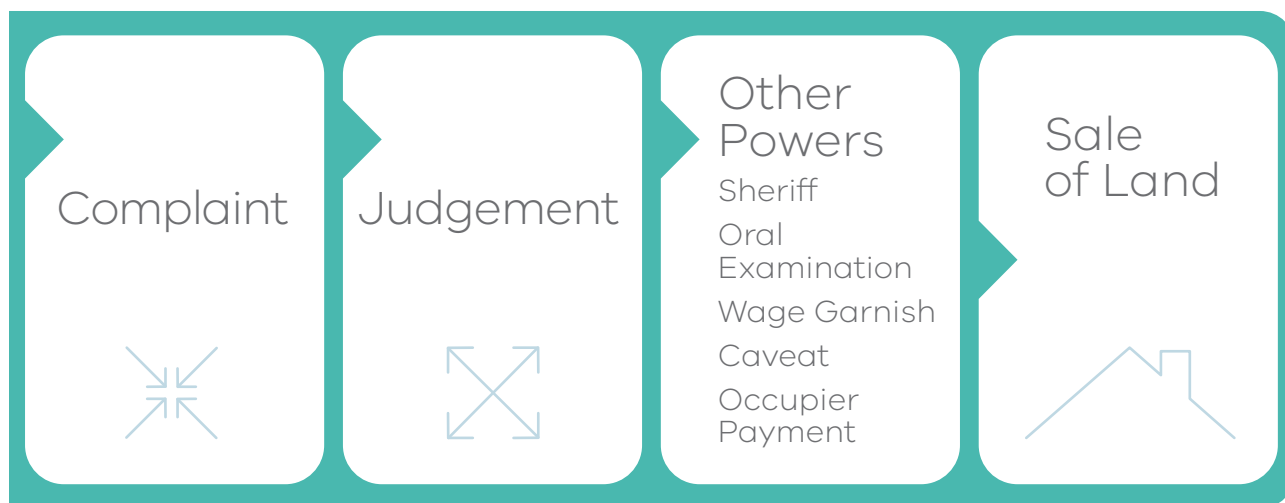


⁹⁸ Local Government Inspectorate, Protecting Integrity - Yarriambiack Shire Council Investigation', 2019, p.13 - <https://www.lgi.vic.gov.au/sites/default/files/2019-11/Protecting-integrity-Yarriambiack-Shire-Council-Investigation-report.pdf>

- Unlike utility bills (or other services), failure to pay rates does not result in suspension or cancellation of services, which may lead to ratepayers prioritising other bills to retain essential services.
- Updating contact details is limited to email or written letter, which may lead to lost communication and unpaid rates.
- Councils offer fewer billing and payment options than other agencies such as the State Revenue Office.⁹⁹
- Automated, digital services have developed substantially in recent years making possible credit card and direct debit payments. Councils have fallen behind in implementing these more modern practices.
- Providing additional billing services can be seen as either too expensive or unable to be delivered by existing software.
- Providing assistance to ratepayers with payment issues is seen as time and resource intensive.
- Using third-party providers leads to confusion with ratepayers who are accustomed to dealing directly with council.

Chart 39 – The rates recovery system

Legal Action



- Costs for legal action are passed on to the ratepayer, creating a “debt loop” which is harder for the ratepayer to escape.
- Passing debt recovery to a third-party may be a cost-effective method for council to collect debt but it increases pressure on the ratepayer in hardship.
- Most of the existing legal actions to recover rates add pressure to the ratepayer in hardship. Better recovery rates are seen with more focused personal contact.
- Given that rates are a first charge on the land, apart from the sale of land, other powers are little more than tactics to coerce payment and may be unnecessary.

99 <https://www.sro.vic.gov.au/my-land-tax>

- When there are ratepayers that councils legitimately cannot locate (estates, international owners, etc.), legal action is difficult as the initial Complaint must be served in order to use any other powers.
- Councils are reluctant to use their power to sell (or claim) land when rates remain unpaid for the legislated 3 or more years, due to the reputational impact.
- Legal action has a direct effect on the council-ratepayer relationship, creating a long-term negative relationship and reputational damage.
- Follow up on debts is resource intensive.
- Councils can't move to sell a property with significant debt when the owner cannot be located.

The Application of penalty interest rates can cause confusion with ratepayers and councils.

The Act requires interest to be calculated at the rate fixed under the *Penalty Interest Act 1983*. However, it also grants councils the power to exempt any person from paying the whole, or part, of any interest either generally or specifically.

Therefore, councils currently have the power to apply interest charges of any amount up to ten per cent. Some councils charge the maximum despite the fact that commercial interest rates are lower than the maximum allowed under the Act. Council and ratepayer participants of the consultation process argued that the application of penalty interest on unpaid rates and charges should be lower than the allowable ten per cent.

11.1.4 Conclusions

The Act does not encourage a compassionate approach to debt collection or collaborative practice to assist people facing payment difficulty or financial hardship.

The main focus of current legislation is the collection of rates through the billing process, and debt recovery through the legal process when collection is not possible. It does not encourage a more collaborative approach to collection or compassionate hardship practices. Although councillors appear to be reluctant to claim owed rates through the sale of (or claiming of) property, council officers have a strong incentive to use the courts as a blunt intimidatory tool to force engagement by ratepayers. This is an obstacle to developing practices, and a positive reputation, for supporting ratepayers facing payment difficulty.

The legislation makes no provision to support the Panel's principle (see Section 7.2.6) that the rates system should not further harm people in payment difficulty. There is clearly a need for councils to have powers to recover unpaid rates and charges. However, there is also room to improve clarity about providing support to ratepayers and to ensure that coercive practices are only pursued as a measure of last resort when ratepayers do not cooperate with council's efforts to assist them.

Lack of access to information on hardship policies may be a barrier to improving ratepayer support.

Access to consistent, relevant and understandable information on hardship policies and practices is inconsistent across the sector and may be a barrier to applications for support. As noted previously, there is no data available on the number of people who seek assistance from councils, how many are assisted to pay, how many remain with a debt after seeking assistance and how many have their property sold. This is problematic when considering how to ensure continuous improvement of policies and processes at a sector level. Despite the lack of information, it is not unreasonable to assume that inconsistent and inadequate information about how to seek assistance is also a key obstacle to people who might need it.

Offering effective support to people who may experience hardship requires corporate capacity, a supportive organisational culture, sensitive policies and procedures and related skills and knowledge.

For councils to engage in an effective partnership with people to help them to pay rates, the starting point is a recognition that most people do not want to be in debt. Such an approach must also recognise that it is likely that a person who is in rates debt may have payment difficulty or even be in financial hardship. This starting point is based in an organisational culture which, while being prepared to deal with tax evaders, trusts that the majority of ratepayers are honest. This kind of culture must be led from the top of the organisation and should translate into required policies, processes and behaviours of staff when dealing with people who have not paid rates. This kind of leadership and design and implementation of processes requires specific skills and knowledge.

A sector-wide cultural and capability change program is required to ensure best practice in rate recovery and support for people in hardship.

Legislation and other sector support should encourage a more collaborative approach to rate recovery and a fairer approach to dealing with people in hardship. Regulations, guidelines and/or administrative systems are required to support change in addition to an active sector-wide change program including training, performance measures, public reporting and audits to promote continuous improvement. Such broad support has been established to assist the power and water utilities sectors to improve practice over a number of years.

Legal action by councils should be a last resort

Legal action by councils should be a last resort, recognising that once a council decides to pursue legal action against a ratepayer, the relationship between the council and the ratepayer has “failed” and the ramifications are likely to change the nature of the relationship between them. Further, the ability for councils to pass on legal fees as a first charge on the land may encourage a culture in councils where the goal is to ensure “no cost to council”, rather than to improve recovery through more collaborative approaches. This may lead to legal action being viewed as a low-cost method of rate collection.¹⁰⁰

In contrast, the position of the AICRP is that contemporary best practice in debt recovery is based on a personal and collaborative relationship between the council and the ratepayer early in the billing and recovery process. This is likely to improve recovery and reduce stress for the ratepayer.

Accumulating unnecessary legal fees increases pressure on the ratepayer and is not reasonable.

The value of a court order is questionable in situations where councils do not proceed to the sale of land. Other states’ models of debt recovery do not require court orders to proceed with the sale of land. In Victoria it appears that court orders are viewed as a form of “check and balance” by a third party (the Court) assessing the claim. If a council arrives at a point where all other attempts to recover debt from a ratepayer have not been successful and they are committed to the sale of a property to recover outstanding rates, passing on these charges is reasonable. However, accumulating unnecessary legal fees, in the absence of collaborative approaches to debt collection or any intention to sell, to pass onto the ratepayer is not reasonable.

100 S156(6) - http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s156.html

11.1.5 Recommendations

Recommendation 31: Ensure that the regulations (See Recommendation 2) require that all Victorian ratepayers have access to consistent billing, debt recovery and payment difficulty assistance and that the use of councils' coercive powers (e.g. legal action and debt collection) are only ever measures of last resort.

Recommendation 32: Establish a collaborative change management program to support the implementation of the regulations relating to payment difficulty. The program should address the requirement for councils to develop new processes and skills to deal effectively with all aspects of payment difficulty. Responsibility for the change program should be assigned to an agency with experience in guiding, designing, implementing and monitoring reforms of this nature. The performance of councils should be reviewed two years after implementation of the change program to determine its success in changing practice and whether further recommendations for improvement are warranted.

12.1 Service Rates and Charges

12.1.1 Background

Service rates and charges¹⁰¹ are used by councils to recover the cost of collecting and disposing of waste, however S. 162 of the Act specifies that they may also be levied for the provision of a water supply, sewage services, and “other prescribed services”. A “prescribed service” is designated by the Minister for Local Government and would enable a council to apply rates or charges for the purpose prescribed. Although the Minister has not prescribed a service since the Act began, it is possible for a council to request a service be prescribed. Service rates and charges are outside the rate cap calculation.

12.1.2 Issues for Consideration

Full cost recovery for a service is not defined or required by the Act.

The main concern of council participants of the consultation process regarding service rates and charges was that “the collection and disposal of refuse,” as stipulated in the Act, does not cover all activities related to the service. Some extra expenses related to waste disposal therefore come out of general revenue. Councils can pay for a portion of waste collection with service charges but can partially subsidise the service with general rates revenue.

It appears that councils no longer provide water supply services.

The Panel was not able to find any current applications by councils of service charges to provide water services or sewage services such as septic tanks in rural areas. However, councils continue to have responsibility to manage domestic waste water in accordance with the *Environment Protection Act 2017*. This includes the charging of permit fees for installation of septic tanks. It appears that the reference in the Act to water supply services is no longer relevant.

12.1.3 Evidence and Analysis

Most councils levy separate waste service charges.

Separate waste charges are levied by 74 of the 79 Councils in 2019-20. Banyule, Melbourne, Whitehorse, Yarra and Port Phillip councils are the exceptions, funding waste services out of general revenue. Waste charges, in the form of service charges, were budgeted to raise \$694 million across the sector in 2019-20.

Over the past 3 years there have been increases in the budgeted waste charges across the sector.

Year-on-year growth in local government’s budgeted waste charges has increased from a 5.7 per cent rise in 2017-18, an 11.0 per cent rise in 2018-19 and then 5.8 per cent rise in 2019-20. The change in the level of waste charges has been substantially higher than the change in both budgeted general rates revenue and increases in the consumer price index. These increases are mainly attributed to increases in the cost of recycling.

101 s162 - http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s162.html

The Act does not require councils to restrict waste charges to reasonable costs of providing waste services.

Councils can subsidise services with general rate revenue at levels of their own choosing. Waste charges levied by Wodonga City Council were the subject of a 2018 investigation by the Victorian Ombudsman.¹⁰² The investigation identified that the City of Wodonga levied a waste management charge at levels “substantially above the fair cost of providing waste management services and generates a substantial surplus. This surplus is then used to subsidise activities unrelated to waste management and also general rate revenue”.¹⁰³

There is variation across the sector in waste service provision and in charging arrangements.

The wide range of waste charges levied across the sector in 2019-20 indicates that varying costing practices and charging applications are in use. Councils billed over 400 different service charges for the collection and disposal of waste in 2019-20, mostly for the collection of 80 litre, 120 litre and 240 litre bins. Charges range across councils from under \$100 for picking up a single smaller bin, to over \$500 for collection and disposal of rubbish in multiple bins or bin types such as waste, recycling, green waste and organics.

Service rates and charges for targeted services such as waste collection and disposal are applied to rate-exempt properties.

Given that a service rate or charge is tied to a tangible and property-specific service, councils can levy waste and other service rates and charges on rate-exempt properties. This applies to sewage services and water supply if required and any Ministerially prescribed services if determined in the future. This requires transparency and accuracy in calculating the costs and setting the charges for such services to ensure that exempt properties are only paying for the cost of the service and not subsidising other services.

12.1.4 Conclusions

The Act should provide some direction for setting service rates and charges.

The Act should enable councils to be flexible in determining what elements of a service they provide to meet the needs of their communities, while supporting relative consistency across the sector in how they cost those elements. The current term “collection and disposal of refuse” used in the Act does not allow for consideration of the material and necessary costs related to landfill remediation and other longer-term waste management costs such as infrastructure development. New and innovative ways of managing waste and recycling collections should be accommodated in the legislative framework.

Councils should ensure they are transparent about the basis of their service rates and charge levels.

The need for transparency is especially important in applying waste service charges to ensure that payment by exempt properties is restricted to the service only and not subsidising general revenue. There have been changes to the waste and recycling industry over time which require continuous education and infrastructure changes. It is important that councils are clear about how they calculate and allocate their costs to provide accurate cost signals to rate payers about their waste practices. Existing State and Commonwealth guidelines on cost recovery could be adopted for local government service charges.¹⁰⁴

102 See <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-wodonga-city-councils-overcharging-of-a-waste-management-levy/#recommendations>

103 Ibid, Section 70.

104 The State and Commonwealth Governments have current cost recovery guidelines for the setting of fees and charges. See Department of Treasury and Finance, Cost Recovery Guidelines, 2013 (https://www.dtf.vic.gov.au/sites/default/files/2018-01/Cost-Recovery-Guidelines-Jan2013_0.pdf). See also Department of Finance (Commonwealth) ‘Australian Government Cost Recovery Guidelines’ (<https://www.finance.gov.au/publications/resource-management-guides/australian-government-cost-recovery-guidelines-rmg-304>)

12.1.5 Recommendations

Recommendation 33: That the section of legislation referring to “collection and disposal of refuse” be amended to ensure that all applicable waste management activities and efficient costs that are directly related to the service provided, may be considered when setting the service rate (or charge).

Recommendation 34: That “the provision of a water supply” be removed from the provisions for a service rate (or charge).

12.2 Special Rates and Charges

Section 163 of the Act provides for councils to declare a special rate or charge for the purpose of providing a special benefit to a defined group of ratepayers. It is commonly used for economic development of commercial areas, and for activities such as beautification projects and footpath installation. Councils must follow the rules of use and a prescribed process for the declaration of special rates and charges. A council can only tie the rate or charge to defraying the expense of an activity that has special benefit to those levied the charge. Submission and appeal mechanisms¹⁰⁵ allow ratepayers to engage with councils by prescribing consultation and voting processes, as well as objection rights for ratepayers if they believe that the charge has been applied incorrectly.

Chart 40 – Special rates and charges under the Act

Section (S.)	Summary of provision
S. 163	This gives councils the power to declare a special rate and/or charge for the purpose of defraying the expense of, or repaying the advance/loan on, a function or power of Council that is of special benefit to a specific group of people.
S. 163 (1A) to (1C)	Details how councils are required to calculate the amount to be levied. It also allows the Minister to make guidelines regarding these calculations to be published in the Victoria Government Gazette (see below).
Gazette G39 ¹⁰⁶	The use of special rates and charges is governed by the <i>Special Rates and Special Charges: Calculating Maximum Total Levy Ministerial Guideline</i> .

Source: Local Government Act 1989

Some issues for consideration are outlined below.

Special rate and charge schemes can be time consuming and costly.

Several councils commented about the time and expense required to establish special rate or charge schemes and to undertake the required community processes to obtain community support. A scheme is in place once it is declared by a council while the actual works and the billing of ratepayers can lag behind the declaration for a long time. While actual levying of a special rate or charge cannot commence until the project does, the charge remains on the property until collected and there is no required timeframe within which the project subject to the scheme must commence.

¹⁰⁵ s163A & s163B

¹⁰⁶ Available at <http://www.gazette.vic.gov.au/gazette/Gazettes2004/GG2004G039.pdf#page=28>

Some activities providing special benefit to a group of ratepayers may also provide some general broader public benefit.

The extent to which such benefits are paid for by general rates or special rates and charges is a key area of debate for councils and communities. Further, special rates and charges schemes sit outside the annual budget process and require their own separate rate notice.

There are two main categories of special rates and charges schemes in use across councils.

Submissions and information from previous reviews indicate that there are two main purposes for which the schemes are used.¹⁰⁷ The first is upgrading or construction of roads and footpaths. The second is for street trading associations to fund promotional and marketing activities. Approximately 70 street trading association schemes are in use across Victoria according to Mainstreet Australia in 2015. In these circumstances, the charges are levied in a designated area to pay for street upgrades or for staff to manage annual activities. Many street trading association schemes have been in place for along time. Therefore, while ratepayers would be informed about special charges on their tenancies, many may not have had the opportunity to participate in the design of the scheme or to object to its application.

12.2.1 Conclusions

The specific and targeted nature of special rates and charges makes them an appropriate tool to fund projects targeted to particular groups in the community where there is special benefit.

Though special rates and charges schemes are time consuming to establish, they have a clear and transparent process that requires councils to undertake due diligence on the design and cost of a project or program and to consult and test them with the affected ratepayers. They are important funding tools for councils but require safeguards for ratepayers to ensure fair application.

Projects funded through special rates and charges should be initiated and completed within a reasonable timeframe.

The special benefits ratepayers are funding should be enjoyed by them as soon as practicable. If a long period of time elapses from declaration of a scheme by a council to project commencement, it implies that council was not ready to undertake the project. If a council determines that a project is too large or costly to be completed within a reasonable timeframe, then it is possible that the decision to fund it through a special rates and charges scheme was not appropriate. Further, special rates and charges schemes in place for trader associations should be reviewed to ensure their continued relevance and value to the affected ratepayers.

12.2.2 Recommendations

Recommendation 35: That the *Local Government Act 1989* be amended to require that the declaration of special rates and charges schemes include a project timeframe and plan, that councils report on progress against the plan in their annual reports, and that councils review and report to stakeholders on the schemes on a regular basis to promote their timely completion and ongoing relevance.

Recommendation 36: That where a special rates or charges scheme relates to infrastructure, the Act clearly specify a limited timeframe between the declaration of a scheme and the initiation of the project.

¹⁰⁷ As Special Rate and Charge Schemes are not required to be included in Annual reports, data collection on their use is difficult. Street trader associations funded by Special Charges are a common practice. Approximately 70 such schemes were identified across Victoria by Mainstreet Australia in their 2015 submission to the Review of the Local Government Act 1989. Mainstreet Australia is an association that supports the establishment of street trader associations and their funding.

12.3 Environmental Upgrade Agreements and Cladding Rectification Agreements

There are two specific rating provisions within the Act; the provision for Environmental Upgrade Agreements¹⁰⁸ (EUAs) and the provision for Cladding Rectification Agreements¹⁰⁹ (CRAs).

EUAs allow ratepayers, councils and lending institutions to enter into an agreement for the purpose of funding works to improve energy, water or environmental efficiency and/or sustainability. Lenders provide finance to a building owner for environmental upgrades and the council collects the repayments through its rate system and passes them on to the lender. Similarly, CRAs allow these parties to enter into agreements to fund works that rectify cladding issues.

Since 2015, when EUAs were enabled in the Act, 21 councils (including City of Melbourne agreements created under the *City of Melbourne Act 2001*) have been party to at least one EUA.¹¹⁰ 72 projects have commenced with a total value of \$26.7 million. There are currently 36 councils prepared to be party to new EUAs.¹¹¹

The Sustainable Australia Fund (SAF), currently the only organisation which brokers EUA finance and administers EUA applications for councils, submitted that the scope of EUAs should be expanded from just commercial properties to all properties, and that requirements in the Act for credit risk assessments should be reduced. Ratepayers Australia raised concerns about EUAs including a lack of transparency around environmental returns from EUAs, and the complexity of EUAs which may lead to ratepayers entering into agreements without a full understanding of associated risks. Some councils noted there is little incentive to participate in EUAs due to their administrative difficulty. CRAs were only introduced into the Act in 2018 and were not raised in any part of the consultation process. The Panel did not find evidence that the mechanism has yet been used.

On the basis of the issues raised during the consultation process, it is reasonable to conclude that the process for assessing and administering EUAs should be reviewed to determine how they might be simplified for councils who wish to be a party to them and how the community might be better informed about the risks and benefits of the product.

Recommendation 37: That the legislative and administrative arrangements for Environmental Upgrade Agreements be reviewed to determine how they might be simplified and how best to communicate the risks and benefits to ratepayers.

