

# **LOCAL GOVERNMENT REGULATION REVIEW**

## **PART 5 -**

### **RATES & CHARGES**

**Submission by**

**DG & AB MAXWELL  
Consulting Accountants**



# NSW Local Government Regulation Review

## Part 5 - Rates & Charges

### INTRODUCTION

Our firm provides specialist financial and administration consulting services solely to Local Government throughout Australia, but principally within New South Wales. Our senior principal, David Maxwell is a Fellow of the Institute of Chartered Accountants and an Associate of Local Government Managers Australia with over 29 years experience as Local Government Auditor, Principal Accounting Officer, Chief Executive Officer and Consultant.

This experience includes service as the responsible Rates Officer, as supervisor of the responsible Rates Officer, as Principal Accounting Officer, as Chief Executive Officer and as Auditor - all of which require an understanding of the rating process and a greater or lesser knowledge of rating legislation and practices, including accounting and administrative procedures.

In response to an industry request, we have developed and delivered specialist Rates Officer training courses to Council staff and have prepared comprehensive course notes to assist.

Our comments in this submission are limited to matters in relation to Part 5 of the public consultation draft of the proposed Local Government (General) Regulation 2005.

### PRELIMINARY SUBMISSION

On 4 January 2005, in response to an invitation contained in the Departmental circular 04/62, we forwarded the following comments, which were acknowledged in paragraph 4.2.3 of the Regulatory Impact Statement (RIS).

Fundamentally, there are 3 reasons why amounts have to be written off:

1. By operation of law - these include Pensioner Concessions (LGA sec 583(1) ), Postponed Rates & Interest (LGA sec 595), Alteration to Valuation (VLA sec 14DD(2) ), Change in Categorisation (LGA sec 527), Discount for Prompt Payment (consequent to LGA sec 563), Special Rates - Capital Contributions (LGA sec 565 once payment is made or written agreement is made), Rounding down for cash payments (LG Financial Management Reg cl 25), Sale of Land for Non-Payment of Rates (LGA sec 719(b) ).

In all these instances, the rates debt (to the extent that it is being written off) does not exist, whether or not the Council corrects its rates ledger.

2. Voluntary by Council - these include Hardship Resulting from Valuation Changes (LGA sec 606(2) ), Accrued Interest (LGA sec 567), Periodical Payment Agreements (LGA sec 564(2) ).

3. Clerical errors - these include Incorrect Section 603 certificates and Crediting the wrong assessment (where often the error is not detected until after interest has incorrectly been added to the correct assessment, and not added to the assessment incorrectly credited).



# NSW Local Government Regulation Review

## Part 5 - Rates & Charges

It would appear that all of the amounts in group 1 would fall with clauses 14 (4) (b) & (c) of the existing Regulation.

But Regulation 14 (1) requires that the Council must fix an amount above which all rates and charges may only be written off by resolution of Council. (The regulation is not clear whether the amount referred to is in relation to any one assessment, or whether it is the total during a calendar or financial year.)

This would suggest that (say) pensioner concessions cannot be written off until there has been either an order by a delegate or a resolution by Council.

All local government software that I am aware of performs the pensioner concession write off as part of the "rates run" - the process in which the rates are raised. (Some software does not produce a separate list of pensioner concessions granted (written off), but includes this information in the overall rates run report.) Accordingly, it would seem that ALL Councils are in breach of the regulation.

We suggest that this section of the regulations should be revised to:

1. Require that Council establishes appropriate internal controls to record and control all write offs in group 1 (by operation of law).
2. Provide for the appropriate authorisations of all write offs in groups 2 & 3.

Clause 13 is entitled "additional circumstances in which rates and charges may be written off", but most of the items shown are those where the rates and charges **MUST** be written off. (Section 607 provides that "the regulations may specify circumstances, in addition to those for which provision is made in this Chapter... " "This Chapter" is chapter 15, which includes sections 491 to 625. Subclauses (a) to (d) all refer to sections within Chapter 15, and are therefore superfluous.

These matters have been certified by the Minister as matters of a machinery nature but the RIS advises that the Department will carefully consider all amendment proposals as part of the overall regulation review. We therefore submit the following supplementary material for consideration.

## **“WATER RIGHTS AMENDMENTS”**

### **The Legislation**

The *Local Government and Valuation of Land Amendment (Water Rights) Act 2005 (No 49)* was assented to on 27 June 2005, and took effect from 1 July 2005. Clause 8 of Schedule 2 of the amending Act inserted a new Part (by our numbering, Part 26) to Schedule 8 of the Local Government Act, including a new clause (by our numbering, clause 83). Sub clause (2) of that clause reads as follows:



# NSW Local Government Regulation Review

## Part 5 - Rates & Charges

“(2) Subject to the provisions of any proclamation in force under section 213 or 218C, the amount that may be levied as an ordinary rate for any parcel of land in the category “farmland”, or any sub-category of that category, must not be more than 20 per cent above the amount levied as an ordinary rate for that parcel for the previous year.”

The contents of this provision are outside the terms of the Regulatory Review, and indeed, we accept the necessity for some such provision.

### The Mechanics of Applying the Legislation

We set out below what we believe to be the process to be followed in applying this legislation, but we would welcome advice of any mis-interpretation that we have made of that process.

A rate must be made and levied for each year on all rateable land categorised as “farmland”, whether sub-categorised or not (section 494). In this sense, rate means an *ad valorem* rate, which may also have a base amount or a minimum rate.

A “rate” which is expressed as “20 % greater than the previous year” would not meet the requirements of the Act.

The Council must therefore calculate the rates for each assessment, which may result in the ordinary rate for some parcels of land exceeding an amount greater than 20% of the ordinary rate for those parcels of land in the previous year.

