

# Explanatory Paper

*Local Government (Rate Oversight) Amendment Bill 2018*

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**Government of South Australia**

Department of Planning,  
Transport and Infrastructure

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## INTRODUCTION

The Local Government (Rate Oversight) Amendment Bill 2018 (the Bill) introduces a rate oversight scheme into the *Local Government Act 1999* (the Act). This Explanatory Paper is intended to be read in conjunction with the Bill, to provide further details on the intent and application of the Bill's provisions.

The Bill chiefly amends Chapter 10 of the Act to insert Part 1A—Rate oversight that provides for the establishment, operation and reporting of a system to cap annual increases in councils' general rates.

## KEY ELEMENTS OF THE BILL

The Bill provides a rate oversight framework that establishes three key elements—

1. **Primary rate cap determinations:** the establishment of a rate cap — provisions enabling a cap to be set, determining that the cap applies to council revenue recoverable from general rates, and providing for its calculation on an annual basis for all councils, classes of councils or particular councils.
2. **Variation applications:** setting out provisions that enable councils to apply for a variation of the rate cap, by demonstrating engagement with their community on a variation and that a variation is necessary within the context of the council's operations and long term financial planning.
3. **Monitoring and reporting:** setting out provisions that enable monitoring and reporting on the rate oversight system, to ensure both compliance and understanding of the effect of rate oversight on councils.

## INDEPENDENT REGULATOR

In accordance with the Government's policy that the rate oversight system will be managed by an independent regulator, the Bill appoints the Essential Services Commission of South Australia (ESCOSA) as the body responsible for—

1. Making rate cap determinations.
2. Receiving and assessing applications from councils for variations on the rate cap.
3. Reporting on compliance and the outcomes of the system to the Minister on a regular basis.

It should be noted that while the Bill provides the statutory framework necessary for a rate oversight system, detail necessary for the operation of the system will be contained within guidance material produced by ESCOSA. This will include—

1. Guidance on compliance with the rate cap (including guidance on how councils should calculate annual rate revenue that incorporates the cap, the calculation of a council's total annualised revenue).
2. Requirements for council applications for variations on the cap, and guidance on the assessment process for these applications.

3. Requirements for information and other material from councils to enable ESCOSA to undertake necessary monitoring and reporting.

## THE PROVISIONS OF THE BILL

### Part 1 – Preliminary

Part 1 of the Bill contains preliminary information about the short title of the Bill, commencement (the Act will come into operation on a day to be fixed by proclamation) and amendment provisions.

### Part 2 – Proposed amendment of *Local Government Act 1999*

Part 2 of the Bill contains the substantive provisions to amend the Act.

#### Clause 4—Amendment of section 3—Objects

The Bill amends the objects of the Act, specifically section 3(f) of the Act to clarify that the objects of the Act are to encourage local government to provide appropriate services and facilities to meet the present and future needs of local communities while also ensuring that these are supported by appropriate financial contributions by ratepayers.

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

These clauses amends section 123(2) of the Act to ensure that an annual business plan and budget released by a council states that the council has applied for or has received a rate cap variation for that financial year, if this is the case.

#### Clause 6—Insertion of Chapter 10 Part 1A

This clause of the Bill proposes the inclusion of Part 1A to Chapter 10 of the Act — Rates and Charges. Accordingly, inserted sections 187C–187K of the Bill contain most of the detail of the rate oversight system.

#### 187C — Objects of Part

The objects of the proposed Part 1A rate oversight clarify the purpose of the rate oversight system; namely to ensure that the financial contributions of ratepayers to the provision of services and infrastructure are subject to appropriate oversight (the cap) and also to ensure that a council has the financial capacity to perform its duties and exercise its powers (the ability of councils to apply for a variation on the cap).

#### 187D — Interpretation

This section sets out definitions for the various terms and phrases used throughout the Bill.

Of particular note are the definitions (and formulas) of the terms ‘base standard rate’ and ‘capped standard rate’, which form the basis of the calculation of the cap each year by councils. This is explained further in the next section.

187E — Primary rate cap determination

This section stipulates that ESCOSA may, on its own initiative, or at the request of the Minister, make a ‘primary rate cap determination’ for each financial year – referred to below as the ‘the primary rate cap’.

The primary rate cap must be set by 31 December each year, or by another date set by ESCOSA in the South Australian Government Gazette (the Gazette). ESCOSA must also publish primary rate caps in the Gazette. A primary rate cap may apply to all councils, a class of councils, or a particular council.

Before determining a primary rate cap, ESCOSA must consider a range of matters. These include what the basis of the cap should be (which may be a relevant price or cost index), and whether the cap should include any form of efficiency or productivity element.

The Bill does not require ESCOSA to use a particular index—such as the Consumer Price Index (CPI) or the Local Government Price Index (LGPI)—as the basis for a primary rate cap. This is a matter of discretion for ESCOSA as the independent regulator.

Under the primary rate cap, councils’ capped standard rate for a specified financial year must not exceed the base standard rate by more than the primary rate cap specified in ESCOSA’s determination. In this context (as the formulas in section 187D sets out), the base standard rate is a nominal rate that is arrived at by dividing the total annualised revenue for a council area by the number of rateable properties in that area at the end of a base year (30 June immediately before the financial year to be capped).

The intent of the application of the cap to the base standard rate, and the calculation of ‘total annualised revenue’ is to ensure that growth in rateable properties over the year prior to the capped year (the base year) are fully incorporated within the calculation of each year’s primary rate cap. This recognises that growth in rateable property numbers results in additional cost pressures for councils, and should ensure that growth councils do not have to apply for a variation on the rate cap for this to be recognised.