108 http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s181a.html, Division 2A of the Act

109 http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s185i.html, Part 8B of the Act

110 Better Building Finance website, <https://betterbuildingfinance.com.au/news/market-data/>

111 As of February 2020, per the Sustainability Victoria website, www.sustainability.vic.gov.au

13.1 Electricity Industry Act 2000 – Payment in Lieu of Rates

13.1.1 Background to the Topic

The privatisation of the electricity industry in Victoria in the 1990s resulted in a rates liability for power generators for the first time as public assets, which were exempt from rates, moved into private ownership. The *Electricity Industry Act 1993* (now the *Electricity Industry Act 2000*, referred to as the EIA in this chapter) provided for the newly privatised electricity generators to choose to negotiate an agreement with councils to make payments in lieu of rates. The agreement is generally referred to as a PiLoR (Payment in Lieu of Rates) agreement.

Under PiLoR, the rates payable can be any amount agreeable to both parties.¹¹² If agreement cannot be reached, the EIA provides for third party arbitration. Since 2005, arbitrators must have regard to the method published by the Minister in the Victoria Government Gazette. In practice, many councils appear to apply the gazetted methodology, thereby avoiding the need for arbitration.

The PiLoR arrangements apply only to the land on which the generation units are situated. Related assets, such as transformers and connection infrastructure, are rated under the LGA.

The PiLoR formulae.

The gazette notice contains a number of formulae for determining rates based on power generation capacity or output, rather than property value.¹¹³

Generators other than solar-/wind-powered generators.

If a generator is not powered by solar or wind it is rated based on the capacity of the power station in megawatts (MW). These generators pay rates made up of a fixed charge (\$54,400 in 2018) plus a variable charge (\$1,225 per MW in 2018). The fixed and variable amounts are indexed annually.

Solar- and wind-powered generators.

Since 2018 separate formulae for solar and wind generators have been included in the gazette, with the intention of supporting this type of generator. These consist of a variable charge based on output in megawatt-hours (MWh) with solar/wind generators that are deemed “community-owned” paying a lower variable charge. In 2018 the charges were \$0.56 per MWh produced for community generators, and \$1.12 per MWh for other solar/wind generators. Both charges are indexed annually.

13.1.2 Issues for Consideration

Concerns about inequity between industries.

Submissions from the local government sector and council forum participants were critical of the PiLoR arrangement. They pointed out that such arrangements result in power generation companies paying less in rates than many businesses rated under the Act, despite benefiting from council services like other business ratepayers. The MAV submission further argued that recouping rates based on property valuations from power generators would enable councils to reduce rates on other properties. The submission from Australian Energy Council argues a condition of many energy infrastructure projects is the obligation to upgrade the servicing roads at the project proponent’s cost.

¹¹² Section 94, http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/eia2000261/s94.html

¹¹³ Victoria Government Gazette, General Gazette 41, 11 October 2018, p.2303, <http://www.gazette.vic.gov.au/gazette/Gazettes2018/GG2018G041.pdf>

Concerns about administrative burden.

Alpine Shire Council commented that the scheme is administratively cumbersome, particularly where it relates to the volatile output of hydroelectricity generators. This can make the PiLoR calculations difficult and subject to frequent negotiations with the generation company.

Inconsistency between State and local government in taxing power generators.

In contrast to the council rating system, the Victorian Government's Fire Services Property Levy (FSPL) is applied to power generators based on CIV without any special arrangements. Several councils noted that it was inconsistent for the State to require councils to levy generators on a separate basis.

13.1.3 Evidence and Analysis

The effect of the PiLoR arrangement is generally a discounted rate liability for power generators.

Details of some of the PiLoR arrangements in place indicate an inequity across business sectors in rates contributions. For example, Swan Hill Rural City Council estimates that rating power generation land in Swan Hill based on CIV would have raised approximately \$1.5 million more in revenue¹¹⁴ than the value of rates under PiLoR in 2019-20. Similarly, Towong Shire Council estimated that the difference between rating generators in the Shire of Towong based on CIV rather than PiLoR would be approximately \$700,000 in additional revenue.¹¹⁵

Revenue collected under the PiLoR arrangements is not part of the rate cap calculation. Councils that have seen significant growth in power generation assets in recent years from solar and wind are realising a revenue increase which sits outside of general rate revenue and the rate cap calculation.

PiLoR arrangements create complexity and uncertainty compared with property-based rates.

PiLoR arrangements are potentially complex for some councils and can create uncertainty for councils (and generators).

While general rates under the Act are calculated based on property valuations conducted annually by the State, the PiLoR formulae are based on separate rating bases, namely output or generation capacity. The gazette includes separate formulae for three categories of generator: coal/gas generators; small solar/wind generators; and small solar/wind community generators. The formulae are based on estimates of either maximum or average output and capacity, which are disclosed by the generator to the council. However, there must be a final reconciliation between the actual and estimated figures in order to come to a final rates payment.¹¹⁶ Additionally, the gazette notice requires the formulae to be adjusted if production is significantly lower than capacity and allows for adjustments more generally as agreed by both parties (and the arbitrator). These uncertainties reduce the transparency of the rating system and increase administrative costs for councils.

There is no clearly stated rationale for electricity generation businesses to pay rates under a separate arrangement.

There appears to be no clear record of why a separate rating arrangement was created for generation businesses when Victoria's electricity assets were privatised. Parliamentary records do not provide any rationale, while a recent DELWP discussion paper on PiLoR notes only that:¹¹⁷

¹¹⁴ Based on Swan Hill industrial rate 2019-20.

¹¹⁵ Based on Towong industrial rate 2019-20. The Swan Hill Rural City Council and Towong Shire Council estimates formed part of the submission by the Municipal Association of Victoria to this Review.

¹¹⁶ While maximum capacity would generally remain fixed over time (barring improvements to the generation equipment) average capacity may need to be verified on an annual basis.

¹¹⁷ Victorian Department of Environment, Land, Water, Planning, 'Community renewable energy projects, PiLoR and planning issues discussion paper', 2016, <https://apo.org.au/sites/default/files/resource-files/2016/09/apo-nid70565-1202896.pdf>.

"[s.94 of the EIA] ... aimed to result in fair and equitable charges—considering the capital-improved land value of the generation facility—for generators as they were at time: most were large, base-load generators."

While most business ratepayers are charged rates based on the capital improved value of their property, power generators may pay rates based on the amount of power they can (or do) generate. This generally results in a lower rate bill than under property value-based rates. While power generators provide an essential service, they are still private entities extracting private benefit from their property like any other business. The principle of horizontal equity (i.e. that taxpayers in similar circumstances should be treated in a similar way) is contradicted when this small group of businesses receives more favourable rating treatment than other businesses.

13.1.4 Conclusions

The complexity of the PiLoR arrangements and the special circumstances of their application have remained unchanged since the privatisation process in the 1990s. This has resulted in inequitable revenue outcomes across many communities and inequity between electricity generators and other businesses that are levied rates under the Act. While energy generation companies may make direct contributions to community activities and have agreements to pay for infrastructure damage or upgrades related to particular construction projects, these arrangements are ad-hoc. Electricity generation companies also benefit from the other services provided by councils.

Power generators operate as private businesses. Although they are important providers of essential services, the Panel concludes that in the absence of a clear rationale for these arrangements, it is not clear why councils should continue to provide effective rate concessions by way of a complex, specialist scheme. Similarly, while the 2018 changes to the PiLoR methodology were intended to support the development of smaller generators, the Panel's view is that Victorian Government support should not impact the fair distribution of rates in a municipality.¹¹⁸

Bringing the rating of power generators under the same arrangements as the majority of ratepayers would likely impact on the rates paid. While it is difficult to model the outcomes given the number of factors involved, in most circumstances this will entail an increase in rates for power generators. The benefits will be increased simplicity and transparency for all parties and increased equity in the rating system.

13.1.5 Recommendations

Recommendation 38: That in the absence of a clear policy rationale, section 94 of the *Electricity Industry Act 2000* be repealed to bring the rating of all power generation companies under the *Local Government Act 1989*.

Recommendation 39: If section 94 of the *Electricity Industry Act 2000* (EIA) is repealed, that a transition arrangement and timeframe for electricity generators to be rated under the *Local Government Act 1989* (LGA) be implemented. (For example, the difference in rates payable under the EIA and the LGA could be phased in evenly over three years).

118 https://www.energy.vic.gov.au/__data/assets/pdf_file/0030/57945/Community-Energy-Projects-Guidelines-Booklet-A4-WEB.pdf

13.2 Cultural and Recreational Lands Act 1963

13.2.1 Background

Purpose of the Cultural and Recreational Lands Act 1963.

A key driver of the *Cultural and Recreational Lands Act 1963* (CRLA) was the fact that many sporting and recreational lands were facing substantial increases in their rates at that time. This was a consequence of the significant upgrade to Victoria's valuation system, culminating in the *Valuation of Land Act 1960*. Valuation system reforms resulted in more accurate and consistent valuation of land at its highest and best use.

The CRLA has two goals: firstly, preventing the compulsory acquisition of land deemed cultural/recreational;¹¹⁹ and second, requiring certain factors to be taken into account when rating cultural and recreational land. The CRLA has three key criteria for defining "recreational land" which councils may then consider for determining rates.¹²⁰

- **The organisation owning or using the land must have specific purposes:** The land must be owned by an organisation existing for the purpose of providing/promoting **outdoor, cultural or sporting recreational** facilities or objectives, or the land is leased or licenced from the Crown or a municipal council by such an organisation.
- **The organisation must not be for profit:** The organisation's profit may only be applied to promote activities relating to those objectives.
- **The land must be used for specific purposes:** The land must be used for outdoor sporting recreational or cultural purposes or similar outdoor activities.

Separately from the general definition above, the CRLA declares specific properties to be "recreational lands", including agricultural showgrounds, the Caulfield Racecourse Reserve, the Melbourne Cricket Ground, Flemington Racecourse and the National Tennis Centre. The Governor-in-Council may also make an order declaring land to be recreational for the purposes of the CRLA. However, to date there has been no such declaration made.

How are cultural and recreational lands currently rated?

The CRLA requires that a council consider both the services it provides to the land and the benefit to the community derived from the land when setting rates on cultural and recreational (C&R) land.¹²¹ Section 6 of the CRLA allows for any dispute with council relating to the CRLA to be determined by the Minister.¹²²

The legislation also includes "clawback" provisions requiring that if C&R land changes use (or otherwise ceases to be C&R land), there must be a repayment to council of the difference between the rates paid under the CRLA and what would have been paid under the Act.¹²³

In addition, for the purpose of these "clawback" provisions, the valuation of the land is deemed to be the valuation after the land ceases to be "recreational", meaning the repayment could be more or less than the amount that would have been payable under the LGA during the same period.

119 The CRLA only refers to "recreational land" (including land used for outdoor cultural facilities) – but to avoid confusion this report will describe land impacted by the CRLA as "cultural and recreational".

120 See section 2 of the CRLA: http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/carla1963291/s2.html

121 See section 4 of the CRLA: http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/carla1963291/s4.html

122 Section 6, http://www6.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/carla1963291/s6.html

123 Section 4, CRLA.

In 2019-20, 35 out of 79 councils reported separate rates for cultural and recreational lands.¹²⁴ Rates set under the CRLA are not included in general rates and are therefore not subject to the rate cap.

13.2.2 Issues for Consideration

Although rates set under the CRLA were a topic of only moderate interest among most participants of the consultation forums, 17 written submissions were received from golf clubs and associations.

A frequently raised concern was that current rating for C&R land does not appear to reflect the original intent of the CRLA insofar as property value is used as a starting point to determine rates, regardless of whether there is any intention to sell the land. This was considered particularly problematic where the highest and best use valuation causes large increases in rates and where clubs are less able to cover the increased costs or budget for them.

Golf clubs further argued that they should have lower rates since they provide substantial community benefits. Golf clubs were also concerned that there is inconsistency across councils, and even within council areas, in how their courses were rated from year to year.

Council participants pointed out that, while there could be justification for rate reductions on C&R land with public benefits, the existing regime is vague and difficult to apply. The MAV submitted that the rating of C&R land could take place through the Act and a rate reduction offered through the use of a differential rate.

13.2.3 Evidence and Analysis

There is limited reporting on council rating of C&R land.

Few councils publish explicit policies or advice on the rating treatment of C&R lands. Some councils have detailed their approach to rating C&R land in their rating strategy documents. Councils are not required by the CRLA to publish the separate rate levied on such lands, although 35 councils out of 79 disclosed their C&R rates alongside differential rates in their 2019-20 budget documents. Where councils do have a policy, they lack detail and many do not describe what services are provided or what benefits are assessed in relation to the relevant C&R property. In a few cases, they use surveys and questionnaires to ascertain this information.

There appears to be wide variation in the practice of rating C&R land.

Where councils do provide information about how C&R rates are set, a range of approaches are taken. The majority of councils appear to provide significantly reduced rates, compared to general rates, for a range of C&R land uses. Several councils apply a specific rate (such as the commercial differential rate) to the property valuation as a starting point, and then add a discount to account for benefits provided by the property and the services received from the council. These discounts vary greatly, as indicated in Chart 41 below. A number of councils provide complete exemption from rates for C&R land. Often, land uses that appear similar (e.g. golf clubs) receive varying treatment between councils.

Other councils have additional criteria when setting C&R rates, such as distinguishing between 'with liquor' or 'without liquor'. The City of Ballarat specifies that a ratepayer is not eligible for a cultural and recreational assessment if they employ paid staff.

Although councils are not required to publish C&R rates, they provide aggregate data to the VGC to enable grant allocation. A total of \$4.48 million was levied by all Victorian councils on C&R land in 2017-18.¹²⁵ Councils reported between 1 and 89 C&R land assessments, with most councils having fewer than 20 assessments. A selection of councils that have disclosed their C&R rates is presented below, illustrating the extent of the discount relative to general, residential and commercial rates.

124 The information was found in published council budgets and rating strategies and council responses to the Review consultation. There is no requirement to report rates set under the CRLA so there may be other arrangements the Panel is not aware of.

125 While councils are not required by law to report on C&R rates through their budgets, most councils disclose data on C&R rates to the Victorian Grants Commission as part of the grant determination and allocation process.

Chart 41 – C&RL rates relative to general, residential and commercial rates – selected councils

Selected councils	C&RL rate as a % of other rates		
	General	Residential	Commercial
Brimbank City Council		109%	50%
Glenelg Shire Council	50%		
Greater Shepparton City Council		73%	36%
Horsham Rural City Council		50%	53%
Mildura Rural City Council		10%	8%
Nillumbik Shire Council		39%	33%
South Gippsland Shire Council		50%	48%
Stonnington City Council	75%		
Whitehorse City Council	28%		
Yarra Ranges Shire Council		60%	40%

The selection of councils above shows that the effective discounts for C&R land vary significantly, ranging from 8 per cent to more than 50 per cent of commercial property rates.

Some land deemed “recreational” by the CRLA may only be adjacent or incidental to open space. For example, in the City of Melbourne, the corporate box and restaurant at the Melbourne Cricket Ground and a track manager residence at Flemington Racecourse are all treated as C&R land and rated accordingly. These exclusive or commercial uses appear inconsistent with the goal of preserving open space.

13.2.4 Conclusions

Councils’ rationales for their rate-setting practices for C&R lands are not transparent.

Councils must consider two factors when setting rates on C&R lands: the services provided to the C&R property, and the benefits derived by the community from the property. Councils have significant discretion in interpreting these provisions as the legislation does not include any additional detail. However, as described previously, very few councils publish explicit policies or any advice on the rating treatment of C&R lands.

The value of the benefit to the community of any C&R land and of the services provided by the council to such land would be very difficult to calculate objectively. This may be why it has been reported to the Panel that councils use the property valuation as a starting point for assessing the rates (which is not prohibited by the CRLA). However, beyond basing C&R rates on property valuations there is little transparency about how councils are arriving at the rates payable on these properties.

The planning system is a more effective tool for the Victorian Government to maintain open spaces.

The planning system allows state and local governments to restrict or specify the use of land. Local councils can and do impose a range of planning zones and overlays, including for green and open space purposes. This is a direct way for government to control land use and more effective than reducing rates to incentivise a type of land use. (A current review of Victoria’s overarching planning strategy document *Plan Melbourne 2017-*

2050 is already considering future needs through several actions to maintain green spaces.) The planning system requires a level of community engagement and transparency, with zoning and overlay information and decisions being publicly available.

The rationale behind reducing rates for C&R land is similar to the rationale for broader rate relief

As discussed in Chapter 10 of this report, there is a strong case for governments (at all levels) to provide tax reductions to support activities for public benefit, such as those of not-for-profits. Recommendation 22 lays out a public benefit test that could be applied to decide which land should be provided rate relief.

Under the legislation, owners or occupiers of land deemed “recreational” cannot distribute profits but must apply them to further sporting, recreational/cultural facilities, i.e. they must operate on a not-for-profit basis.

Land used for public, cultural and recreational purposes should be considered on the same basis as other land used for public benefit and assessed for partial relief of rates as proposed in Chapter 10 of this report. The application of a public benefit test (as proposed in Recommendation 22) to cultural and recreational land would ensure that the community benefits of open spaces and recreational land are recognised and valued within a consistent framework.

13.2.5 Recommendations

Recommendation 40: That section 4 of the *Cultural and Recreational Lands Act 1963* be repealed, removing the requirement for councils to consider services provided and community benefits relating to cultural and recreational lands when setting rates for such lands.

Recommendation 41: That the rating of cultural and recreational land by councils be brought under the *Local Government Act 1989* with any rate reductions to be determined under the proposed public benefit test for exemptions and to comply with the regulations to be established (as proposed in Recommendation 2).

13.3 City of Melbourne Rating Arrangements

13.3.1 Background

The *City of Melbourne Act 2001* (“CoM Act”) provides for rating arrangements for the City of Melbourne that are different from the provisions of the *Local Government Act 1989*. The CoM Act arrangements were originally created to acknowledge the need for a rating system to accord with the City’s unique occupancy arrangements and heavily built-up municipality.

The City of Melbourne can apply differential rates to commercial and residential properties using an NAV rating base.¹²⁶ The CoM Act allows for the use of differential rates regardless of the valuation base for rates whereas the *Local Government Act 1989* does not. If differential rates are used in conjunction with NAV, the difference between the highest and lowest rate in the dollar used for each rate may be 2:1 (instead of 4:1 allowed under the *Local Government Act 1989*).¹²⁷

13.3.2 Issues for Consideration

Since approximately 60 per cent of the property in the City of Melbourne is leased, the council has a preference for using NAV valuation for rates. NAV is based on very objective information about the value of the rents, which are contained in the leases.

¹²⁶ Although the CoM Act originally prohibited the City’s use of CIV, this restriction was lifted in 2005.

¹²⁷ s28 - http://www5.austlii.edu.au/au/legis/vic/consol_act/coma2001189/s28.html

The City of Melbourne submitted that there is potential to simplify and improve the efficiency and accuracy of their rating administration by allowing rating by title rather than occupancy. With 60 per cent of their rateable properties being occupancies (tenancies), it is not possible for the City to keep up with the changes in occupancies in a given year. Furthermore, a single building valuation could require up to 400 occupancy valuations. The City requires correct information to ensure rate notices are sent to the tenant, as retail lessees are liable for rates. To aid rates administration, the City conducts a survey of tenancies every two years. Nevertheless, it is likely that information on a portion of occupancies is not up to date.

The City of Melbourne also requested a removal of the current limits on the ratio between the highest and lowest differential rates which are set by both relevant Acts, although no rationale was provided.

13.3.3 Conclusions

There is merit in exploring rating by title rather than occupancy across the system more generally. (See Section 8.3.3 and Recommendation 6). The Panel acknowledges that the City of Melbourne is responsible for a unique community that includes a commercial and economic hub for the State of Victoria and a growing residential community. Both commercial and residential ratepayers have very different service needs.

In addition, bringing the City of Melbourne rating provisions under the *Local Government Act 1989* may simplify the system by eliminating its special arrangement. However, such a decision should be based on modelling to determine the impact on their ratepayers and consider any relevant City and State policy objectives.

13.3.4 Recommendation

Recommendation 42: That the Victorian Government and the City of Melbourne explore the impact of repealing s.28 of the *City of Melbourne Act 2001* to bring the City of Melbourne's rating provisions in line with the *Local Government Act 1989*.

14.1 The Rate Notice

14.1.1 Background

The principles of a fair rate system as outlined in Chapter 7 include the need for clarity and simplicity. The Act details what is required of councils when issuing rates notices, including when they are to be issued, what information is provided on the notice, and what payment instalments are offered, as well as other information such as the process for payment and the ratepayer's legal rights (see Chart 42).

- The Act provides for the payment of rates and charges in four instalments. In addition, many councils offer additional instalment plans and arrangements such as direct debit payments.
- The Act also allows councils to issue rate notices to third parties, such as tenants and real estate agents, to pay on behalf of ratepayers at the ratepayer's request. Depending on the council's operational procedures, this may result in the owner's name not being present on the notice (though it is still recorded in their database). Councils may also require an occupier (such as a tenant) to pay their rent to council should rates remain unpaid.
- The Act prescribes information the annual rate notice must contain including property and ratepayer details, property valuations, penalties, how to pay, how to object, due dates, and the amount due and payable.

