

House of Assembly—No 27

As laid on the table and read a first time, 20 June 2018

South Australia

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

A BILL FOR

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

2—Commencement

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

3—Amendment provisions

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

Part 2—Amendment of *Local Government Act 1999*

4—Amendment of section 3—Objects

Section 3(f)—after "communities" insert:

- 15 and to provide for appropriate financial contributions by ratepayers to those services and facilities

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

Section 123—after subsection (2) insert:

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

6—Insertion of Chapter 10 Part 1A

Chapter 10—after Part 1 insert:

Part 1A—Rate oversight

187C—Objects of Part

The objects of this Part are to ensure—

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

187D—Interpretation

- (1) In this Part—

base standard rate—see subsection (2);

base year means the financial year before the capped year;

capped standard rate see subsection (3);

capped year means the financial year specified in a primary rate cap determination;

ESCOSA means the Essential Services Commission established under the *Essential Services Commission Act 2002*;

primary rate cap means the primary rate cap (expressed as a percentage) specified by ESCOSA in a primary rate cap determination;

primary rate cap determination—see section 187E(1);

rate cap variation determination—see section 187F(1);

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

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

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

Where—

BSR is the base standard rate;

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

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

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

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

Where—

CSR is the capped standard rate;

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

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

187E—Primary rate cap determinations

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

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

- (ii) give the council a reasonable opportunity to make submissions in relation to the proposed determination.

(5) A primary rate cap determination does not have effect in relation to a capped year unless it is published in the Gazette—

- (a) on or before 31 December in the financial year before the capped year; or
- (b) on or before another date specified by ESCOSA by notice in the Gazette in the financial year before the capped year.

(6) A primary rate cap under a primary rate cap determination may be a positive or negative amount.

187F—Rate cap variation determinations

(1) ESCOSA may, on application by a council the subject of a primary rate cap determination applying to councils generally or a class of councils, make a determination specifying a varied rate cap (being a cap that is different from the primary rate cap applying to the council under the primary rate cap determination) for 1 or more specified financial years (up to a maximum of 5 years) (***rate cap variation determination***).

(2) ESCOSA may only make a rate cap variation determination on an application under this section if satisfied that the varied rate cap is appropriate, having regard to—

- (a) the matters set out in section 187G(2); and
- (b) the council's record of compliance with any previous primary rate cap determination or rate cap variation determination; and
- (c) whether requirements given by ESCOSA under section 29 of the *Essential Services Commission Act 2002* relating to the council giving information relevant to the application (if any) have been complied with; and
- (d) any matter that the Minister directs ESCOSA to consider; and
- (e) any other matter determined by ESCOSA.

(3) If ESCOSA makes a rate cap variation determination under this section, ESCOSA must publish a notice in the Gazette specifying—

- (a) the fact that a rate cap variation determination has been made; and
- (b) the council to which the rate cap variation determination applies; and
- (c) the varied rate cap applying under the rate cap variation determination (which may be the varied rate cap proposed by the council or another cap set by ESCOSA); and

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

187G—Rate cap variation determination applications

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

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

187H—Publication of Ministerial requests and directions

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

- (2) If the Minister gives—

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

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

187I—Council must notify ESCOSA of certain matters

- (1) A council must not—

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

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

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

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

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

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

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

187J—Compliance with rate cap determinations

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

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

187K—Administration

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

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

7—Amendment of section 273—Action on report

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

; or

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

8—Amendment of section 303—Regulations

- (1) Section 303(8a)—delete "additional"

- (2) Section 303(8a)—delete "enactment of the *Statutes Amendment (Boards and Committees—Abolition and Reform) Act 2015*" and substitute:

amendment of this Act by another Act

9—Review

- (1) The Minister responsible for the administration of the *Local Government Act 1999* must cause a review of the operation of Chapter 10 Part 1A of that Act (as to be inserted into the *Local Government Act 1999* by section 6 of this Act) to be conducted and a report on the results of the review to be prepared and submitted to the Minister.

- (2) The review and report must be completed by 31 December 2023.

- (3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after receiving the report.