As noted above, section 187E(4) allows ESCOSA to make a primary rate cap determination that applies to a particular council. However, it is expected that ESCOSA would only set a primary rate cap for a council in particular circumstances, not as a usual practice. The Bill therefore proposes that ESCOSA may do this in response to non-compliance with the primary rate cap, in response to a council’s introduction of a service rate or charge or separate rate or use of other council fees and charges, or for any other reason that ESCOSA considers appropriate.

If ESCOSA is considering making a primary rate cap for a particular council, it must also give the council a reasonable opportunity to make submissions in relation to the proposed determination. If a council receives a primary rate cap under this section, that council may not apply for a variation of the cap (see section 187F(1)).

187F — Rate cap variation determinations

Along with the setting of a primary rate cap, an ability for councils to apply for a variation on a primary rate cap is critical to achieving the objectives of the rate oversight system.

Section 187F therefore enables ESCOSA to receive and assess applications for a variation of a primary rate cap from councils that are subject to a primary rate cap that applies to all councils or a class of councils. Applications must be received by ESCOSA by 31 March of the year before the capped year, unless ESCOSA sets another date in the Gazette.

187G — Rate cap variation determination applications

While ESCOSA will act independently in its assessment of variation applications, the Bill proposes a number of criteria that ESCOSA must have regard to. These are set out in section 187G(2) and include matters that a council's application must specify, such as—

- The council's proposed varied rate cap, and what years council proposes that it applies to (this can be for a maximum period of up to five years).
- The reasons for the variation application.
- The community engagement process that the council has undertaken, to inform and engage with its community on the proposed variation. It is not intended that councils will have to demonstrate explicit community support (through polling or other measures); rather, that it must be clear that the council has made every effort to explain to its community the necessity for the variation, and that there is wide understanding of these reasons.
- The council's views of the likely impact of the proposed variation on ratepayers, which may be informed by the community engagement process.
- How the council has considered alternatives to a variation, which may be the reprioritisation of spending, or the use of alternative funding mechanisms (including the appropriate use of debt, or of council reserves).
- How the variation represents value for money for the council and its ratepayers, and promotes the efficient use of council resources. This reflects the expectation that councils should seek to make efficiencies across their operations before seeking a variation.
- How the proposal is consistent with the council's long term financial plan and infrastructure and asset management plan. All South Australian councils are required to have these plans in place, and they will be a critical component of an application for a variation as clear demonstrations of a council's need for additional revenue.

Councils will also be required to publish their application for variation on their website.

### 187H — Ministerial requests and directions

While the Bill proposes that the rate oversight system is managed by an independent regulator (ESCOSA), the Minister can direct ESCOSA to consider a matter when ESCOSA is considering—

- A primary rate cap determination: section 187E(3)(d).
- A primary rate cap determination that will apply to a particular council: section 187E(4)(b)(i)(C).
- Applications for a rate cap variation determination: section 187F(2)(d).

Additionally, the Minister may request ESCOSA to determine a primary rate cap under section 187E(1).

While the Minister may request or direct ESCOSA to consider matters in these circumstances, ESCOSA will maintain its discretion as to whether to act. Section 187H also requires ESCOSA to publish copies of any Ministerial request direction on its website, to ensure the appropriate level of transparency.

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

Under the Act, councils have four main sources of revenue: general rates (declared under section 153 of the Act); separate rates (section 154 of the Act); service rates and charges (section 155 of the Act); and fees and charges (section 188 of the Act).

The rate oversight system proposes that a primary rate cap would apply to general rates only. This recognises that both separate rates and service rates and charges are already restrained within the Act, as they can only raise sufficient revenue to cover the cost of the relevant purpose or prescribed service.

Councils will be required to inform ESCOSA if they are planning to introduce a separate rate or a service rate or charge. ESCOSA may then consider the application of a primary rate cap for that council, if ESCOSA are of the view that this is needed to prevent an effective rate increase above the cap.

As is noted above, ESCOSA also has the ability to consider a primary rate cap for a particular council if ESCOSA is of the view that a council is utilising the application of fees and charges under section 188 of the Act unreasonably.

Additionally, councils will be required to notify ESCOSA if they plan to change their basis of rating from rating on title to rating on occupancy, or vice versa, as this may have a material impact on the calculation of the rate cap for that council.

### 187J — Compliance with rate cap determination

This section requires councils' compliance with any rate cap determination made by ESCOSA. The Bill also proposes an amendment to section 273 of the Act, to enable the Minister to take action on a report made by ESCOSA under this Chapter 10 Part 1A of the Act.

It is therefore anticipated that the Minister would make recommendations or directions to a council in instances of non-compliance, and, if the non-compliance is sufficiently serious, to recommend to the Governor that the council be declared defaulting.

#### 187K — Administration

This section provides ESCOSA with powers to perform the functions that ESCOSA will be responsible for in the rate oversight system. Additionally, ESCOSA will be required to—

- Monitor and review councils' compliance with the system; and make annual reports to the Minister on this compliance.
- Assess the effect of rate capping (both the primary rate cap and variations) on councils, and identify any trends that may arise from the application of the rate oversight system across local government. ESCOSA will make a report on these matters to the Minister every two years.

Reports received by the Minister from ESCOSA must be laid before the Houses of Parliament, and may also be published on ESCOSA's website.

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

As noted in the discussion on section 187J, this clause amends section 273 of the Act to include ESCOSA as a body that can make reports that may result in Ministerial action towards a council.

#### **Clause 8 – Amendment of section 303 — Regulations**

This amends the Act to enable regulations to be made that may be necessary to deal with saving or transitional matters related to this Bill.

#### **Clause 9 – Review**

This clause requires the Minister responsible for the Local Government Act to review the legislation that establishes the rate oversight system before 31 December 2023 (expected to be after five years of the operation of the legislation).