Chart 42 – Legislative provisions for payments by instalment

Section (S.)	Summary of provisions
S. 158 (4) & Regulation 10*	Describes what information must be on the rates notice, when the notice must be issued, and the consequences if councils issue notices later than the prescribed date.
S. 167 (1) to (2C)	Councils must allow a person to pay general rates and charges in four instalments. Councils also have the option to allow payment in a lump sum, on dates fixed by the Minister.
S. 167 (3) to (6)	Details the requirements on how to set instalment plans for special rates and charges. Councils may set due dates for these as they see fit, though traditionally these are the same as general rates and charges.
S. 168	Allows councils to provide incentives for prompt payment, which must be tied to an existing instalment due date (i.e. 30 September, 30 November, 28 February, and 31 May). For example, if a council wishes to offer a discount on rates if they are paid in full by 30 September 2020, they must: <ul style="list-style-type: none"> • First offer the lump sum payment date (15 February 2021); and then • Offer the lump sum incentive date (30 September 2020).
S. 177	If rates remain unpaid after the due date, this section allows councils to send notices to a tenant and require payment to council of the rent the tenant owes the owner of the property. There are protections for the tenant in place such that the payment also discharges their rent debt to the owner. If the tenant does not pay, this section allows council to take them to the Magistrates' Court to enforce the debt.

*Note: From the Local Government (General) Regulations 2015

The payment due dates were fixed by the Minister through the Victoria Government Gazette on 20 March 1998 and have not been altered since.^{128 129}

Chart 43 – Gazetted due dates for rate payments

Four Instalments	Payment in Full
30 September	15 February
30 November	
28 February	
31 May	

14.1.2 Issues for Consideration

There are concerns that the rates notice is not clear and understandable.

Of the limited commentary about the rate notice throughout the consultation, most related to the amount of information present on the rear of the notice. Many ratepayers stated that they do not read the rear of their rate notice, and that the information should be provided in a clearer and more understandable format.

Both council and ratepayer participants agreed that much of the information provided on the rates notice could be provided on council websites. Several ratepayers also suggested that all council rate notices should be issued on the same template, to avoid confusion. Rate notices contain the details of the property owner, except when the tenant or occupier has agreed to pay the rates, meaning the owner of the property is not listed on the rate notice and may never receive it. This can limit the ability for the council to communicate with property owners.

There is variable council capability to provide more flexible payment options as required by ratepayers.

Currently, the Act requires payments be available in four instalments, with councils having the option of also offering a lump sum payment. Ratepayers require more flexible payment options, ranging from weekly payments to a single lump sum payment, to suit their cashflows.

Most councils stated that they are generally willing to provide alternative instalment plans through direct debit payments and are supportive of more flexible instalment options. However, some acknowledged that they do not have the capability to offer direct debit and therefore do not provide flexible options.

Council participants identified some problems associated with offering additional instalments.

As noted above, the Act requires payments be available in four instalments. Where councils choose to offer payment over a higher number of instalments, costs can include:

- increased cost of payment gateway charges;
- increased cost of paper instalment notices;
- limitations to the software for supporting credit card payments and for providing payment or instalment notifications outside those that are legislated; and
- costs from all the above if ratepayers switch between instalment plans during the year.

128 Page 632 - <http://www.gazette.vic.gov.au/gazette/Gazettes1998/GG1998G012.pdf>

129 There is no provision to alter these dates if they fall on a weekend, or a public holiday.

There is no legislated instruction on how partial payments of rates should be allocated to the various rates and charges on a rate notice

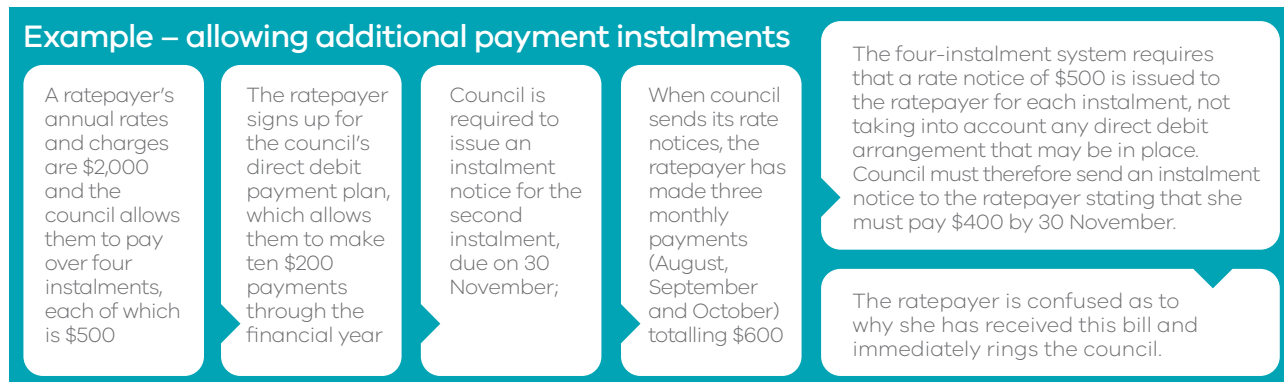
Ratepayers who have payment difficulty may make a partial payment of their rates. They may owe arrears as well as the amount shown on their current rate notice. They may also owe interest and legal fee repayments. In the absence of any guidance in the Act about how to allocate a partial payment against the various amounts owing, council officers decide where to allocate payments. This can have consequences for both the council and the ratepayer.

14.1.3 Evidence and Analysis

Councils are using cumbersome workarounds to offer more options to ratepayers.

The requirement for councils to allow payment over four instalments (and send the associated notices), combined with the option for councils to allow a lump sum payment date, creates complications if the council wishes to offer additional payment options, such as direct debit agreements with payment over different timeframes.

Though the due dates for payments (either in lump sum or instalments) are set by the Minister, there are common “workarounds” that allow councils to offer other arrangements for ratepayers. Applying their powers to defer¹³⁰ rates and to forego penalty interest¹³¹ effectively allows councils to tailor payment arrangements to meet their ratepayers’ needs. This can lead to administrative complexity. An example illustrating the administrative problems that can arise is provided in the breakout box below.



Councils offering lump sum payments, in addition to the four instalment payments, must ensure clarity for ratepayers.

There is no guidance to councils or ratepayers about how a lump sum payment is to be administered in the context of the required four instalments. All councils must issue the first rates notice due on the 30th of September. Councils choosing to offer a lump sum payment option make their own assumptions about the ratepayer. They may assume that a ratepayer who does not pay the first instalment amount in full on the due date, has chosen to pay by lump sum by the 15th of February. There are two benefits to this approach. Firstly, there is less administrative burden for council and secondly, it ensures penalty interest is not accrued by the ratepayer against the missed instalment.

130 http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s170.html

131 http://www7.austlii.edu.au/cgi-bin/viewdoc/au/legis/vic/consol_act/lga1989182/s172.html

There are also problems with this approach. There is no notice issued to the ratepayer for the second instalment since the council assumes they will pay their rates by lump sum on the 15th of February. This means that the next notice the ratepayer may receive is a final notice for the lump sum payment after the due date if no payment is received. If a ratepayer has not paid their first instalment due to payment difficulty both the council and the ratepayer have missed an opportunity to engage early to establish a payment plan. This may lead to further stress for the ratepayer and is inconsistent with both the principles of a good rating system outlined in Chapter 7 and the approach to payment difficulty and hardship outlined in Chapter 11.

In addition, if, upon receiving the first instalment notice the ratepayer decides to pay a lump sum on the 15th of February, but their circumstances change before the notice for the lump sum is issued, reverting to instalment payments could result in penalty interest being charged on the debt.

The lack of clarity in relation to lump sum payment arrangements has created the potential for confusion and dispute.

Council practice in allocating priority to rate and charge payments could benefit from formal guidance.

Information from members of the Revenue Management Association indicates that most councils have adopted the following order of payments against amounts owed:

1. Legal costs owing (if any); then
2. Interest owing (if any); then
3. Arrears on rates owing (if any); then
4. Current rates/charges/levies owing.

Partial payments of debts can leave small legacy amounts owed, potentially accruing penalty interest. In the absence of arrangements for payment difficulty, such small amounts can also mean the property is eligible for sale under S.181. The administration costs of such small amounts and their allocation can also be high for councils. Formalising the order of allocation of payments for different rates and charges would reduce ambiguity in the case of a dispute over debt.

The information on the rate notice includes important ratepayer rights.

The prescribed information that must be present on the rate notice includes important legal information pertaining to the occupancy and the ratepayer's rights.¹³² Councils suggested that this information could be presented on their websites, freeing up space on the rates notice. Though the information present on the notice can be seen as complex, confusing or unnecessary, it also advises ratepayers of their legal rights, which may be difficult to access for all ratepayers if located elsewhere.

14.1.4 Conclusions

Payment arrangements should be flexible and consistent with contemporary arrangements for payment.

The existing arrangements required by the legislation are restrictive and no longer appropriate for contemporary needs. Councils and ratepayers alike would benefit from the freedom to create payment plans that are more suitable for their needs. The legislation should foster flexibility for councils to provide methods that are convenient for ratepayers. It should also provide for councils and ratepayers to engage sooner around payment difficulty. However, the four instalments currently allowed for payments and due dates should remain as a default payment plan.

¹³² http://classic.austlii.edu.au/au/legis/vic/num_reg/lgr2015n119o2015427/s10.html

Councils' suggestion to formalise the existing payment allocations has merit.

Formalising a payment allocation hierarchy would provide clarity about how payments are processed and the amounts owing and ensure that a ratepayer's debt is suitably managed. However, the allocation will impact both councils' revenue and people who may have difficulty paying. These impacts must be identified and considered.

The rates notice should clearly identify the owner of the land.

Members of the Revenue Management Association commented that although it is acceptable for owners to nominate a third party such as an occupier (tenant) or agent to pay rates on their behalf, this can obscure who is ultimately liable for payment of rates. Requiring the owner's details to be present on the notice ensures that all parties are informed of the rates liability. This may help resolve disputes over payments and where responsibility lies for missed payments. Rate notices that do not list all parties create a risk that the notice may be used fraudulently.

The rate notice may be too "crowded".

Some council participants suggested less statutory information on the rate notice combined with options to provide the information in other forms (e.g. online). The statutory information includes important advice about a ratepayer's legal rights. Nevertheless, ratepayers may find the information difficult to understand. Councils also use the rate notice as a mechanism to communicate with ratepayers about council activities, yet do not provide important information such as whether the council has differential rates and, if so, how the particular ratepayer's rates compare with other differential rates.

The rate notice requires review against best practice written communication principles and in consultation with ratepayers.

14.1.5 Recommendations

Recommendation 43: That the Victorian Government work with the local government sector to develop and implement a best practice rates payment arrangement (including any legislative changes and systems required) to support flexibility and convenience for both councils and ratepayers.

Recommendation 44: That legislation formalise a hierarchy for the allocation of payments received. The hierarchy should be determined in consultation with stakeholders.

Recommendation 45: That the Victorian Government facilitate the development of a template for rates notices to be used across councils, which is consistent with best practice written communication principles.

Recommendation 46: That the owner and occupier are listed separately on the rate notice (if the rate notice is paid by the occupier).

15.1 Rating Strategies

15.1.1 Background

A rating strategy is a document published by councils to outline their approach to the setting of rates and charges. It is not a requirement of the Act. However, it has become common practice by councils to produce a rating strategy either as a standalone document or as part of the annual budget.

The structure and content of council rating strategies are informed by a guidance document titled 'The Local Government Better Practice Guide 2014: Revenue and Rating Strategy'¹³³, which sets out good practice for developing a council revenue and rating strategy.

Council's long-term spending intentions are reflected in their four-year council plan and strategic resource plans. The revenue implications of these plans ultimately impact upon the council's rating strategy since rates provide the majority of own-source revenue to councils.

Central elements of best practice rating strategies, according to the Better Practice Guide 2014, include a requirement for a council to consider rates in the context of all other elements of its revenue including fees, charges and grants. The guide suggests that a council should also determine a "pricing policy" that clarifies what type and proportion of each revenue source pays for different services and to what extent rates are used to subsidise many services. Councils should therefore identify the cost of their services and how they wish to price them for their community. They should model rating options to determine impacts on equity, efficiency, capacity to pay, and benefit derived from services. The council should then inform and consult with their community on the strategy.

15.1.2 Evidence and Analysis

Although preparation of rating strategies has become common practice, their quality does not appear to have improved over time.

The Victorian Auditor-General's Office (VAGO) 2013 performance audit, "Rating Practices in Local Government" reported that of the 12 councils audited, 'strategies varied considerably in their completeness and quality. Key considerations and drivers behind rating decisions were often not clearly identified in either rating strategies or council budgets.'¹³⁴ Observations from this Review of current rating strategies indicate similar shortfalls.

Rating strategies reviewed did not address all of the elements of the Better Practice Guide 2014.

The majority of councils (76 out of 79) currently have a rating strategy document published on their websites or include this information in their budget document. While most provide an overview of the rating system, restating legislative requirements and facts, and describing how the council intends to use the rating instruments available to them under the Act, much of the content repeats information on rates and charges specified in council budget documents.

A review of rating strategies against the elements of the Better Practice Guide 2014 was undertaken. Some strategies address the elements of the Better Practice Guide 2014 by providing insight into the council's considerations of rates in relation to taxation principles and local circumstances. While these revealed some thinking and priorities of the elected council on the application of rates and charges, the majority lacked information about why the council had determined to apply rates as proposed, or the merits and shortfalls

¹³³ https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0020/48260/LG-Revenue-and-Rating-Strategy.pdf. This document was originally issued in 2004 by the then Department of Planning and Community Development and the MAV, and revised by the then Department of Transport, Planning and Local Infrastructure in 2014.

¹³⁴ <https://www.audit.vic.gov.au/sites/default/files/20130220-LG-Rating-Practices.pdf>, p.ix

of the other options available. Few featured any quantitative analysis of the impact of proposed rates and charges on ratepayers. The justification for applying differential rates and other tools is generally described in very broad terms such as “improving equity and efficiency in delivery of council services” without any relevant evidence or further detail.

Community engagement in rating strategies appears limited.

Community engagement with the council in decisions about rates is generally limited to participation in the consultation process for annual budgets, although there are some examples of more active community engagement in long-term financial planning

15.1.3 Conclusions

Rating strategies should describe their relationship to long-term plans and priorities of councils such as those outlined in councils’ four-year plans and strategic resource plans.

A council’s four-year priorities should be the basis for its four-year resource plan, which, in turn, should inform a council’s rating strategy. All these plans should be set within the context of a long-term community strategy and associated financial plan and should inform the council’s annual financial planning, and annual budget. Generally, there is no clear link between these documents.

Rates generally form the largest proportion of a council’s revenue and are fundamental to providing infrastructure and ongoing service. They are also, possibly, the only link between every property owner and the council. It is, therefore, imperative that there is a clear alignment between council priorities, financial planning and rating strategies.

The Local Government Bill 2019 reforms provide an opportunity to improve strategic and financial planning across the sector

The *Local Government Bill 2019* reform proposals include a requirement for councils to prepare revenue and rating plans that cover the four years of the council term. Its alignment with the other legislative requirements for a four-year council plan, and a 10-year financial plan and 10-year asset plan provide a strong foundation to support the alignment of rate decisions with the broader revenue and expenditure decisions of councils. In other words, the Bill offers an opportunity to ensure alignment between long-term strategic planning and shorter-term planning.

15.1.4 Recommendations

Recommendation 47: That legislative reforms require councils to prepare a four-year rating strategy which aligns with their four-year resource plans and that annual budgets align with their four-year resource plans and their four-year rating strategies.

Recommendation 48: That the regulations (see Recommendation 2) include a requirement for councils to report on:

- The objectives of their rating strategy within the context of the council’s four-year resource plan;
- The evidence on which they have based their rating strategy to meet those objectives;
- The method by which they have engaged their communities in the consultation and discussion of the rating strategy; and
- The method by which they will review and evaluate the rating strategy.

Recommendation 49: That the regulations (see Recommendation 2) require councils to approve the rating strategy publicly and to publish it.

15.2 Community Engagement

15.2.1 Background

The Act requires that councils consult with their community on rates through the annual budget process. The proposed rates for the forthcoming financial year must be disclosed in the council's budget.¹³⁵ The budget is then subject to the consultation process specified in S. 223 of the Act, which requires the proposed budget to be published for a period not less than 28 days and permits a person to make a submission on the budget. In addition to this legislated process, councils can consult with the community using a range of other methods. Some councils have conducted consultation processes on preparing long-term financial plans including discussion of rates, while others consult the community as a part of the preparation of their rating strategies. The election process also offers the potential to engage the community in political debate and discussion about rates.

15.2.2 Issues for Consideration

Not all councils undertake meaningful community engagement in rates decisions.

Methods of community consultation have changed considerably in recent years. The International Association of Public Participation (IAPP) sets out a framework which clarifies the range of methods for engaging communities from simply providing information to empowering communities as partners in the design of policies and procedures which impact on them. This has improved the standards for community engagement. In addition, there are now many relatively new technology solutions which provide opportunities for governments to communicate and engage with communities. However, many councils may not have the culture, skills and technology available.

Any effective community engagement relies on informed participation and therefore effective and timely communication from councils.

Community and council participants of the consultation process for the Review acknowledged that the complex nature of the rating system presents a challenge when devising meaningful community engagement processes. They were appreciative of the short video prepared to inform the participants of the community engagement sessions under this Review. Effective communication on what rates are and how they are administered are an important element of any community engagement process.

15.2.3 Evidence and Analysis

It appears that most councils use more passive methods of community engagement in financial strategies including rating strategies.

Councils are facing increasing demands to engage meaningfully with the community on rates and many other functions. The current community engagement methods used by councils in relation to rates include both passive and active approaches. The passive methods are limited to providing information in annual budget documents, rating strategies and rate notice attachments. The more active engagement methods include public meetings and workshops such as citizens' juries, advisory committees who work with council officers to recommend strategies to council, as well as online and face-to-face surveys and discussions.

¹³⁵ S.127(3) of the Act requires that the budget contain the information specified about proposed rates.

The public submission process required for annual budgets is not effective in engaging the community in discussion about rates.

Although the annual budgets contain information about the rates decisions of council, the information and submission process required under the Act is a formal and relatively passive means to engage communities. The short timeframe restricts the opportunity to inform communities and to undertake interactive and meaningful engagement activities. Public submissions on the draft budgets are generally few and more often relate to councils' proposals for expenditure rather than for revenue generation.

The Local Government Bill 2019 proposes a requirement for councils to have a community engagement policy that gives effect to proposed community engagement principles.

The *Local Government Bill 2019* is an indication of the Government's intention to improve the standard of community engagement in council decisions and activities and to improve the level of information and transparency required to achieve meaningful engagement. The proposed policy content and the community engagement principles are consistent with the IAPP, which outlines contemporary best practice in this area.

15.2.4 Conclusions

Applying the principles for community engagement and transparency proposed in the Local Government Bill 2019 to rating strategies will improve community knowledge and participation in rating matters.

The principles relating to community engagement and transparency proposed in the *Local Government Bill 2019* will support ongoing improvement in community engagement in local council matters generally. In conjunction with the Review's recommendations on rating strategies, the proposed legislation could provide a strong foundation to ensure community engagement on rates and rating decisions.

Councils must develop the culture, skills and knowledge to achieve best practice in community engagement.

The IAPP outlines the range of strategies that can be used by councils depending on time and resources available and their objectives for engaging their communities at any point in time. Developing sound policies and undertaking the more meaningful processes of community engagement requires leadership, skill and knowledge at all levels and across the whole organisation. There are many opportunities for relevant training and development across the sector. Recruitment and induction and performance review programs should include a focus on improving effective community engagement.

15.2.5 Recommendation

Recommendation 50: That a sector wide culture development program be established to assist councils to develop the governance, leadership, skills and knowledge required to engage communities in a manner consistent with the policies and practices set out by the *Local Government Bill 2019*.

15.3 Rates Administration

15.3.1 Background

There are 79 separate councils, all operating similar administrative systems for issuing and collecting rates. The administration of rates and charges is undertaken by council employees, with some exceptions.¹³⁶ In other sectors where there are common administrative functions across different entities, centralised or outsourced delivery models have been established to deliver the sector requirements.

The review of Australia's Future Tax System (the Henry Tax Review) suggested that State land tax and local government rates should become more integrated both in billing and valuation methods. A step towards the latter has already occurred in Victoria, with valuation services now centralised in the office of the Victorian Valuer-General.

The VAGO report of 2014¹³⁷ recommended that the (then) Department of Transport, Planning and Local Infrastructure, then responsible for local government affairs, identify the back-office functions most suitable for shared services and the potential cost savings and other benefits that could result from shared service initiatives. The Report also recommended that councils be assisted to improve the monitoring, evaluation and reporting of financial and non-financial benefits of shared services. The 2017 Report of the Rural and Regional Councils Sustainability Reform Program by KPMG also proposed such improvements. Since this report, the Victorian Government has administered several programs to support councils sharing services.¹³⁸ These programs have not included sharing of rates administration.

Digital technology has brought significant improvements to information management and enhanced customer access to services in recent years. There is greater potential now than ever before to transfer data and manage information despite vast data sets and multiple users.

15.3.2 Issues for Consideration

Ratepayers participating in the consultation perceived rates administration as cumbersome and falling below the capabilities of other service sectors.

Consultation participants described frustration caused by outdated, rigid payment arrangements and slow responses to queries about confusing information. Some observed, more generally, that councils appeared to be inefficient and should seek to reduce unnecessary costs. One participant commented:

*"There should be a centralisation of administrative services, allowing analysis of data, cost savings with procurement and staff, and a standard way of issuing rates and exemptions across the state."*¹³⁹

Submissions by Wyndham City Council and Finpro supported the recommendations and suggestions of the Henry Review outlined above.