Any such excess is void<sup>1</sup> pursuant to clause 83(2) of Schedule 8, and must therefore be written off.

*Under the current structure of clauses 130 & 131 (clauses 13 & 14 of the existing Regulations) it is unclear when that write off occurs.*

#### Clause 130

- Section 607 provides that "the regulations may specify circumstances, in addition to those for which provision is made in this Chapter.. " "This Chapter" is chapter 15, which includes sections 491 to 625.
- Clause 130 contains the only reference to section 607 within the Regulations.
- It would appear that the write off cannot be made pursuant to clause 130, because none of the sub-clauses refer to clause 83 of Schedule 8.
- *If* section 130 provides an exhaustive list of all “additional circumstances in which rates and charges may be written off” “other than those for which provision is made in” Chapter 15, *then* the write-off cannot be made under clause 131.

#### Clause 131 (*if the previous dot point does not apply*)

- If the amount fixed by Council pursuant to subclause (1) is sufficiently large, the amounts can be written off by the general manager pursuant to subclause (4)(b).

---

1. We have used the term *void*, but it seems irrelevant as to whether the correct term is *invalid*, *uncollectable*, *illegal* or any other term.



# NSW Local Government Regulation Review

## Part 5 - Rates & Charges

- Otherwise, the amounts can only be written off by Council. Accordingly, a report must be prepared for submission to Council, and Council must resolve to write off the rates. An officer (or a computer program) acting in anticipation of such resolution would be in breach of the Act.

Depending on the date of the July Council meeting, there may be difficulties in preparing such a report prior to that meeting (or at the least, in time for inclusion in the meeting papers), in which case it would (presumably) be deferred to the August meeting.

Presumably, also, the rates notices cannot be issued (levied) until after the write off has been authorised, and if the notice is not served by 1 August, the first instalment is not due for payment until 30 November (section 562(4) ).

In addition, the preparation of the proof of service of the main run of rates notices becomes administratively more complex, and additional proof of service would be required for rates notices issued after the write-off.

## PROPOSED REGULATORY STRUCTURE

It is recommended that the Regulation be structured as follows:

1. To require that Council establishes appropriate internal and administrative controls to record and report to Council<sup>1</sup> all amounts of rates<sup>2</sup> written off.
2. To require that all rates amounts where
  - (a) there is an error in the assessment
  - (b) the amount is not lawfully recoverable, whether as a result of a decision of a court or otherwise, or whether as a result of the provisions of Chapter 15 or not<sup>3</sup>, must be written off as soon as practicable after the Council becomes aware of the circumstances, and, that such amounts may be reported to Council by reference to a record kept by the Council in which the following particulars are recorded
    - (c) the name of the person whose debt is being written off
    - (d) the identification of the account concerned
    - (e) the amount written off, and
    - (f) the section or clause of the Act or the Regulation, and the name of the Act or Regulation, or particulars of the judgement, appeal, review or other process<sup>4</sup> authorising the write-off.

- 
1. The regulation may require that the report to Council (other than for amounts written off as a result of a specific Council resolution) must be made not later than 60 days after the date the amount is written off.
  2. Includes *ordinary and special rates, annual and special charges, interest accrued and costs awarded* as described in section 550 (1) and hereinafter referred to as “rates amounts”.
  3. This wording seeks to overcome the problems arising from “Water Rights Amendments” situations.
  4. Which may include *applications for review of categorisation, alterations to the Register of Land Values* (see VLA sec 14DD(1), as well as *decisions of the courts*).



# NSW Local Government Regulation Review

## Part 5 - Rates & Charges

3. To require that all rates amounts that have been added to an assessment as a result of a clerical error, or which become non-recoverable by a clerical error<sup>1</sup>, are to be written off as soon as practicable after the Council becomes aware of the circumstances, and that such amounts may be reported to Council by reference to a record kept by the Council in which the following particulars are recorded
  - (a) the name of the person whose debt is being written off
  - (b) the identification of the account concerned
  - (c) the amount written off, and
  - (d) the reason for the write off,and to require that the report to Council include a statement from
  - (e) Council's internal auditor if one is appointed, or
  - (f) Council's audit committee if one is appointed, or
  - (g) Council's external auditoras to whether the circumstances giving rise to the write-offs indicate any weakness requiring remediation in the system of internal and administrative controls referred to in paragraph 1. above.
4. The require, in relation to all other rates amounts written off by Council,
  - (a) that Council fixes, in relation to any individual assessment, a rates amount that may be written off by order of the general manager<sup>2</sup>, in default or excess of which rates amounts must be written off only by resolution of the Council.
  - (b) that such write-offs be made only where Council exercises a discretion pursuant to section 606 (Hardship Resulting from Valuation Changes), section 567 (Accrued Interest), section 564 (Periodical Payment Agreements) or if the Council or the general manager believes on reasonable grounds that an attempts to recover the amount would not be cost effective.
  - (c) that a resolution or order writing off a rates amount must specify the name of the person whose debt is being written off, identify the account concerned, specify the amount written off, and specify the reason for the write off<sup>3</sup>, and this information must be included in the report to Council of amounts written off by order of the general manager<sup>4</sup>.

We shall be pleased to supply any further information that you may require.

- 
1. As, for example, where a section 603 certificate is issued for an amount less than the correct amount due.
  2. It is not clear whether the last dot point of section 377 (1) prevents the sub-delegation of the power of writing off rates amounts under sub-clauses (1) & (2) of clause 130, which otherwise expressly requires that the function be exercised by resolution of Council. We have no preference either way, but suggest that clarification would be of benefit.
  3. No provision is made here for this information to be identified by reference to a list. In the case of individual exercises of a discretion, we do not consider it appropriate.
  4. Or his delegate, if that be permitted.