15.3.3 Evidence and Analysis

The online, voluntary council survey of councils conducted by the Panel as part of the consultation process requested information regarding software and staff costs relating to the administration of rates. Responses were received from 23 of the 79 councils, including a mix of metropolitan, interface and rural councils.

136 The Kennett Government's Competitive Tendering during the 1994 amalgamations saw some variation to service provisions in a small number of councils through outsourcing to private providers.

137 <https://www.audit.vic.gov.au/sites/default/files/20140528-Shared-Services.pdf>

138 See for example <https://www.localgovernment.vic.gov.au/grants/collaborating-councils>

139 What we heard: A report of the consultation, Local Government System Rating Review, 2019, <https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/9915/7828/6434/LocalGovernmentRatingSystemReviewConsultationReportFinal.pdf>

Costs of rates administration are incurred by all councils.

Costs of software and related services ranged from \$20,000 to \$700,000 per year. Several councils claimed that it is difficult to estimate the cost of software services relating specifically to rating because modules relevant to the service needs of other departments are included in their expenditure.

Staffing costs also varied across these 23 councils, however based on their data the average cost for a single full-time specialist rating officer is approximately \$104,000 and the average total staff costs for a council for rating officer positions is \$572,000.¹⁴⁰

The majority of administrative tasks related to rates are identical across the sector. Tasks include, but are not restricted to;

- Customer service enquiries (e.g. hardship arrangements, payment enquiries);
- Data management (e.g. ownership, contact details, occupancies);
- Billing services (e.g. creating and issuing rate notices);
- Payment management (e.g. receiving and processing payments);
- Provision of data for internal and external clients (e.g. Land Information Certificates, Fire Services Property Levy reporting, monthly and annual reports, property data for Surveying and Planning through Electronic Applications and Referrals (SPEAR);
- Administering rates and charges (e.g. general rates, special and service rates, supplementary valuations, end of year rollover); and
- Legal and governance services (e.g. debt recovery, selling or claiming land, Payment in Lieu of Rates schemes).

Councils typically employ officers specifically to provide these services, however in councils with smaller revenue bases customer service officers may provide some of these services. In addition to employee costs, each of the 79 councils has support systems and tools to administer rating including:

- Database management software;
- Procurement contracts (e.g. debt recovery, printing services, payment gateways);
- IT support services; and
- Legal support services.

Policy decisions, such as what level of penalty interest to apply, when notices are issued or how debt recovery is performed, appear to be the major points of difference between the 79 councils. Despite these policy differences, all councils perform similar administrative tasks which could be improved through consistency, access to create an economy of scale, and specialised staffing.

The VAGO report referred to the National Audit Office (UK), which identified benefits of consolidation of administration through:

- Improved efficiency;
- More systematic collection of management information, providing the opportunity to identify scope for further service improvement and financial savings;

¹⁴⁰ Approximately 5.5 Full Time Employees.

- Moves towards paperless transactional processing;
- Improved processing times; and
- Procurement savings.

There are opportunities for administrative improvements in how councils are notified of a change of land ownership

A Notice of Acquisition¹⁴¹ is a form which is used mostly by conveyancers and lawyers, to notify the State Revenue Office (SRO) and councils of a change of land ownership. Land Use Victoria (Titles Office) is updated with this transaction digitally. Given that the Titles Office is seen as the “source of truth” for property ownership, they could provide a digital file to councils which includes all ownership information, thereby increasing efficiency and accuracy.

15.3.4 Conclusions

It is likely that models of centralised or shared services can reduce duplication of systems and tasks related to rates administration in the sector while also improving service delivery.

The Panel supports the 2014 VAGO recommendation that there is opportunity to investigate consolidated or shared services to effect improved services, systems and financial savings. It may be timely to consider the potential benefits of centralised administration or shared service arrangements to improve efficiency for local government rates administration and to explore the potential to improve its interfaces with relevant Victorian Government functions.

More research and engagement from the sector will be required before designing a solution. Consideration about the centralisation of administrative services must be informed by a full understanding of current practice and sector-wide requirements in relation to policy, practices and systems.

Consideration of consolidating rating services should not be limited to a single model.

The centralisation of rating services could take several forms:

- A new agency created to provide back-office rating services to the sector;
- Consolidation with the State Revenue Office’s services; or
- Shared service agreements between groups of councils supported by common systems.

Consideration of a centralised rating administration service to councils should also assess the feasibility of integrating other related back-office functions to maximise potential efficiencies and savings for councils more broadly.

15.3.5 Recommendation

Recommendation 51: That further work is undertaken to assess the merits of replacing the Notice of Acquisition with a file from Land Use Victoria (Titles Office), to understand the benefits and associated costs of consolidating the administration of rating systems across the sector and to identify the potential for improved interfaces between rates administration and relevant Victorian Government functions.

141 S.231 of the Act

15.4 Appealing a Rate Notice

Part 8, Division 3 of the Act details the circumstances and the process by which a ratepayer may apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a council decision relating to differential rates and special rates and charges. It also sets out how ratepayers aggrieved by a rate or charge imposed by a council may appeal to the County Court for a review of a rate or charge. As outlined in Chapter 8, ratepayers also have the right to lodge an objection to their valuation under the *Valuation of Land Act 1960*.

No concerns were raised throughout the consultation about the provisions for appeal under the Act.

While there were some submissions to the Panel outlining issues of concern with the outcomes of their appeals to VCAT or the Court against decisions of councils in relation to rates, no issues were raised with the Panel about the provisions under the Act.

Both council and community participants raised concerns regarding the method of objecting to valuations.

Community participants of the consultation process described their frustration after calling the telephone number on their rates notices to speak to a council officer about the valuation of their property, and being told to call another number. They did not understand why this might occur and felt “fobbed off” by the process. Council participants described frustration at being the point of contact for ratepayers while not having the information or the power to address their concerns. While it is the role of councils to assist a ratepayer to identify whether it is the valuation of their property which is the source of their concern about their rates, it is the role of the Office of the Valuer-General to assist the ratepayer on these matters.

There was general agreement that the current arrangements for ratepayers to complain or seek information are not always satisfactory.

Despite the reassignment of responsibility for conducting property valuations from councils to the Valuer-General’s Office, councils still receive ratepayer objections to property valuations. Councils act as an intermediary between the Valuer-General’s Office and the ratepayer. This is likely to cause confusion and inefficient handling of complaints and information.

There should be direct access between the ratepayer with a complaint or query about the valuation of their property and the Valuer-General’s Office.

The process for seeking information, making a complaint, seeking a review or appealing a decision about valuations of property should be simplified in a manner that allows ratepayers to discuss, formally object and resolve their valuation issues directly with the Valuer-General’s Office, as the responsible authority for valuations.

Moving all valuation objection processes directly to the Valuer-General’s Office would be more efficient than the current mechanisms. Using council as an intermediary between ratepayers and the Valuer-General’s Office causes unnecessary double-handling, as the experts who analyse the data, set the valuation and process objections are not council officers.

There is currently no compelling reason to change the provisions under the Act relating to reviews and appeals in relation to rates.

15.4.1 Recommendation

Recommendation 52: That the Valuer-General’s Office and councils collaborate to redesign the valuation objections process to provide a single point of contact within the Valuer-General’s Office for ratepayers who have issues with their valuations, to improve responsiveness to ratepayers who seek information or review and to improve process efficiency.

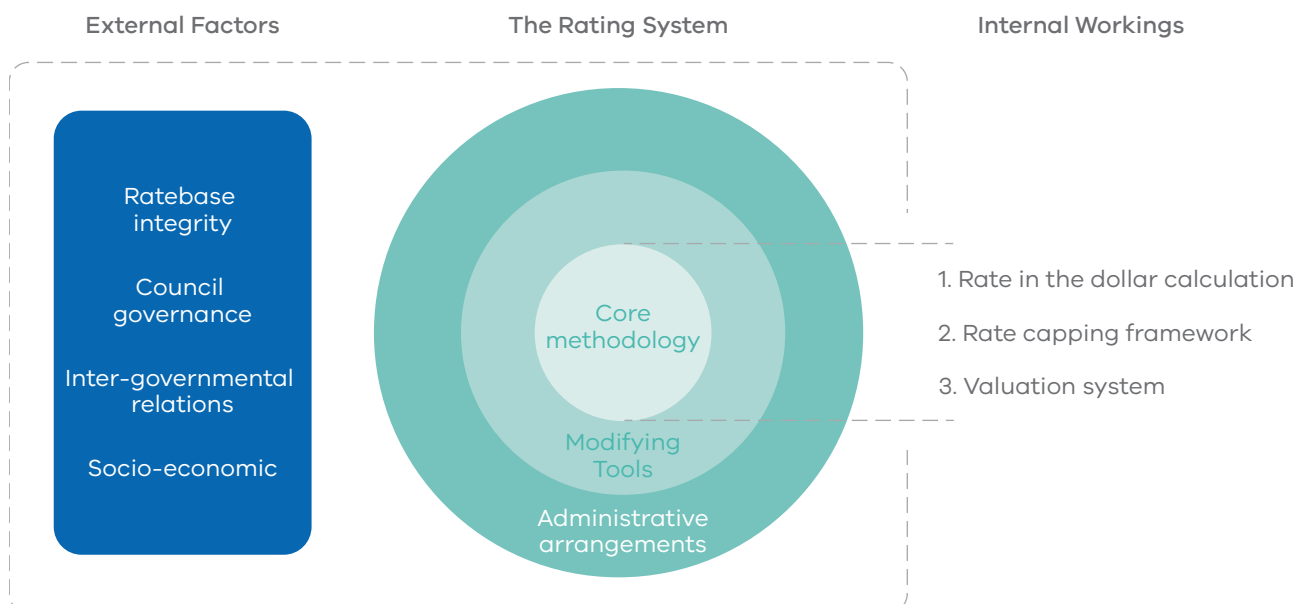
Other opportunities to improve confidence in the rating system

Background

Many of the issues raised throughout the Review in relation to rates relate to sources of inequity and fairness which lie beyond the rating system and this limited review. Addressing these issues will improve community confidence in the equity and fairness of their rates.

This chapter looks at both the deeper internal workings of the rating system and the broad external environment within which the rating system operates. These internal and external elements are critical to the efficiency of the rating system as well as community confidence in both the system and the councils who administer it. These elements are shown in Chart 44 and described in detail below.

Chart 44 – The rating system



In the diagram above, the rating system is described as comprising of three concentric elements:

A core methodology for determining rates.

The calculation of an individual property owner's rates is determined by the interplay of various provisions within the *Local Government Act 1989* and the *Valuation of Land Act 1960*. These provisions are heavily prescribed, leaving councils with little room for discretion. As observed by many participants of the consultation process and discussed in further detail below, these largely deterministic arrangements do not necessarily translate into predictable outcomes for ratepayers.

Tools which can be used to modify the impacts of the core methodology on individuals or groups of ratepayers.

These modifying instruments include exemptions, waivers, rebates, deferrals and differential rates. Although councils have discretion over whether and how they use many of these instruments, their use has no bearing on the core methodology for determining rates.

Legislative provisions, sector-wide and council-specific practices which guide councils' administration and collection of rates.

Elements of the administrative rating system include billing and other data management systems, credit management and debt recovery arrangements, as well as assistance for ratepayers facing payment difficulty. Like the modifying instruments, these administrative arrangements have no bearing on the core methodology for determining rates.

The terms of reference of the Review and, therefore, the focus of the Panel's research and recommendations relate mostly to the latter two of these elements and are the subject of chapters 8-15 of this report.

The only exception appears in Section 8.4, where the Panel recommends further investigation into the merits of providing councils with the option of smoothing property valuation before applying rates (See Recommendation 7). The Panel considers it is also important to report on its observations about the core methodology more generally and to identify where opportunities for improvements might lie.

Implementation of best practice rating arrangements by councils, as well as community confidence in the rating system as a whole, rest on four requirements which bear heavily on the capacity and capability of councils and shape the environment within which they operate. They are outlined below.

- All councils must have sufficient revenue to address the priority service and infrastructure needs of their municipalities;
- Councils must have the resources they require to deliver the range of services and infrastructure needed to meet the differing socio-economic circumstances of their communities;
- Where councils are required by the State or the Commonwealth Governments to provide services, such requirements are established and funded through an effective partnership arrangement;
- The governance of all councils is effective and accountable for establishing, implementing, monitoring and evaluating progress on strategic, operational and financial planning and associated rating approaches.

Many of the Panel's observations throughout the Review challenge whether these external factors are in place and indicate that there are opportunities for improvement to ensure the implementation of a better rating system.

The following discussion focuses on the core methodology of the rating system. This is followed by a broader exploration of the external factors influencing the community confidence in councils' administration of the rating system.

16.2 The Inner Workings of the Core Methodology

The core methodology of the rating system consists of three elements. While each element derives directly from the legislation independently of the other two elements, the three elements interact in ways that produce outcomes that can have seemingly unfair consequences for ratepayers. The three elements of the core methodology are:

- **Calculation of a rate in the dollar:** The method for calculating rates derives from the interplay of sections 158 to 161A of the Act. These sections: (i) require councils to declare the amount they intend to raise through general rates, and (ii) allow that amount to be recovered by declaring a rate (commonly known as the rate in the dollar) which is to be multiplied against the rateable value of land in the municipality.¹⁴² These

¹⁴² Note, section 161 also allows the use of multiple rates (known as differential rates) as discussed in chapter 9 of this report. For ease of exposition, the discussion in this chapter only refers to single (or uniform) rates. However, this is not a particularly important qualification. A reference to a uniform (or single) rate in the following discussion can also be interpreted as referring to the council-wide average rate even where differential rates are used.

prescribed arrangements imply that the rate in the dollar must be calculated by dividing the declared amount to be raised through general rates by the total value of rateable land in the municipality.

While this is a simple calculation, both parameters (required general rate revenue and the total value of rateable land) are subject to change from year to year. In other words, the rate in the dollar to be paid by ratepayers within a municipality is recalculated each year. This arrangement represents a significant departure from other taxation systems where the tax rate is generally stable from year to year, with any changes typically announced well in advance.

- **The rate capping framework:** In 2016, the Victorian Government introduced a rate capping framework which limits the extent to which a council can increase its rates from year to year. The rate capping framework is prescribed by Part 8A of the Act. As noted in section 8.4, the rate capping framework is often misrepresented and misunderstood. It neither limits the annual rate increases individual ratepayers can face, nor does it represent the annual increase in either the total or average rates a council can collect from the start of one year to the next.¹⁴³

The rate capping framework begins by calculating a notional average 'base rate' representing the rates that would have been paid by the average ratepayer at the end of the base year. This notional amount does not represent the rates the average property owner would have actually paid in the base year. It is this notional amount that is escalated by the rate cap to determine the rates that would be paid by an average ratepayer at the beginning of the following year.¹⁴⁴

- **The valuation system:** Because most properties are not sold each year, the value of a property for rating purposes must be estimated. The Valuer-General is responsible for producing these estimated valuations (as described in section 8.2). A council's calculation of its rate in the dollar, individual property owners' rating liabilities, and the application of the rate cap, all rely on the estimated property valuations provided by the Valuer-General.

Like any model, the Valuer-General's modelling embodies many assumptions. These assumptions are informed by past observations about the property market, including sale prices and particular characteristics of properties. Whether past sales prices are a good indicator of current market values will always be unclear. Where past observations are not reliable indicators of current prices, the model may systematically over or underestimate the value of some properties relative to others.

16.2.1 Some observations on the consequences of the rating system's core methodology

Anyone who is not intimately familiar with the inner workings of the rating system may find the outcomes they experience difficult to understand. When ratepayers experience such outcomes (individually and collectively), their confidence in the rating system can be undermined. Some of these outcomes are described below.

It can be very difficult for a property owner to estimate their rates for next year

When combined, the effect of the three elements of the rating system's core methodology is to introduce uncertainty into the rating system. There are multiple factors a property owner would need to forecast in order to estimate their rates in the year ahead. In some cases, these factors are not discoverable.¹⁴⁵ This makes

¹⁴³ For example, if the rate cap is set at 2 per cent the annual increase in a council's total revenue from general rates may increase by more than 2 per cent depending on a range of other factors. These additional factors are discussed in Appendix three. Similarly, the increase in the average rate struck by a council ahead of a new rating year may increase by more than the rate cap when compared to the average rate struck at the beginning of the base year.

¹⁴⁴ This non-intuitive approach was adopted to account for supplementary rates on new investments made within the municipality during the base year (for example, new multi-dwelling developments or home extensions).

¹⁴⁵ As shown in Appendix 3.

estimating next year's rates difficult. It is this unavoidable difficulty that leads to 'rate shock' as property owners receive their rates notices each year.

This unpredictability may be at odds with councils' legislative obligation to "pursue spending and rating policies that are consistent with a reasonable degree of stability in the level of the rates burden."¹⁴⁶

There may not be a consistent relationship between changes in valuations and changes in rates from year to year

The rating system's core methodology means the relationship between a property's estimated value and the rates payable can vary from year to year. In other words, while a ratepayer might have a reasonable idea about the likely change in the value of their property, this will not necessarily help them to forecast the rates payable on the property. For example, the rateable value of a property may increase by 5 per cent in two consecutive years, but the rates payable can conceivably increase by 10 per cent one year and decrease by 7 per cent the following year. Other outcomes are similarly possible. This instability is the product of the various factors that determine the rates payable each year (as described in Appendix three).

The rating system can lead to outcomes that appear contradictory to ratepayers.

Rates are often described as a wealth tax. This description suggests that as people become wealthier via the appreciated value of their properties, they can expect to pay more in rates. It also implies that if there is no change to the estimated value of their property, then there should be no change to the rates they need to pay. Neither of these outcomes is guaranteed by the rating system's core methodology. For example, it is possible that rates will increase (or decrease) even when there has been no change to the estimated value of a property. Such an outcome is at odds with the notion of rates being a wealth tax but is made possible by the interplay of the multiple factors that influence a property owner's final rates liability (as shown in Appendix three).

The estimated value of a property for rating purposes is not objectively verifiable.

As discussed in Chapter 7, many authors support rating (or taxing) property on the basis that such taxes usually satisfy the generally accepted principles of good taxation.¹⁴⁷ Despite this widespread support, few if any of these authors have questioned how the value of property should be estimated for rating purposes. It would appear they simply take it as given that property values can be estimated for rating purposes. This assumption requires further scrutiny on at least two fronts.

First, markets are erratic institutions, possibly none more so than the real estate market. Observed sale prices at any point in time will be determined by the preferences, priorities, perceptions and behaviours of thousands of individual buyers and sellers selling highly varied properties. While overarching pricing patterns might be discernible from a whole-of-market perspective (or even within submarkets), such patterns won't necessarily be relevant to the estimated value of an individual property.

Second, even under the best circumstances, pricing models remain dependent on a series of judgements and assumptions by the modellers. In addition, such models are constrained by the availability of accurate data about the factors that drive observed pricing outcomes. The model being used to estimate property valuations is no different in this regard, however it determines how \$6.1 billion of rates will be distributed across 3.1 million Victorian property owners in 2020. By way of comparison, it is inconceivable that income would be taxed solely on the basis of an estimate by the Australian Taxation Office of an individual's income.

Valuation smoothing (See Recommendation 7) may help offset the impact of short-term vagaries in observed market price. Nonetheless, greater scrutiny, both public and professional, of the valuation model would

¹⁴⁶ Section 136(2)(b) *Local Government Act 1989*.

¹⁴⁷ These principles are mentioned in the Panel's terms of reference and have been included in the Panel's principles for the design of a good rating system (see Chapter 7).

support community confidence and provide a demonstrable commitment to continually improving the rating system.¹⁴⁸

16.2.2 Conclusions about the core methodology

The outcomes described above are the direct result of the rating system's core methodology. They cannot be systematically overcome using the rating system's modifying instruments or administrative arrangements. They are inherent to the rating system as it is currently designed.

While all these outcomes can be explained from a whole-of-system perspective, property owners neither have, nor can they be expected to have, such a perspective of the rating system. An individual property owner's primary interest will be with their own rates notice and whether it looks fair to them.

A good rating system should 'make sense' when viewed from a system-wide perspective by policy makers as well as by individual ratepayers. Unless both these criteria are satisfied, community confidence in the rating system cannot be assured.

While it is true that individual ratepayers can dispute or appeal their rates by objecting to the valuation of their property (see Sections 8.2 and 15.4), for the vast majority of ratepayers, the likely saving to be made from contesting a valuation will be greatly outweighed by the time and effort this would involve. Most ratepayers will simply choose to 'wear' their disaffection with a rating system they can neither understand nor easily challenge.

16.2.3 Recommendations to improve trust in the core methodology

Recommendation 53: That the Valuer-General's methodology and data be reviewed at least every two years by a suitably qualified and independent agency as part of a program dedicated to the continuous improvement of the rating system.

Recommendation 54: That work be undertaken to explore whether the valuation model can be improved by reducing its dependence on observed market prices and increase its reliance on property characteristics which are more stable than market prices (such as: size of land, floor space, distance from service centres, etc.)

16.3 External Factors Affecting the Capability and Capacity of Councils to Administer an Effective Rating System

16.3.1 Rural and regional councils have different contexts for rating and servicing their communities

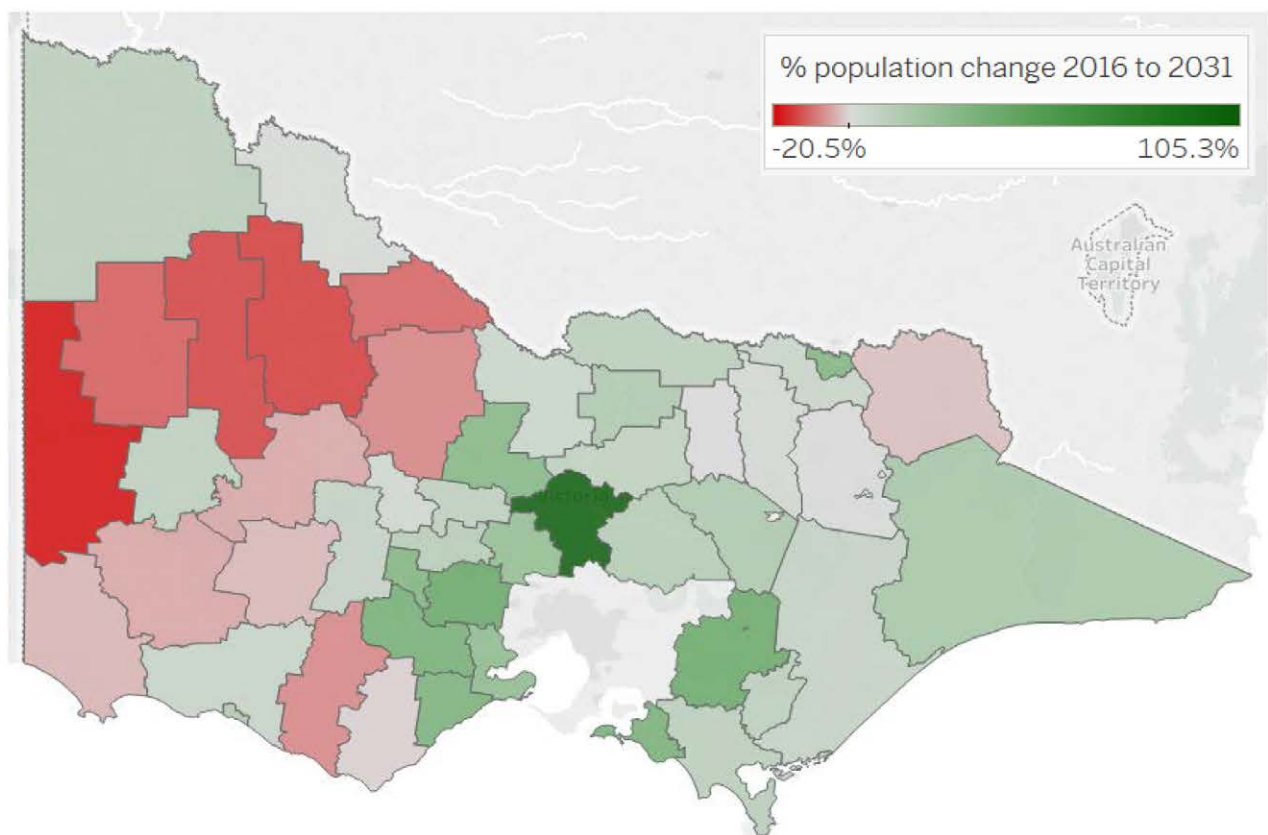
There are two factors which underpin community confidence in the effectiveness of the rating system. Firstly, that all councils have sufficient revenue (after taking into account investments and financial grants provided by the State and Federal governments) to meet the service and infrastructure requirements of their communities. Secondly, that all councils have the resources to address the socio-economic needs of their communities. The negative influence of these external factors on community and council confidence in the rating system was drawn to the Panel's attention in numerous ways; through data and information provided in the commentary of participants of the consultation process and through submissions from peak bodies (including Municipal Association of Victoria, the Victorian Local Government Association, and Rural Councils Victoria). The Panel's own research and observations reinforced these concerns.

¹⁴⁸ The review envisaged is akin to the work undertaken by the Essential Services Commission which regularly reviews the domestic building insurance premiums set by the Victorian Managed Insurance Authority and has previously reviewed premiums set by WorkCover and the Transport Accident Commission. These reviews are conducted as a check-and-balance on government agencies with exclusive powers that affect the 'prices' paid by Victorian consumers.

The 2017 Report of the Rural and Regional Councils Sustainability Reform Program by KPMG, commissioned by the Department of Environment, Land, Water and Planning (the KPMG Report), provided significant insight into how rural and regional councils operate within a context which is very different to that faced by councils in metropolitan areas.¹⁴⁹ Some of the issues identified in the KPMG Report are outlined below.

Council population sizes in 2016 ranged on average from 10,000 in small shires, to 30,000 in large shires, 77,000 in regional cities and 150,000 in metropolitan and interface councils. Some small rural council populations are forecast to decline. This will reduce the rate base even further in the future, particularly in the west of the State.

Chart 45 – Forecast population change, 2016 to 2031

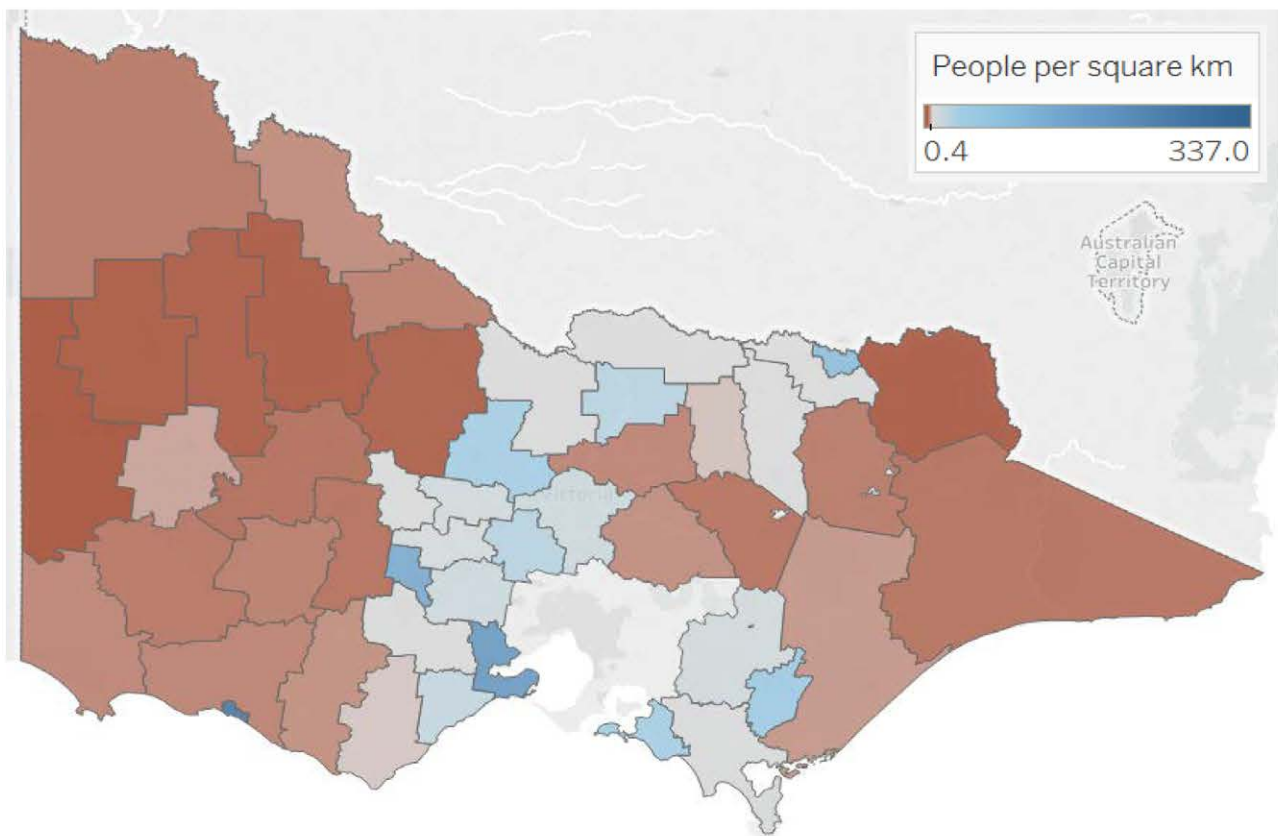


Reproduced from the Report of the Rural and Regional Councils Sustainability Reform Program 2017

149 See https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0025/214675/Rural-and-Regional-Councils-Sustainability-Reform-Program_Phase-1-Final-Report.pdf

The distribution of the population in rural councils varies significantly. Low densities result in larger service delivery and asset costs since councils must deliver services over a larger geographic area which sometimes requires duplicated staff and service bases.

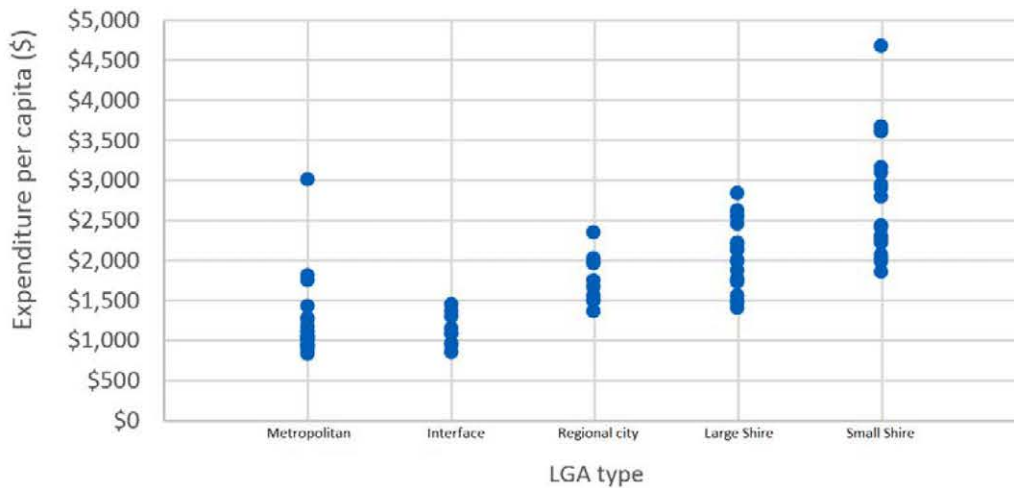
Chart 46 – LGA population density, 2016



Reproduced from the Report of the Rural and Regional Councils Sustainability Reform Program 2017

Less populated councils spend more per person to maintain infrastructure and provide services. Furthermore, councils in rural and regional areas must deliver some necessary services which are not provided by private providers, as they are in metropolitan council areas, due to the small customer base.

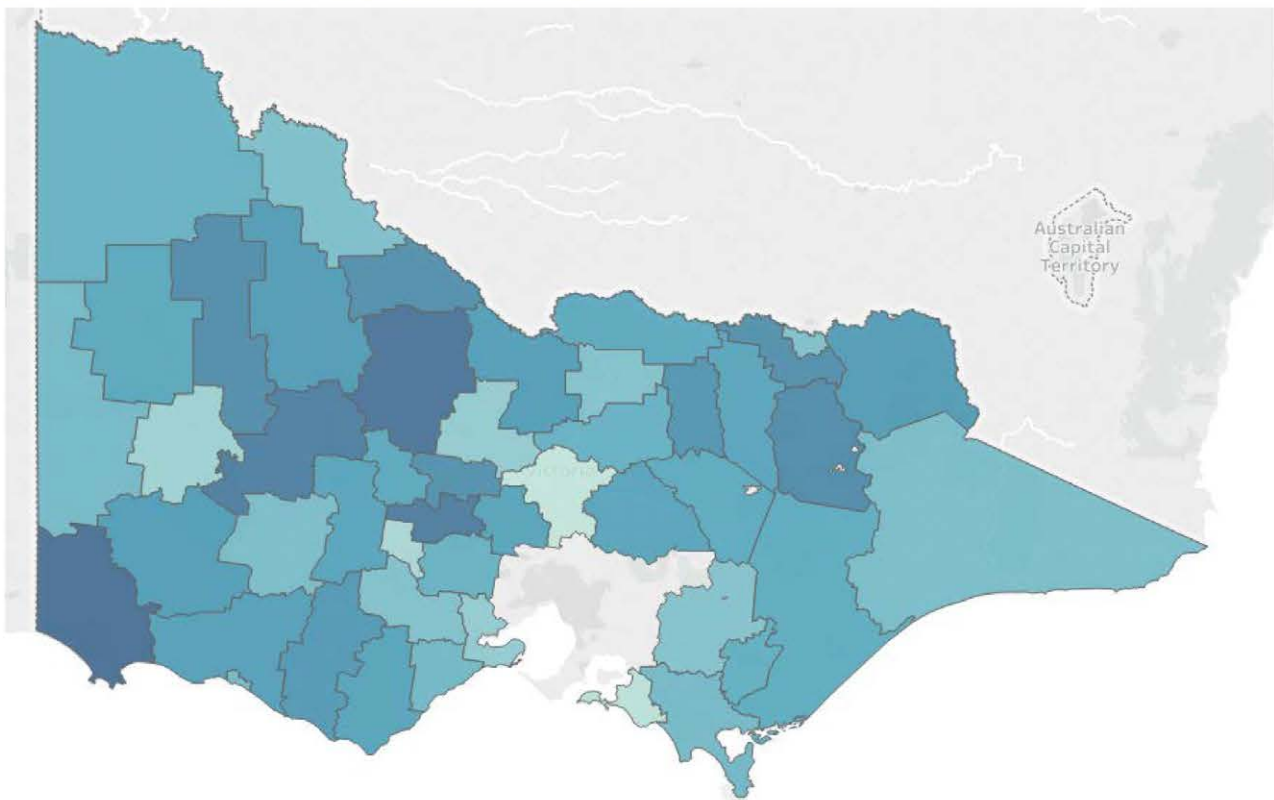
Chart 47 – Council expenditure per capita, 2015-16



*Reproduced from the
Report of the Rural
and Regional Councils
Sustainability Reform
Program 2017*

Communities in these councils tend to be older than in metropolitan areas. This will be particularly problematic for small shires where people over 65 are expected to be one third of their populations by 2031. The rapidly aging population has the potential to reduce the community's capacity to pay, increase concession and discount entitlements and increase demand for services.

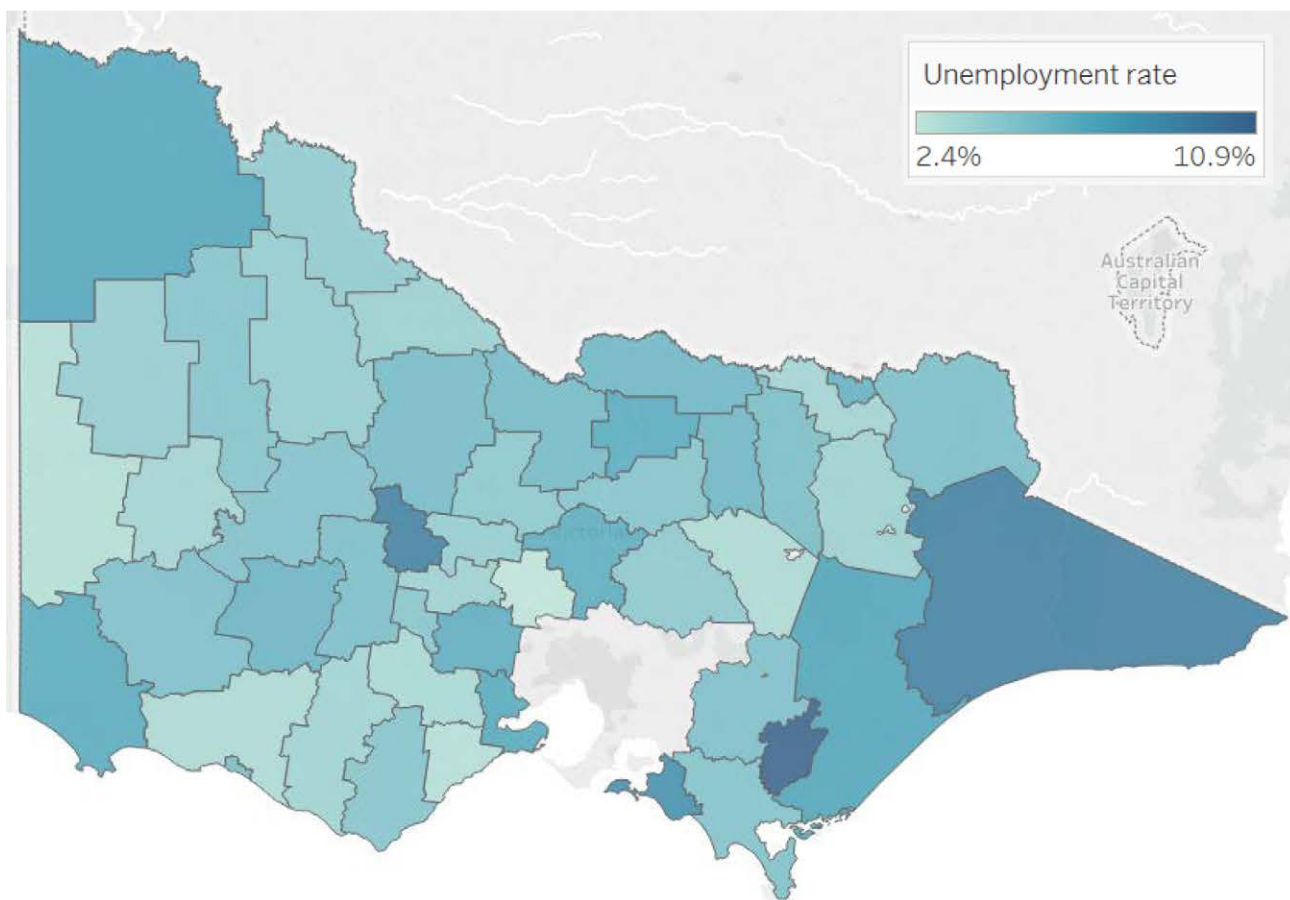
Chart 48 – Change in the proportion of population 65+, 2016-2031



Reproduced from the Report of the Rural and Regional Councils Sustainability Reform Program 2017

On average, people in rural Victoria are more likely to be socially disadvantaged with greater social and physical health needs and lower capacity to pay rates. This level of disadvantage is likely to lead to higher demand for community and health services.

Chart 49 – Unemployment rate, March 2017



Reproduced from the Report of the Rural and Regional Councils Sustainability Reform Program 2017

Chart 50 – Prevalence of selected risk factors in Victorian adults residing in metropolitan and rural regions, 2015

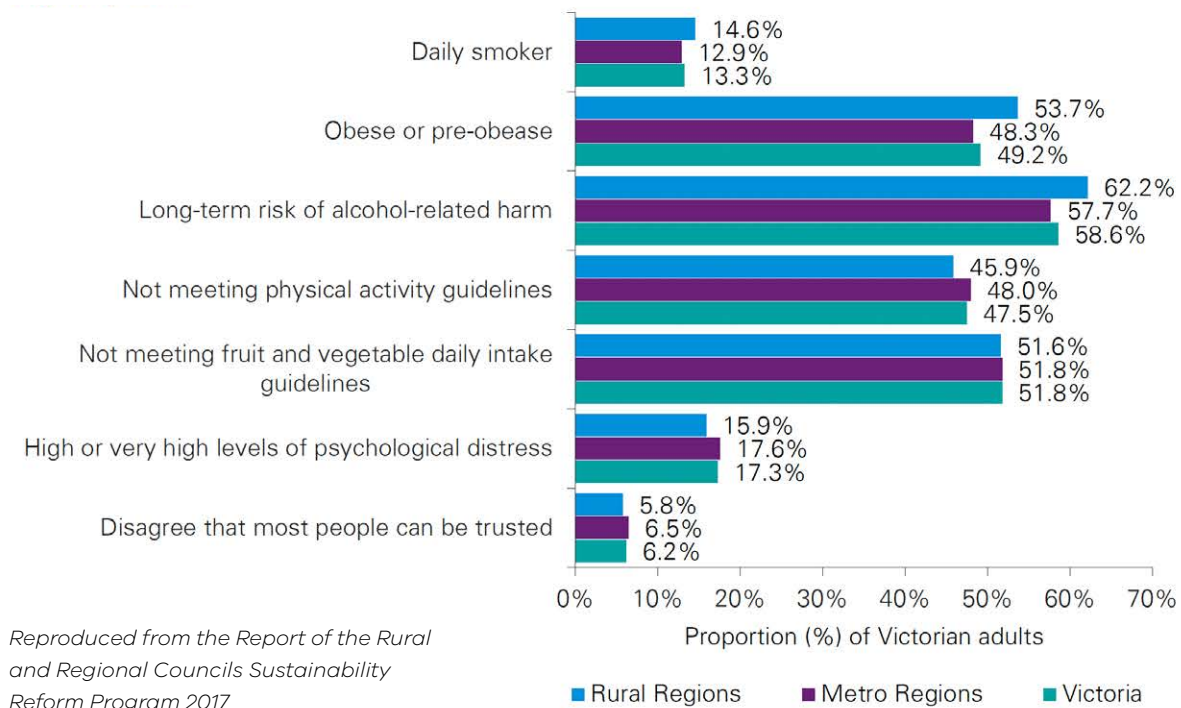
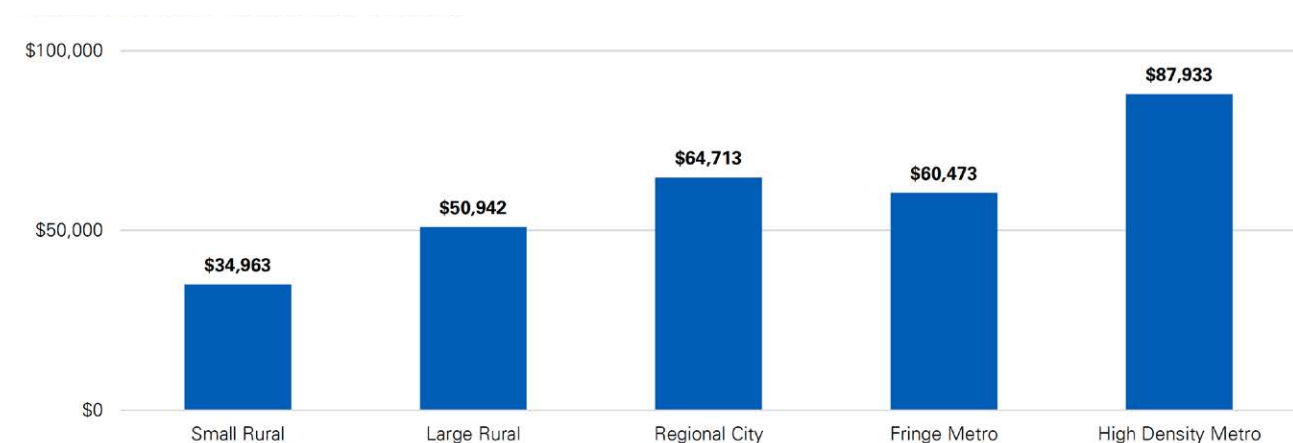


Chart 51 – Capacity to Pay Index – 5 year Average 2007-2012



Reproduced from the Report of the Rural and Regional Councils Sustainability Reform Program 2017

The KPMG Report also demonstrates how a range of contextual issues, beyond revenue opportunities and service responsibilities impact rural councils' financial sustainability. Revenues and costs from the 2016 council financial performance data, adjusted to exclude non-recurrent grants, shows that the small, large and regional cohorts of councils, unlike the metropolitan and interface cohorts, generated underlying deficits, an indication that rural councils may be at financial risk over the medium-term. The Report projects ongoing deficits for small shires, increased reliance on government grants and decreased investment in assets and services. The VAGO Local Government audit of 2015-16 linked the decline in capital grant revenue, combined with a steady level of expenditure by councils, to a decline in the operating result of small shires.

16.3.2 The relationship between the Victorian Government and councils should be improved

A key element for an effective rates system at a state-wide level, is a strong relationship between local councils and the State when determining roles, service models and funding arrangements for new programs and reviewing existing ones. This is particularly important where councils are required by the State to provide services considered important for community, regional or environmental well-being.

The Victorian State-Local Government Agreement (VSLGA) was established in 2008 to give effect to the Inter-Governmental Agreement (IGA), establishing principles guiding inter-governmental relations on local government matters.¹⁵⁰ It was updated on 10 September 2014.

Despite the Victorian State-Local Government Agreement 2014, many council submitters and participants of consultation groups stated that there is little consultation with local government when the State makes policy and program decisions which impact on their operations. They are concerned about the increasing costs of a range of extra services imposed on councils by the State, particularly in the context of a rate cap. This is especially problematic for small rate based rural and regional councils. It is not reasonable to expect councils to participate in delivering new services or programs without a clear understanding of how this might affect the focus on local priorities or further constrain councils' financial and human resource capacity.

A more collaborative approach is required to ensure sustainable delivery and funding of Victorian Government designed programs. It is also essential for service innovation to improve council efficiency and productivity.

16.3.3 Governance and management of councils is variable in its effectiveness

It is clear from reviewing councils' strategic documents that there is an immediate need to improve alignment between rating arrangements, strategic priorities and associated resource plans and councils' longer-term plans for their communities. The absence of this strategic alignment is most notable in the seemingly ad hoc approach many councils seem to take in the provision of rate relief and differential rates.

There is a need to improve councils' accountability to their communities about the objectives and evidence base behind their rating decisions. Informed communities can engage and participate effectively with their councils. Information and transparency also assist to improve understanding and trust in the systems and processes used by councils when planning and implementing rates strategies.

Effective rating relies on policies, processes, information systems and skilled and knowledgeable staff who communicate well with the community. It appears that access to the pool of resources and services in rural and metropolitan areas is not even. That said, the Panel observed that smaller councils were some of the most resourceful and innovative councils in the State.

It is incumbent upon councils to ensure they operate efficiently and to continually improve their capacity to respond to changing service requirements. This should include participation in the design and implementation of shared service models which reduce duplication and make productive use of human

150 <https://www.localgovernment.vic.gov.au/our-partnerships/victorian-state-local-government-agreement>

resources across council collaborations. Yet, despite Victorian Government support, there are relatively few shared service models or collaborations between councils which might improve productivity and reduce costs across council areas, either in the rural or metropolitan areas. It is not immediately obvious why these efforts have not been successful, that is, whether they have been inhibited by structural or cultural impediments.

16.3.4 Conclusions about the external factors contributing to council capacity and capability

The external factors that contribute to a best practice state-wide rating system require strengthening in Victoria. There are inequities between rural and metropolitan councils in both revenue generating capacity and in service and infrastructure responsibilities. There is also a requirement to better align long-term strategic community, financial and asset plans with four-year council priorities, associated resource plans and revenue and rating strategies. These should, in turn, inform council annual plans.

There is also a requirement for councils to identify partnerships and collaborations which could facilitate new models of service delivery to improve productivity and cost efficiencies. These fundamental deficiencies not only undermine perceptions about the state-wide fairness and equity of the rating system, they also undermine the financial sustainability of rural councils.

In addition, the relationship between the State and councils could be more effective. The KPMG Report of 2017 outlines a program to improve the equity between rural and metropolitan councils which has the potential to address many of these issues.

16.3.5 Recommendations

Recommendation 55: That the Victorian Government work with relevant peak bodies and councils to design a performance development program which ensures improved alignment between councils' longer-term strategic plans for their communities, their ten-year financial and asset plans, their four-year priorities and associated resource plans and four-year revenue and rating plans. These, in turn, should inform their annual budgets.

Recommendation 56: That the improvement program outlined in the 2017 Report of the Rural and Regional Councils Sustainability Reform Program is reviewed to inform future projects and programs to address improved equity across all councils in Victoria.

APPENDIX 1: Rating Data and Charts

Chart 52 – Average weekly household income (2016 Census) and average rates 2016-17 – all councils

Council	VLGCG	Average Weekly Household Income (2016)	Average Rates 2016-17	Average Weekly Rates	Ratio
Alpine	Small Shire	\$676.00	\$1,859.84	\$35.77	5.29%
Ararat	Small Shire	\$674.00	\$2,106.88	\$40.52	6.01%
Ballarat	Regional City	\$746.00	\$1,976.11	\$38.00	5.09%
Banyule	Metropolitan Council	\$1,002.00	\$1,614.37	\$31.05	3.10%
Bass Coast	Large Shire	\$625.00	\$1,706.78	\$32.82	5.25%
Baw Baw	Large Shire	\$746.00	\$2,010.33	\$38.66	5.18%
Bayside	Metropolitan Council	\$1,303.00	\$1,779.13	\$34.21	2.63%
Benalla	Small Shire	\$645.00	\$1,807.29	\$34.76	5.39%
Boroondara	Metropolitan Council	\$1,298.00	\$2,129.09	\$40.94	3.15%
Queenscliffe	Small Shire	\$834.00	\$1,945.45	\$37.41	4.49%
Brimbank	Metropolitan Council	\$700.00	\$1,786.01	\$34.35	4.91%
Buloke	Small Shire	\$570.00	\$1,898.65	\$36.51	6.41%
Campaspe	Large Shire	\$693.00	\$1,715.85	\$33.00	4.76%
Cardinia	Interface Council	\$864.00	\$1,954.45	\$37.59	4.35%
Casey	Interface Council	\$842.00	\$1,793.97	\$34.50	4.10%
Central Goldfields	Small Shire	\$519.00	\$1,350.51	\$25.97	5.00%
Colac Otway	Large Shire	\$695.00	\$1,721.52	\$33.11	4.76%
Corangamite	Large Shire	\$669.00	\$1,917.46	\$36.87	5.51%
Darebin	Metropolitan Council	\$902.00	\$1,748.79	\$33.63	3.73%
East Gippsland	Large Shire	\$621.00	\$1,386.37	\$26.66	4.29%
Frankston	Metropolitan Council	\$836.00	\$1,631.80	\$31.38	3.75%
Gannawarra	Small Shire	\$610.00	\$1,652.26	\$31.77	5.21%
Glen Eira	Metropolitan Council	\$1,091.00	\$1,584.04	\$30.46	2.79%

Council	VLGCG	Average Weekly Household Income (2016)	Average Rates 2016-17	Average Weekly Rates	Ratio
Glenelg	Large Shire	\$685.00	\$1,684.33	\$32.39	4.73%
Golden Plains	Large Shire	\$823.00	\$1,650.80	\$31.75	3.86%
Greater Bendigo	Regional City	\$752.00	\$1,807.17	\$34.75	4.62%
Greater Dandenong	Metropolitan Council	\$659.00	\$1,893.28	\$36.41	5.52%
Greater Geelong	Regional City	\$786.00	\$1,585.56	\$30.49	3.88%
Greater Shepparton	Regional City	\$734.00	\$2,052.66	\$39.47	5.38%
Hepburn	Small Shire	\$662.00	\$1,664.28	\$32.01	4.83%
Hindmarsh	Small Shire	\$615.00	\$1,403.50	\$26.99	4.39%
Hobsons Bay	Metropolitan Council	\$960.00	\$2,443.93	\$47.00	4.90%
Horsham	Regional City	\$720.00	\$1,761.37	\$33.87	4.70%
Hume	Interface Council	\$756.00	\$1,876.92	\$36.09	4.77%
Indigo	Small Shire	\$796.00	\$1,460.28	\$28.08	3.53%
Kingston	Metropolitan Council	\$946.00	\$1,689.40	\$32.49	3.43%
Knox	Metropolitan Council	\$905.00	\$1,665.82	\$32.04	3.54%
Latrobe	Regional City	\$706.00	\$1,544.22	\$29.70	4.21%
Loddon	Small Shire	\$552.00	\$1,139.25	\$21.91	3.97%
Macedon Ranges	Large Shire	\$953.00	\$1,744.16	\$33.54	3.52%
Manningham	Metropolitan Council	\$944.00	\$1,982.66	\$38.13	4.04%
Mansfield	Small Shire	\$709.00	\$1,396.85	\$26.86	3.79%
Maribyrnong	Metropolitan Council	\$975.00	\$2,352.85	\$45.25	4.64%
Maroondah	Metropolitan Council	\$936.00	\$1,643.98	\$31.61	3.38%
Melbourne	Metropolitan Council	\$970.00	\$2,621.25	\$50.41	5.20%
Melton	Interface Council	\$850.00	\$1,733.58	\$33.34	3.92%
Mildura	Regional City	\$681.00	\$1,965.14	\$37.79	5.55%

Council	VLGCG	Average Weekly Household Income (2016)	Average Rates 2016-17	Average Weekly Rates	Ratio
Mitchell	Large Shire	\$823.00	\$1,683.66	\$32.38	3.93%
Moira	Large Shire	\$654.00	\$1,447.44	\$27.84	4.26%
Monash	Metropolitan Council	\$878.00	\$1,457.00	\$28.02	3.19%
Moonee Valley	Metropolitan Council	\$1,034.00	\$1,735.17	\$33.37	3.23%
Moorabool	Large Shire	\$824.00	\$1,853.62	\$35.65	4.33%
Moreland	Metropolitan Council	\$942.00	\$1,792.32	\$34.47	3.66%
Mornington Peninsula	Interface Council	\$807.00	\$1,364.11	\$26.23	3.25%
Mount Alexander	Large Shire	\$667.00	\$1,653.34	\$31.80	4.77%
Moyne	Large Shire	\$751.00	\$1,385.71	\$26.65	3.55%
Murrindindi	Small Shire	\$701.00	\$1,626.74	\$31.28	4.46%
Nillumbik	Interface Council	\$1,129.00	\$2,558.63	\$49.20	4.36%
Northern Grampians	Small Shire	\$634.00	\$1,608.42	\$30.93	4.88%
Port Phillip	Metropolitan Council	\$1,376.00	\$1,677.49	\$32.26	2.34%
Pyrenees	Small Shire	\$575.00	\$1,462.78	\$28.13	4.89%
South Gippsland	Large Shire	\$665.00	\$1,998.23	\$38.43	5.78%
Southern Grampians	Large Shire	\$688.00	\$1,438.67	\$27.67	4.02%
Stonnington	Metropolitan Council	\$1,393.00	\$1,621.38	\$31.18	2.24%
Strathbogie	Small Shire	\$652.00	\$2,140.91	\$41.17	6.31%
Surf Coast	Large Shire	\$938.00	\$2,155.40	\$41.45	4.42%
Swan Hill	Large Shire	\$697.00	\$2,132.80	\$41.02	5.88%
Towong	Small Shire	\$683.00	\$1,374.53	\$26.43	3.87%
Wangaratta	Regional City	\$712.00	\$1,875.95	\$36.08	5.07%
Warrnambool	Regional City	\$763.00	\$1,757.95	\$33.81	4.43%

Council	VLGCG	Average Weekly Household Income (2016)	Average Rates 2016-17	Average Weekly Rates	Ratio
Wellington	Large Shire	\$715.00	\$1,578.12	\$30.35	4.24%
West Wimmera	Small Shire	\$673.00	\$1,356.89	\$26.09	3.88%
Whitehorse	Metropolitan Council	\$915.00	\$1,519.71	\$29.23	3.19%
Whittlesea	Interface Council	\$807.00	\$1,707.29	\$32.83	4.07%
Wodonga	Regional City	\$801.00	\$2,288.06	\$44.00	5.49%
Wyndham	Interface Council	\$891.00	\$1,931.41	\$37.14	4.17%
Yarra	Metropolitan Council	\$1,371.00	\$1,960.40	\$37.70	2.75%
Yarra Ranges	Interface Council	\$878.00	\$1,995.72	\$38.38	4.37%
Yarriambiack	Small Shire	\$592.00	\$1,632.84	\$31.40	5.30%

Chart 53 – Residential rates 2019-20 – on two standardised property values

Council	VLGCG	Differential Rate Applied	Rate in the Dollar 2019-20	Valuation: \$400,000	Valuation: \$700,000
Alpine	Small Shire	Residential	0.004158	\$1,663.20	\$2,910.60
Ararat	Small Shire	Residential	0.006597	\$2,638.80	\$4,617.90
Ballarat	Regional City	Residential	0.003922	\$1,568.80	\$2,745.40
Banyule	Metropolitan Council	Residential Improved	0.00211214	\$844.86	\$1,478.50
Bass Coast	Large Shire	Residential	0.0031170	\$1,246.80	\$2,181.90
Baw Baw	Large Shire	Residential	0.003433	\$1,373.20	\$2,403.10
Bayside	Metropolitan Council	Uniform	0.00114831	\$459.32	\$803.82
Benalla	Small Shire	Residential (Benalla)	0.005079	\$2,031.60	\$3,555.30
Boroondara	Metropolitan Council	Uniform	0.001401611	\$560.64	\$981.13
Queenscliffe	Small Shire	Residential	0.0021856	\$874.24	\$1,529.92
Brimbank	Metropolitan Council	Residential	0.002055	\$822.00	\$1,438.50

Council	VLGCG	Differential Rate Applied	Rate in the Dollar 2019-20	Valuation: \$400,000	Valuation: \$700,000
Buloke	Small Shire	Residential	0.007699	\$3,079.60	\$5,389.30
Campaspe	Large Shire	General land	0.0042985	\$1,719.40	\$3,008.95
Cardinia	Interface Council	Urban Rate	0.002945	\$1,178.00	\$2,061.50
Casey	Interface Council	Uniform	0.002630182	\$1,052.07	\$1,841.13
Central Goldfields	Small Shire	Residential - Maryborough	0.004950	\$1,980.00	\$3,465.00
Colac Otway	Large Shire	Residential – Colac, Colac East, Colac West, Elliminyt	0.004069	\$1,627.60	\$2,848.30
Corangamite	Large Shire	Residential	0.0037456	\$1,498.24	\$2,621.92
Darebin	Metropolitan Council	Residential	0.00212679	\$850.72	\$1,488.75
East Gippsland	Large Shire	Residential	0.00403615	\$1,614.46	\$2,825.31
Frankston	Metropolitan Council	Ordinary	0.002320	\$928.00	\$1,624.00
Gannawarra	Small Shire	Residential rates	0.00633000	\$2,532.00	\$4,431.00
Glen Eira	Metropolitan Council	Uniform	0.029269	\$585.38	\$1,024.42
Glenelg	Large Shire	Uniform	0.005027	\$2,010.80	\$3,518.90
Golden Plains	Large Shire	Residential Improved (Growth Area)	0.0031330	\$1,253.20	\$2,193.10
Greater Bendigo	Regional City	Residential land - Forest Edge Estate Maiden Gully	0.00399849	\$1,599.40	\$2,798.94
Greater Dandenong	Metropolitan Council	General	0.0017001925	\$680.08	\$1,190.13
Greater Geelong	Regional City	Residential	0.0021619	\$864.74	\$1,513.30

Council	VLGCG	Differential Rate Applied	Rate in the Dollar 2019-20	Valuation: \$400,000	Valuation: \$700,000
Greater Shepparton	Regional City	Residential Improved	0.00507319	\$2,029.28	\$3,551.23
Hepburn	Small Shire	Residential	0.003285	\$1,314.00	\$2,299.50
Hindmarsh	Small Shire	Residential	0.0052420	\$2,096.80	\$3,669.40
Hobsons Bay	Metropolitan Council	Residential	0.002128	\$851.20	\$1,489.60
Horsham	Regional City	Residential	0.005263	\$2,105.20	\$3,684.10
Hume	Interface Council	Uniform	0.0033056	\$1,322.24	\$2,313.92
Indigo	Small Shire	General properties	0.003266	\$1,306.40	\$2,286.20
Kingston	Metropolitan Council	General Land	0.0019763	\$790.52	\$1,383.41
Knox	Metropolitan Council	Residential	0.0017571	\$702.84	\$1,229.97
Latrobe	Regional City	General	0.00466836	\$1,867.34	\$3,267.85
Loddon	Small Shire	General	0.004704	\$1,881.60	\$3,292.80
Macedon Ranges	Large Shire	General rate	0.0024765	\$990.60	\$1,733.55
Manningham	Metropolitan Council	Uniform	0.00173238	\$692.95	\$1,212.67
Mansfield	Small Shire	Residential	0.002804	\$1,121.60	\$1,962.80
Maribyrnong	Metropolitan Council	Residential	0.00294654	\$1,178.62	\$2,062.58
Maroondah	Metropolitan Council	General	0.0021003	\$840.10	\$1,470.18
Melbourne	Metropolitan Council	Residential	0.041127	\$822.54	\$1,439.45
Melton	Interface Council	General rate	0.0025968	\$1,038.72	\$1,817.76
Mildura	Regional City	Residential Differential rate	0.0064303	\$2,572.12	\$4,501.21
Mitchell	Large Shire	General	0.002851	\$1,140.40	\$1,995.70

Council	VLGCG	Differential Rate Applied	Rate in the Dollar 2019-20	Valuation: \$400,000	Valuation: \$700,000
Moirā	Large Shire	Residential and Rural Building	0.0035130	\$1,405.20	\$2,459.10
Monash	Metropolitan Council	Residential	0.00158350	\$633.40	\$1,108.45
Moonee Valley	Metropolitan Council	Residential properties	0.00190878	\$763.51	\$1,336.15
Moorabool	Large Shire	General Rate	0.003424	\$1,369.60	\$2,396.80
Moreland	Metropolitan Council	Residential properties	0.0024645	\$985.80	\$1,725.15
Mornington Peninsula	Interface Council	General land	0.0016462	\$658.48	\$1,152.34
Mount Alexander	Large Shire	Residential	0.0035440	\$1,417.60	\$2,480.80
Moyne	Large Shire	Uniform	0.0020500	\$820.00	\$1,435.00
Murrindindi	Small Shire	Residential	0.003052	\$1,220.80	\$2,136.40
Nillumbik	Interface Council	General	0.002728	\$1,091.20	\$1,909.60
Northern Grampians	Small Shire	Residential	0.006697	\$2,678.80	\$4,687.90
Port Phillip	Metropolitan Council	Uniform	0.037139	\$742.78	\$1,299.87
Pyrenees	Small Shire	General	0.003998	\$1,599.20	\$2,798.60
South Gippsland	Large Shire	Residential	0.00491133	\$1,964.53	\$3,437.93
Southern Grampians	Large Shire	General Rate 1 - rateable residential	0.004631	\$1,852.40	\$3,241.70
Stonnington	Metropolitan Council	Uniform	0.000999	\$399.60	\$699.30
Strathbogie	Small Shire	Residential	0.0050194	\$2,007.76	\$3,513.58
Surf Coast	Large Shire	Residential rate	0.0021129	\$845.16	\$1,479.03
Swan Hill	Large Shire	Residential - Swan Hill	0.00603384	\$2,413.54	\$4,223.69
Towong	Small Shire	Residential	0.004155	\$1,662.00	\$2,908.50

Council	VLGCG	Differential Rate Applied	Rate in the Dollar 2019-20	Valuation: \$400,000	Valuation: \$700,000
Wangaratta	Regional City	Residential	0.004834	\$1,933.60	\$3,383.80
Warrnambool	Regional City	Other Land	0.003726	\$1,490.40	\$2,608.20
Wellington	Large Shire	General	0.005140	\$2,056.00	\$3,598.00
West Wimmera	Small Shire	Uniform	0.002642	\$1,056.80	\$1,849.40
Whitehorse	Metropolitan Council	Uniform	0.00166289	\$665.16	\$1,164.02
Whittlesea	Interface Council	General	0.05142437	\$1,028.49	\$1,799.85
Wodonga	Regional City	Residential occupied	0.005387	\$2,154.80	\$3,770.90
Wyndham	Interface Council	Residential Developed Land	0.004197	\$1,678.80	\$2,937.90
Yarra	Metropolitan Council	Uniform	0.0395330	\$790.66	\$1,383.66
Yarra Ranges	Interface Council	Residential	0.002894	\$1,157.60	\$2,025.80
Yarriambiack	Small Shire	Residential	0.0062576	\$2,503.04	\$4,380.32

The following table shows the difference between farming and commercial/industrial differential rates in a sample number of councils in which there is disparity. The figures represent the ratio between the rate in the dollar levied on farm assessments compared to commercial/industrial assessments, i.e. a ratio of 2.0 shows that commercial/industrial assessments are being levied rates that are twice the rate in the dollar (double that) of farm assessments in the municipality.

When comparing differential rates in this manner, the highest commercial/industrial differential rate for each council was applied.

Chart 54 – Differential rates: Farming vs commercial/industrial assessments

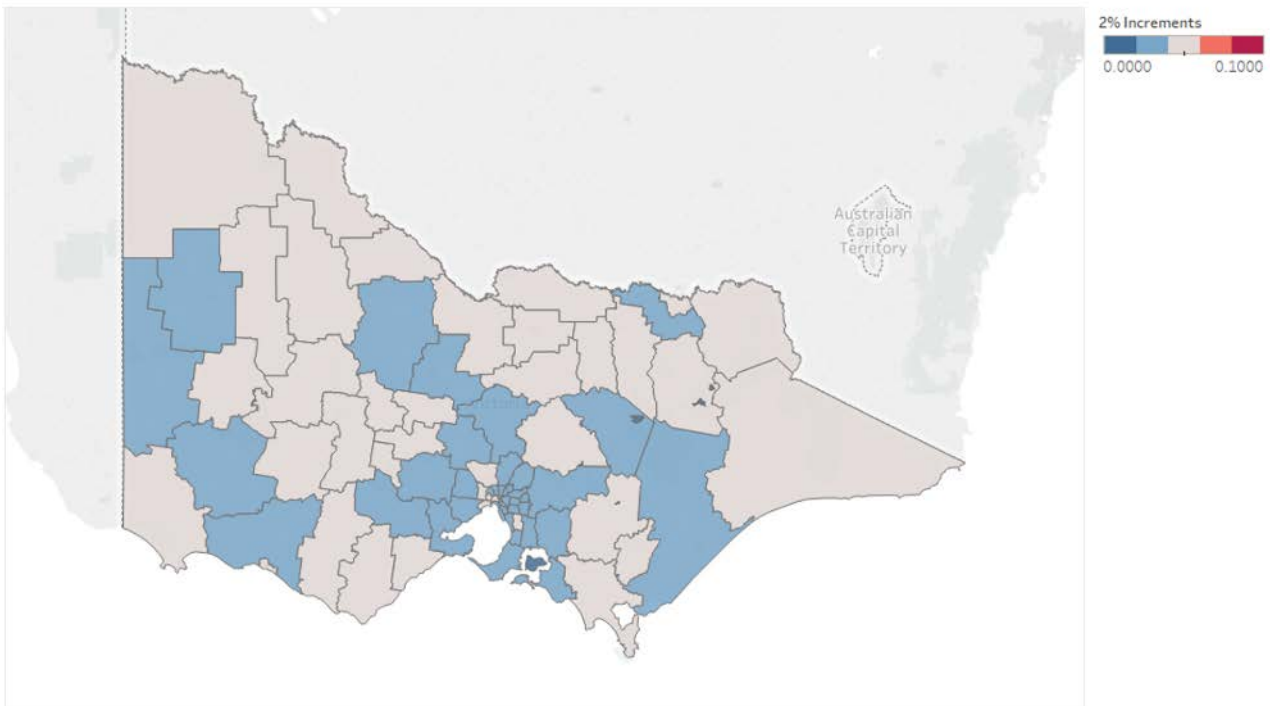
Council	VLGCG	Ratio 2013-14	Ratio 2014-15	Ratio 2015-16	Ratio 2016-17	Ratio 2017-18	Ratio 2018-19	Ratio 2019-20
Alpine Shire Council	Small Shire	1.96	2.02	2.02	1.96	1.96	1.96	1.96
Ararat Rural City Council	Small Shire	2.67	2.70	2.91	2.91	2.91	2.27	2.27
Ballarat City Council	Regional City	3.67	3.60	3.53	3.79	3.79	3.77	3.79
Bass Coast Shire Council	Large Shire	1.00	1.00	1.25	1.25	1.25	1.25	1.25
Baw Baw Shire Council	Large Shire	1.44	1.44	1.44	1.44	1.33	1.33	1.33
Benalla Rural City Council	Small Shire	1.80	1.80	1.80	1.86	1.86	2.07	2.15
Brimbank City Council	Metropolitan Council	1.81	1.84	1.86	2.01	2.01	2.47	2.47
Buloke Shire Council	Small Shire	1.02	1.02	1.02	1.02	1.02	1.14	1.22
Campaspe Shire Council	Large Shire	1.29	1.29	1.29	1.29	1.29	1.29	1.29
Cardinia Shire Council	Interface Council	1.81	1.81	1.81	1.81	1.81	1.81	1.81
Central Goldfields Shire Council	Small Shire	1.95	2.00	2.00	2.00	2.00	2.00	2.00
Colac Otway Shire Council	Large Shire	2.09	2.09	2.09	2.09	2.14	2.20	2.20
Corangamite Shire Council	Large Shire	1.05	1.06	1.08	1.09	1.10	1.11	1.12
East Gippsland Shire Council	Large Shire	1.61	1.61	1.61	1.61	1.61	1.61	1.73
Frankston City Council	Metropolitan Council	1.56	1.56	1.56	1.56	1.56	1.56	1.56
Gannawarra Shire Council	Small Shire	1.22	1.21	1.19	1.19	1.17	1.28	1.33

Council	VLGCG	Ratio 2013-14	Ratio 2014-15	Ratio 2015-16	Ratio 2016-17	Ratio 2017-18	Ratio 2018-19	Ratio 2019-20
Glenelg Shire Council	Large Shire	1.20	1.20	1.00	1.00	1.00	1.00	1.00
Golden Plains Shire Council	Large Shire	1.08	1.08	1.08	1.08	1.08	1.08	1.08
Greater Bendigo City Council	Regional City	2.26	2.23	2.24	2.24	2.24	2.24	2.24
Greater Dandenong City Council	Metropolitan Council	3.13	3.21	3.21	3.75	3.75	3.88	3.44
Greater Geelong City Council	Regional City	2.72	2.78	2.78	2.81	2.70	2.87	3.57
Greater Shepparton City Council	Regional City	2.76	2.41	2.41	2.41	2.41	2.28	2.28
Hepburn Shire Council	Small Shire	1.78	1.78	1.78	1.78	1.78	1.78	1.79
Hindmarsh Shire Council	Small Shire	1.00	1.00	1.00	1.00	0.99	1.00	1.00
Horsham Rural City Council	Regional City	1.11	1.27	1.25	1.25	1.25	1.25	1.42
Indigo Shire Council	Small Shire	1.64	1.64	1.64	1.64	1.64	1.64	1.64
Kingston City Council	Metropolitan Council	1.25	1.25	1.38	1.25	1.25	1.25	1.25
Latrobe City Council	Regional City	1.33	1.33	1.33	1.33	1.33	1.33	1.33
Loddon Shire Council	Small Shire	1.13	1.12	1.12	1.12	1.12	1.12	1.31
Macedon Ranges Shire Council	Large Shire	1.50	1.50	1.50	1.50	1.50	1.50	1.50
Mansfield Shire Council	Small Shire	1.97	2.00	2.00	1.94	1.94	1.96	2.08
Mildura Rural City Council	Regional City	1.16	1.26	1.26	1.26	1.26	1.26	1.58
Mitchell Shire Council	Large Shire	1.18	1.25	1.18	1.18	1.18	1.18	1.18
Moira Shire Council	Large Shire	1.40	1.40	1.40	1.40	1.40	1.40	1.40
Moorabool Shire Council	Large Shire	2.00	2.05	2.05	2.05	2.05	2.03	1.99
Mornington Peninsula Shire Council	Interface Council	2.86	2.86	2.86	2.86	2.86	2.86	2.86

Council	VLGCG	Ratio 2013-14	Ratio 2014-15	Ratio 2015-16	Ratio 2016-17	Ratio 2017-18	Ratio 2018-19	Ratio 2019-20
Mount Alexander Shire Council	Large Shire	1.31	1.37	1.37	1.37	1.44	1.44	1.44
Moyne Shire Council	Large Shire	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Murrindindi Shire Council	Small Shire	1.14	1.14	1.43	1.48	1.45	1.48	1.48
Nillumbik Shire Council	Interface Council	1.36	1.36	1.36	1.36	1.36	1.36	1.36
Northern Grampians Shire Council	Small Shire	1.54	1.54	1.54	1.54	1.54	2.12	2.12
Pyrenees Shire Council	Small Shire	1.23	1.24	1.25	1.25	1.25	1.25	1.30
South Gippsland Shire Council	Large Shire	1.11	1.28	1.50	1.50	1.50	1.50	1.50
Southern Grampians Shire Council	Large Shire	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Strathbogie Shire Council	Small Shire	1.41	1.41	1.41	1.41	1.41	1.45	1.50
Surf Coast Shire Council	Large Shire	2.53	2.27	2.53	2.53	2.53	2.53	2.53
Swan Hill Rural City Council	Large Shire	1.44	1.44	1.37	1.37	1.37	1.41	1.44
Towong Shire Council	Small Shire	1.06	1.06	1.06	1.06	1.06	1.06	1.06
Wangaratta Rural City Council	Regional City	1.84	1.88	1.88	1.98	1.98	2.04	2.04
Warrnambool City Council	Regional City	3.13	3.13	3.13	3.09	3.09	2.93	2.77
Wellington Shire Council	Large Shire	1.25	1.25	1.25	1.25	1.25	1.25	1.25
Whittlesea City Council	Interface Council	1.18	1.18	1.18	1.18	1.67	1.67	1.67
Wodonga City Council	Regional City	1.87	1.87	1.87	1.87	1.87	1.87	1.87
Wyndham City Council	Interface Council	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Yarra Ranges Shire Council	Interface Council	2.14	2.14	2.14	2.14	2.14	2.14	2.14
Yarriambiack Shire Council	Small Shire	1.18	1.30	1.30	1.30	1.23	1.40	1.60

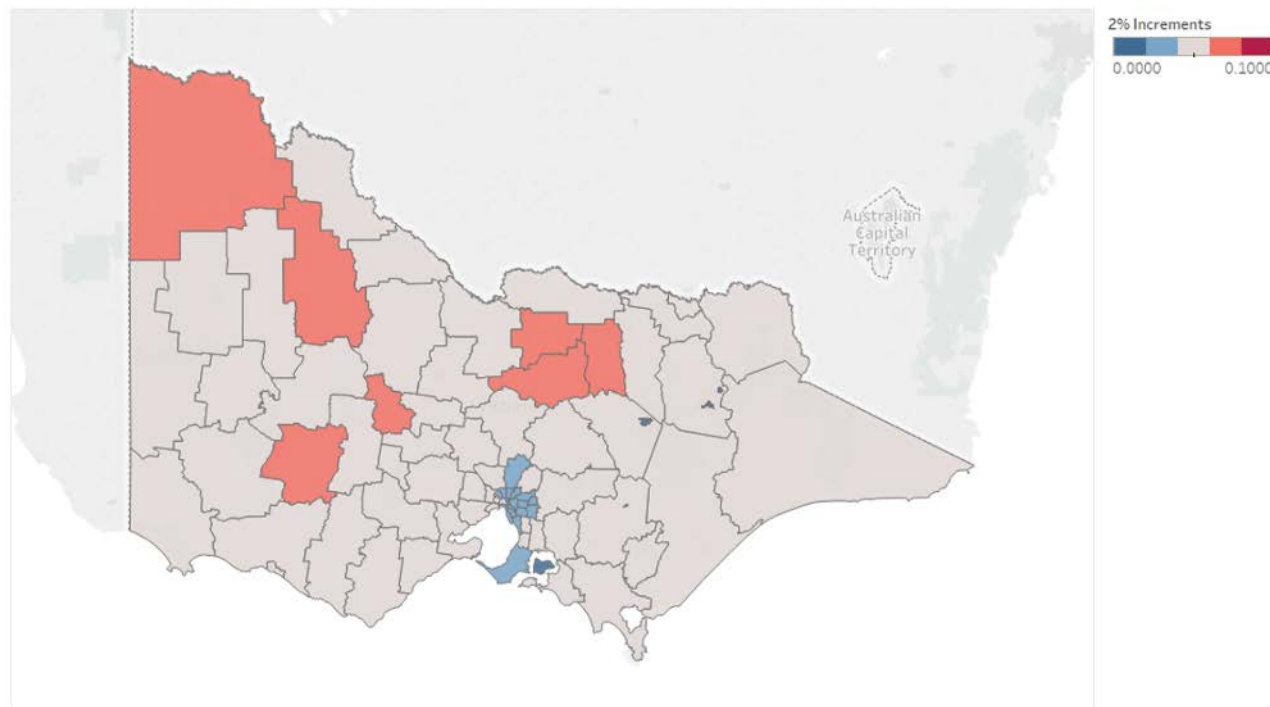
Chart 55 – Percentage of household income spent on rates (2011 and 2016 Census) – by Local Government Area

% Income spent on Rates - 2011



Map based on Longitude (generated) and Latitude (generated). Color shows Proportionate % (2011) as an attribute. Details are shown for Council.

% Income spent on Rates - 2016



Map based on Longitude (generated) and Latitude (generated). Color shows Proportionate % (2016) as an attribute. Details are shown for Council.

APPENDIX 2: Municipal Charges and their Effect on Rates

Understanding the effect of a municipal charge on differential rate categories can be difficult since its application lowers the total amount of rates raised through the ad valorem system (based on property valuations). When councils choose not to use a municipal charge the total rate revenue amount is apportioned by property valuation only, so more valuable properties pay a greater rates contribution than the less valuable properties. A municipal charge raises a fixed amount from each property as part of the total general rates.

Example – municipal charges and differential rates: A City Council has not previously applied a municipal charge and is considering adopting a \$400 charge for all occupancies, which at 19% of the total rates and charges collected, is just under the (current) 20 per cent maximum.

As the council uses differential rates, the effect on ratepayers is not immediately apparent. The Mayor has requested information on the impact this would have on the ratepayers of the council which has been provided in the figures below.

Chart 56 – Council differential rating example

Farm Land		Residential Land	
# Occupancies:	1,495	# Occupancies:	78,899
Average Valuation:	\$1,971,150	Average Valuation:	\$497,218
Rates Payable on	\$2,000,000	Rates Payable on	\$500,000
w/MC	\$3,804.10	w/MC	\$1,578.34
w/o MC	\$4,297.23	w/o MC	\$1,487.50
Difference	-\$493.13	Difference	+\$90.84
Commercial Land		Industrial Land	
# Occupancies:	2,682	# Occupancies:	5,158
Average Valuation:	\$954,858	Average Valuation:	\$1,286,119
Rates Payable on	\$1,000,000	Rates Payable on	\$1,500,000
w/MC	\$4,327.80	w/MC	\$6,503.10
w/o	\$4,958.34	w/o	\$7,704.38
Difference	-\$630.54	Difference	-\$1,201.27

Although the council collects no additional revenue from this model, residential ratepayers pay more rates and the average farm, commercial and industrial ratepayers (which on average have higher valued properties) pay less. It is important to note that this example uses averages to illustrate the effect. A commercial property with a value of \$500,000 would experience a similar effect to the average residential property, i.e. paying more in rates as a result of a municipal charge set at \$400.

The detailed model for this example is set out on the following page.

Chart 57 – Effect of municipal charges on differential rates

Differential Rates + Municipal Charge

Municipal Charge = \$400.00

Rating Category	Occupancies	CIV (Total)	CIV (Aug)	Rate in \$
Farm	495	\$2,946,869,000	\$,971,150	0.00214861
Residential	78,899	\$39,230,024,000	\$497,218	0.00297500
Commerical	2,682	\$2,560,928,000	\$954,858	0.00495834
Industrial	5,158	\$6,633,804,000	\$1,286,119	0.00513625

Valuation of Property (Rates with Municipal Charge)

	\$250,000	\$500,000	\$1,000,000	\$1,500,000	\$2,000,000	\$2,500,000
Farm	\$825.51	\$1,251.02	\$2,102.05	\$2,953.07	\$3,804.10	\$4,655.12
Residential	\$989.17	\$1,578.34	\$2,756.68	\$3,935.02	\$5,113.36	\$6,291.70
Commercial	\$1,381.95	\$2,363.90	\$4,327.80	\$6,291.70	\$8,255.61	\$10,219.51
Industrial	\$1,417.18	\$2,434.37	\$4,468.74	\$6,503.10	\$8,537.47	\$10,571.84

Valuation of Property (Rates without Municipal Charge)

	\$250,000	\$500,000	\$1,000,000	\$1,500,000	\$2,000,000	\$2,500,000
Farm	\$537.15	\$1,074.31	\$2,148.61	\$3,222.92	\$4,297.23	\$5,371.54
Residential	\$743.75	\$1,487.50	\$2,975.00	\$4,462.51	\$5,950.01	\$7,437.51
Commercial	\$1,239.59	\$2,479.17	\$4,958.34	\$7,437.51	\$9,916.68	\$12,395.85
Industrial	\$1,284.06	\$2,568.13	\$5,136.25	\$7,704.38	\$10,272.50	\$12,840.63

Difference in Rate Amounts

	\$250,000	\$500,000	\$1,000,000	\$1,500,000	\$2,000,000	\$2,500,000
Farm	\$288.36	\$176.72	(\$46.57)	(\$269.85)	(\$493.13)	(\$716.42)
Residential	\$245.42	\$90.84	(\$218.32)	(\$527.48)	(\$836.65)	(\$1,145.81)
Commercial	\$142.37	(\$115.27)	(\$630.54)	(\$1,145.81)	(\$1,661.08)	(\$2,176.34)
Industrial	\$133.12	(\$133.76)	(\$667.51)	(\$1,201.27)	(\$1,735.03)	(\$2,268.79)

Example - Uniform Rates: A City Council has not previously applied a municipal charge and is considering adopting a \$400 charge for all occupancies, which would be 19% of the total rates and charges collected.

As the Council uses uniform rates, the effect on ratepayers is not immediately apparent. Mayor Theodore Cleaver has requested information on the impact this would have on the ratepayers of the municipality and has been provided with the figures below.

Chart 58 – Uniform rates and municipal charges – a council

Property Valuation	Rates Payable		
	W/MC	WO/MC	Difference
\$250,000	\$1,054.63	\$826.39	+\$228.24
\$500,000	\$1,709.27	\$1,652.78	+\$56.49
\$1,000,000	\$3,018.54	\$3,305.56	(\$287.03)
\$1,500,000	\$4,327.80	\$4,958.34	(\$630.54)
\$2,000,000	\$5,637.07	\$6,611.12	(\$974.05)
\$2,500,000	\$6,946.34	\$8,263.90	(\$1,317.56)

In this model, where there are no differential rates and so categories of land are irrelevant, the lower valued properties are paying more in rates and the higher valued land is paying less. The council also collects no additional revenue from this model.

Chart 59 – Effect of municipal charge on uniform rates

Uniform Rates + Municipal Charge

Municipal Charge \$400.00

Rating Category	Occupancies	CIV (Total)	CIV (Aug)	Rate in \$
Farm	1,495	\$2,946,869,000	\$1,971,150	0.00244678
Residential	78,899	\$39,230,024,000	\$497,218	0.00244678
Commerical	2,682	\$2,560,928,000	\$954,858	0.00244678
Industrial	5,158	\$6,633,804,000	\$1,286,119	0.00244678

Valuation of Property (with Municipal Charge)

	\$250,000	\$500,000	\$1,000,000	\$1,500,000	\$2,000,000	\$2,500,000
Farm	\$1,054.63	\$1,709.27	\$3,018.54	\$4,327.80	\$5,637.07	\$6,946.34
Residential	\$1,054.63	\$1,709.27	\$3,018.54	\$4,327.80	\$5,637.07	\$6,946.34
Commercial	\$1,054.63	\$1,709.27	\$3,018.54	\$4,327.80	\$5,637.07	\$6,946.34
Industrial	\$1,054.63	\$1,709.27	\$3,018.54	\$4,327.80	\$5,637.07	\$6,946.34

Valuation of Property (without Municipal Charge)

	\$250,000	\$500,000	\$1,000,000	\$1,500,000	\$2,000,000	\$2,500,000
Farm	\$826.39	\$1,652.78	\$3,305.56	\$4,958.34	\$6,611.12	\$8,263.90
Residential	\$826.39	\$1,652.78	\$3,305.56	\$4,958.34	\$6,611.12	\$8,263.90
Commercial	\$826.39	\$1,652.78	\$3,305.56	\$4,958.34	\$6,611.12	\$8,263.90
Industrial	\$826.39	\$1,652.78	\$3,305.56	\$4,958.34	\$6,611.12	\$8,263.90

Difference in Rate Amounts

	\$250,000	\$500,000	\$1,000,000	\$1,500,000	\$2,000,000	\$2,500,000
Farm	\$288.24	\$56.49	(\$287.03)	(\$630.54)	(\$974.05)	(\$1,317.56)
Residential	\$288.24	\$56.49	(\$287.03)	(\$630.54)	(\$974.05)	(\$1,317.56)
Commercial	\$288.24	\$56.49	(\$287.03)	(\$630.54)	(\$974.05)	(\$1,317.56)
Industrial	\$288.24	\$56.49	(\$287.03)	(\$630.54)	(\$974.05)	(\$1,317.56)

APPENDIX 3: An Algebraic Representation of the Rating System

The core methodology of the Victorian rating system can be described using mathematical notation.

Equation (1) shows gross annualised **revenue from general rates** (TG_t) in year t equals the sum of budgeted revenue from **general rates** (TR_t) calculated at the start of year t plus total annualised **supplementary rates** (TS_t) issued during year t — where ‘annualised’ has the same meaning as in sections 185B&C of the Local Government Act 1989.

$$(TG_t) = (TR_t) + (TS_t) \quad (1)$$

Equation (2) shows the value of annualised total supplementary rates (TS_t) equals the product of the **rate in the dollar** (r_t) in year t and total investment in **new capital stock** (TK_t) in the municipality during year t .

$$(TS_t) = (r_t) * (TK_t) \quad (2)$$

Equation (3) shows the rate in the dollar (r_t) in year t is calculated by dividing the budgeted revenue from general rates (TR_t) at the start of year t by the **total value of rateable properties** (TV_t) at the start of year t .

$$(r_t) = \frac{(TR_t)}{(TV_t)} \quad (3)$$

Equation (4) shows budgeted revenue from general rates (TR_t) is calculated by multiplying the **number of rateable properties** (N_t) at the start of year t by the **capped average rate** (CAR_t) at the start of year t .

$$(TR_t) = (N_t) * (CAR_t) \quad (4)$$

Section 185C of the Local Government Act defines the capped average rate (CAR_t) at the start of year t as the product of the **rate cap** (c_t) in year t and the **base average rate** (BAR_{t-1}) at the end of the previous year ($t-1$). This relationship is represented by Equation (5).

$$(CAR_t) = c_t * BAR_{t-1} \quad (5)$$

Section 185B of the Local Government Act defines the base average rate (BAR_{t-1}) at the end of year $t-1$ as the annualised gross revenue from general rates (TG_{t-1}) at the end of year $t-1$ divided by the number of properties (N_{t-1}^*) at the end of year $t-1$. This relationship is represented by Equation (6).

$$BAR_{t-1} = \frac{TG_{t-1}}{N_{t-1}^*} \quad (6)$$

An individual rate's liability (R_t) in year t is given by the product of the **rate in the dollar** (r_t) in year t and the **rateable value of their property** (V_t) in year t . This is shown in equation (7).

$$R_t = r_t * V_t \quad (7)$$

Equations (1) to (7) can be projected to year $t+1$ and rearranged to derive a property owner's rates liability for next year (R_{t+1}) as shown in equation (8)

$$R_{t+1} = \frac{V_{t+1}}{TV_{t+1}} * c_{t+1} * \frac{N_{t+1}}{N_t^*} * r_t * (TV_t + TK_t) \quad (8)$$

A ratepayer trying to estimate next year's rates **$E_t[R_{t+1}]$** during the current year (t) is therefore required to form expectations (i.e. estimate) the values of all the variables on the righthand side of equation (8). The ratepayer can be expected to know with certainty the current year's rates (r_t) as it appears on this year's rates notice. With some effort the ratepayer might be able to discover the value all rateable properties this year (TV_t) for example in the council's annual budget papers). The value of the rate cap (c_{t+1}) may also be knowable if it is announced and publicised well in advance by the Minister. The ratepayer might also assume that the number of properties does not change as the current year ticks over to the next year ($N_t^* \approx N_{t+1}$).

In other words, even under the best-case scenario, a ratepayer must guess the value of at least three variables of the righthand side of the equation in order to estimate the value of their rates in the following year. For all future years, a ratepayer would need to guess the value of all eight variables on the righthand side of equation (8).

Ministerial Panel for the Victorian Local Government Rating System Review Terms of Reference

Introduction

Rates and charges underpin the funding of local government and its important services and infrastructure in Victoria.

With the exception of the Fair Go Rates system which was introduced in 2015, the structure of the rating system has not substantially changed in over a century.

The Victorian Government is both committed to the financial sustainability of councils and ensuring that the burden of rates falls fairly amongst all ratepayers.

In response to the Parliament of Victoria's Inquiry into the Sustainability and Operational Challenges of Victoria's Rural and Regional Councils the Government has agreed to undertake an inquiry into the local government rating system to identify changes that will improve its fairness and equity. The Fair Go Rates system has helped improve the financial accountability of Victoria's 79 Councils and it has highlighted that the current rating system may be made more equitable, more efficient and more progressive.

The Minister for Local Government has determined to form a Panel for the Victorian Local Government Rating System Review (the Panel) to provide advice to the Minister in accordance with this Terms of Reference.

The Panel will be required to consult widely and report to the Minister by 31 March 2020.

Definitions

1. In these Terms of Reference-

Panel means the Ministerial Panel for the Victorian Local Government Rating System Review, established by the Minister for Local Government by these Terms of Reference.

Code of Conduct means the *Directors' Code of Conduct and Guidance Notes* issued by the Victorian Public Sector Commission¹;

Department means the Department of Environment, Water, Land and Planning or its successor.

Appointment and Remuneration Guidelines means the Government's *Appointment and Remuneration Guidelines*, as updated from time to time².

Member means a member of the Panel and includes a reference to the Chairperson unless the contrary intention is expressed.

Minister means the Minister for Local Government;

PAA means the *Public Administration Act 2004*;

Public sector employee has the meaning given in section 4(1) of the PAA.

Secretary means the Secretary to the Department.

¹ published at: <http://vpssc.vic.gov.au/resources/directors-code-of-conduct-and-guidance-notes/>

² available at: <http://www.dpc.vic.gov.au/index.php/policies/governance/appointment-and-remuneration-guidelines>

Ministerial Panel on the Victorian Local Government Rating System Review Terms of Reference

Establishment of Panel

2. The Minister establishes the Ministerial Panel for the Victorian Local Government Rating System Review under S. 220A of the *Local Government Act 1989* as a non-departmental entity from the date of these Terms of Reference. The establishment of the Panel was approved by Cabinet on 8 April 2019.
3. This Panel has been established to deliver the Victorian Government's commitment to "undertake an inquiry into the council rating system to identify changes that will improve its fairness and equity – this is to ensure that the burden of rates falls fairly amongst all ratepayers".

Role

4. The Role of the Panel is to provide advice to the Minister for Local Government regarding an optimal rating system for Victorian Local Government.
5. In performing its Role, the Panel is required to conduct a review of Victoria's local government rating system.

Scope of the Review

6. Examine the current application of rates and charges by local government in Victoria, including:
 - (a) Current local government rates and related charges including those made under the *Local Government Act 1989*, *City of Melbourne Act 2001* and *Cultural and Recreational Land Act 1963*;
 - (b) The interaction of the local government rating system with the taxation, valuation and other related systems of the Victorian Government (noting in particular the rating system related functions of the *Valuation of Land Act 1960*, *Fire Services Levy Property Act 2012*, *State Concessions Act 2004*, and *Electricity Industry Act 2000*);
 - (c) The current exemption and concession arrangements for rates applied by councils, including legislated exemptions, deferrals, waivers, rebates and use of differential rates by councils;
 - (d) The autonomy of individual local governments to apply the rating system in accordance with their own decision-making circumstances, including the quality of council rating strategies and associated public consultation (noting the status, roles and responsibilities of local government as expressed by the *Victorian Constitution Act 1975* and *Local Government Act 1989*).
 - (e) Commonly accepted principles of taxation policy including equity, capacity to pay, simplicity, efficiency, sustainability and cross-border competitiveness, where they relate to or interact with the local government rating system.
7. Undertake research into the application of municipal rating and charging systems applied in other jurisdictions, including analysis of such systems' applicability to the Victorian local government context.
8. Consult with councils, peak bodies and other stakeholders and the community on the application of rates and charges by local government in Victoria.
9. Establish principles and priorities for the future application of local government rates and charges in Victoria
10. Provide formal advice to the Minister for Local Government on the optimal arrangements for local government rating and charging including legislative and non-legislative arrangements, recognising rates and charges are the primary own source revenue for councils. This should include an analysis of the impacts any recommended changes may have on councils, businesses, various classes of ratepayers and the community.
11. Provide advice to the Minister for Local Government on the impact of the local government rating system on other Victorian Government portfolios arising from any recommendations.

Out of scope

12. The elements of the local government rating system specific to the rate cap provisions under Part 8A of the *Local Government Act 1989*, which will be the subject of a statutory review by December 2021;
13. The adequacy of the taxation, valuation and other related systems of the Victorian Government, specifically the principal functions of the *Valuation of Land Act 1960*, *Fire Services Levy Property Act 2012*, *State Concessions Act 2004*, and *Electricity Industry Act 2000*); and
14. Other sources of funding for local government, such as State and Commonwealth grants.



Ministerial Panel on the Victorian Local Government Rating System Review Terms of Reference

Consultation

15. A consultation framework will be developed by the Department for approval by the Panel. This will step out the timing and methodology for broad-based consultation with stakeholders. The consultation will also involve consultation with councils, peak bodies, stakeholders and the community, including the opportunity for formal submissions and public hearings across Victoria.
16. Consultation methods may include but are not limited to face-to-face meetings with key stakeholders, workshops, telephone and online consultations, and a call for submissions. Consultation will also occur with relevant Government agencies including the Valuer-General Victoria.
17. The Panel may establish reference groups as deemed necessary.

Reporting

18. The Panel will be required to develop a discussion paper to guide stakeholder consultation. The paper must be submitted to the Minister for Local Government by a date to be determined by the Minister.
19. The Panel will be required to submit a draft report to the Minister for Local Government by a date to be determined by the Minister.
20. The Panel will be required to submit a final report to the Minister for Local Government at the conclusion of the review, no later than 31 March 2020.
21. The Chair may report informally to the Minister as deemed necessary or as requested by the Minister for Local Government.

Advisory Function of the Panel

22. The Panel is an advisory body, not a decision-making body.
23. The Panel's work is not necessarily about achieving consensus, but rather helping to inform Government's deliberations.

Application of the *Public Administration Act 2004*

24. Under section 5(1)(d)(iii)(A) of the PAA, the Panel is declared to be a "public entity" for the purposes of that Act.
25. Each member of the Panel must at all times act -
 - (a) in accordance with the Code of Conduct issued by the Victorian Public Sector Commission³; and
 - (b) in a manner that is consistent with the public sector values in section 7(1) of the PAA.
26. The relevant duties and requirements of sections 79 to 97 of the PAA apply to the Panel and the members, except where these Terms of Reference are more specific or stringent in nature than those in these sections.
27. The Panel and its members are taken to be a public body and its directors respectively for the purposes of these sections of the PAA. The Panel is also equivalent to a board of directors for the purposes of these sections.
28. The Panel must act consistently with the 'duties of directors' (Panel members) in section 79 of the PAA. These duties include:
 - (a) Performance of duties: act honestly; in good faith in the best interests of the agency; with integrity; in a financially responsible manner; with a reasonable degree of care, diligence and skill; and in compliance with the establishing Act and any subordinate instrument.
 - (b) Confidentiality: maintain confidentiality, even after your appointment expires or otherwise terminates.
 - (c) Use of information: avoid improperly using your position or any information acquired in your role as a Panel member to gain advantage for yourself or another person or to cause detriment to the agency.

Accountabilities

29. The Panel is subject to the general direction of the Minister in the performance of its functions.⁴

³ Note section 61 of the PAA

⁴ Note section 85(1) of the PAA

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30. The Panel must provide its recommendations or advice as required by these Terms of Reference to the Minister by 31 March 2020.
31. Each member of the Panel is required to comply with these Terms of Reference, and each member's ongoing participation in the Panel is their implied acceptance of these Terms of Reference.

Membership

32. The Panel consists of the Chairperson and a maximum of two other members, appointed by the Minister.
33. The Panel is to be constituted by
 - (a) a member with skills and experience rural and/or regional issues and an understanding of the broad context of local government and its role, appointed by the Minister;
 - (b) a member with experience or expertise in local government rating and revenue systems and/or taxation systems, appointed by the Minister; and
 - (c) the Chairperson with experience in chairing and leading public reviews and inquiries and understanding of the broad context of local government and its role, appointed by the Minister.
34. A Member is appointed by the Minister for the term of office specified in his or her instrument of appointment.

Chairperson

35. The role of the Chairperson includes: direct and facilitate the business of the Panel;
 - (b) call Panel meetings;
 - (c) determine the agenda for each meeting in consultation with the Secretariat;
 - (d) may invite any individual to attend, observe and/or submit advice at a Panel meeting;
 - (e) preside at meetings, including maintaining order and guiding the meeting through the agenda;
 - (f) act as the contact person between the Panel and the Minister;
 - (g) present reports and recommendations from the Panel to the Minister;
 - (h) liaise with the Secretariat;
 - (i) assist the Panel to understand and carry out its role; and
 - (j) facilitate an orderly and constructive discussion between Members on matters within these Terms of Reference.
36. Subject to any direction provided by the Minister, the Chair is the sole spokesperson for the Panel.

Members

37. Each Member is responsible for:
 - (a) attending Panel meetings and contributing to the work of the Panel by preparing for meetings;
 - (b) notifying the Chair and the Secretariat before the meeting if the Member is unable to attend a meeting;
 - (c) adhering to principles of good governance and conduct.

Remuneration & Expenses

38. Subject to the Appointment and Remuneration Guidelines and these Terms of Reference, a member is entitled to receive remuneration for their service on the Panel as set out in their instrument of appointment.
39. A Member is entitled to the reimbursement of reasonable travelling and personal expenses directly related to their service on the Panel at the rates, and on the terms, that apply to employees of the Department.
40. Daily rates are set for the maximum payable for official duties on a given day. Where official duties equal or exceed four hours, the maximum daily rate will be paid. Official duties of less than four hours will be paid at half the daily rate.
41. Official duties include:
 - a. attendance at, and participation in, meetings with stakeholders and consultation with the public relevant to the role of the panel; and
 - b. preparation of the report, either as individual Panel members or collectively as the Panel panel meetings and stakeholder meetings.
42. Participation in activities considered relevant to the role of a panel member may be eligible for remuneration subject to approval by the Minister for Local Government.

43. Panel Members may apply in writing to the Minister for Local Government if further remuneration is required above these caps.

Removal from office and resignation

44. The Minister, without cause or notice, may remove a member from office at any time and for any reason or for no reason at all.
45. Upon a vacancy occurring in the office of a member, the vacancy may be filled by the Minister in accordance with these Terms of Reference.

Meeting Procedure

46. The Panel is expected to meet at the determination of the Chairperson, as often as required.

Minutes

47. The Chairperson must –
- (a) ensure that minutes of each meeting are kept;
 - (b) circulate the minutes for comment by members before being formally adopted at the next meeting; and
 - (c) provide the adopted minutes to the Panel Secretariat.

Conflicts of Interest

48. In these Terms of Reference:
- (a) a **'conflict of interest'** is a conflict between a member's public duty to act in the best interests of the Panel and their private interests. It includes a **conflict of duty**, which is a conflict between a member's public duty to act in the best interests of the Panel and their duty to another organisation (e.g. due to their role as a Panel member or employee of that organisation).
 - (b) A private interest:
 - may be **direct** or **indirect**; and
 - can be **pecuniary** (financial) or **non-pecuniary** (non-financial), or a mixture of both. A non-pecuniary interest may arise from personal or family relationships or from involvement in sporting, social, or cultural activities, etc.
 - (c) A conflict of interest exists whether it is:
 - **real** (ie. it currently exists);
 - **potential** (ie. it may arise, given the circumstances); or
 - **perceived** (ie. members of the public could reasonably form the view that a conflict exists, or could arise, that may improperly influence the member's performance of his/her duty to the Committee, now or in the future).
49. A member who has a conflict of interest in a matter being discussed at a meeting of the Panel must declare the nature of the interest:
- (a) at the commencement of a meeting; or
 - (b) if they become aware of an interest during discussions, as soon as possible after becoming aware of the interest.
- A declaration must be made even if the interest is already recorded in the Panel's Register of Interests.
50. The Chairperson or member presiding at a meeting at which a declaration of an interest is made must cause the declaration and how the conflict of interest will be managed to be recorded in the minutes of the meeting.
51. The Chairperson must keep a record of declared interests (the Register of Interests). Any member may request and be granted access to this Register of Interests.
52. If a Panel member has breached their conflict of interest obligations in these Terms of Reference, the Chairperson must notify in writing the Ministers as soon as practicable after becoming aware of such a breach, including whether the breach is material.

Gifts Benefits & Hospitality

53. The Panel will adopt the Departmental policy on *Gifts, benefits and hospitality*.

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Confidentiality

54. Members should note that the requirements of sections 79(2) & (3) and 81(1)(c) of the PAA in regard to confidentiality and use of information applies to them. The Minister may authorise the Panel to release specified information to third parties.
55. On the termination or expiry of a member's appointment, the member must return all documents relating to the Panel to the Chairperson.

Privacy

56. The Panel must have processes in place to ensure that its members, in the course of their duties on the Panel, comply with the requirements imposed by or under the *Privacy and Data Protection Act 2014*.⁵

Intellectual Property

57. The rights to Intellectual property created by the members of the Panel in the course of their duties on the Panel, including any reports required under these Terms of Reference, is the property of the State of Victoria. However, the Minister on behalf of the State grants the Panel a licence to use this property as authorised under these Terms of Reference. In this clause, Intellectual property includes legal rights that protect the results of creative efforts including copyright, proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include moral rights.

Media

58. Any enquiries to the Panel from the media should be referred to the Chair (via the Secretariat).
59. A Member who is approached by the media in relation to the work of the Panel should not discuss the Panel's deliberations or work program and should refer the enquirer to the Chair.
60. The Panel will adopt the Departmental policy on Social Media

Secretariat support to the Panel

61. Administrative support to the Panel will be provided by the Department.
62. Day to day liaison for the Panel will be through the Director – Sector Performance, Innovation and Resilience, Local Government Victoria, or his or her nominee.
63. Support provided by the Secretariat includes:
 - a. organising meeting rooms;
 - b. taking minutes;
 - c. preparing and distributing agendas for Panel meetings, in consultation with the Chair, including any meeting papers;
 - d. organising stakeholder consultation meetings;
 - e. managing the public consultation online portal;
 - f. compiling stakeholder submissions for the panel to review;
 - g. arranging travel and accommodation where Panel members are required to attend meetings at regional locations;
 - h. overseeing the budget for the Review;
 - i. conducting research and providing advice to the Panel;
 - j. procurement of external expert analysis and advisory services as required by the Panel on areas within the scope of the review;
 - k. assisting in drafting reports; and
 - l. other administrative support (e.g. processing claims for reimbursement of remuneration and expenses);
64. The Secretariat will disseminate information and papers to members in an efficient and effective manner.

⁵ Note that this Act applies to the Panel as it is a public entity as defined in the PAA and is therefore a public sector agency for the purposes of the *Privacy and Data Protection Act 2014*.



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65. The costs of the Panel will be met by the Department.

Entity review, sunset date & amendments

66. The Panel will operate until 31 May 2020.

67. The Minister may amend these Terms of Reference in writing at any time.

68. The Minister may revoke these Terms of Reference in writing at any time and upon revocation of these Terms of Reference the Panel ceases to exist.

Hon. Adem Somyurek MP
Minister for Local Government

Appendix 5: Bibliography and References

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Government Gazette 26 March 1998 (page 632 for payment of rates dates)

Government Gazette 23 September 2004 (page 2628 special rates and charges Guidelines)

Cultural and Recreational Land Act 1963

Valuation of Land Act 1960 (Part II)

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Government Gazette 11 October 2018 (page 2303 Methodology for determining Payments in Lieu of Rates for electricity generators)

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Local Government Better Practice Guide 2014 – Revenue and Rating Strategy
https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0020/48260/LG-Revenue-and-Rating-Strategy.pdf

Ministerial Guidelines for Differential Rating 2013 https://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0022/74821/Ministerial_Guidelines_for_Differential_Rating_April_2013-PDF.pdf

Web links to Resources

Know Your Council – Guide to Councils – Rates and Charges
<https://knowyourcouncil.vic.gov.au/guide-to-councils/finance-and-planning/rates-and-charges>

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