

PCO 4082/5

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RESTRICTED

Local Government (Rating) Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to update and to simplify existing rating powers to meet the needs of modern local authorities. The Bill provides funding mechanisms that allow local authorities to raise revenue—

- from the community generally; and
- from specified groups or categories of ratepayers; and
- from those who use or generate the need for particular services or amenities.

These revenue needs will be met by general rates, based on the value of rating units, complemented with powers to address valuation anomalies by setting differential rates and uniform annual general charges. Targeted rates based on a range of factors will also be available to fund specific functions of local authorities.

Regional Councils will have access to the same range of funding mechanisms as territorial authorities, and will generally follow the same procedures.

The Bill will provide greater legislative clarification that the unit of liability for rates will generally be based on the concept of title. Owners rather than long-term occupiers will become primarily liable for the payment of rates. A specific exception is provided for existing leases while they preclude owners from renegotiating terms to recognise this change in liability.

There will be a generic power for local authorities to remit or postpone rates for any lawful purpose in accordance with publicly stated policies.

The separate power to remit or postpone rates on Māori freehold land is carried forward in the legislation. A range of matters, including the importance of facilitating Māori owners' aspirations for the land, will be required to be considered in relation to policies on the remission of rates and postponement of the requirement to pay rates on Māori freehold land.

Existing categories of rating exemption will remain, and land that is otherwise non-rateable will remain liable for targeted rates for water supply, sewage disposal, and waste collection if those services are received. The description of land that is non-rateable has been modernised and updated, with a greater emphasis on the purposes for which it is used.

Part by part analysis

Part 1

Preliminary provisions

Part 1 contains the following preliminary provisions:

- the commencement of the Bill. The Bill comes into force on **1 July 2003** (*clause 2*):
- the purpose of the Bill. The 3 main purposes of the Bill are—
 - to provide local authorities with flexible powers to set, assess, and collect rates; and
 - to ensure that rates are set in a manner that is transparent and consultative; and
 - to provide for processes and information to ensure that ratepayers may identify and understand their liability for rates (*clause 3*):
- an outline of the contents of the Bill (*clause 4*):
- definitions of various terms used in the Bill (*clause 5*):
- the binding of the Crown (*clause 6*).

Part 2

Key provisions

Part 2 contains key provisions about who is liable to pay rates, what land is rateable, what kinds of rates may be set, and how rates are set. This Part—

- provides that all land is rateable unless this Act or another Act provides that land is non-rateable. The categories of non-

rateable land under this Act are set out in *Schedule 1 (clauses 7 and 8, Schedule 1)*:

- provides that non-rateable land may still be liable for targeted rates that are set for water supply, sewage disposal, or waste collection (*clause 9*):
- provides that a ratepayer is the person whose name is entered as a ratepayer in the rating information database and the district valuation roll. The person must be either the owner of the rating unit or, in the case of a lease or licence to occupy a rating unit, a person whose name was entered in the district valuation roll as the occupier of a separately rateable property under the Rating Powers Act 1988 that substantially corresponds with the rating unit entered in the rating information database (*clauses 10 and 11*):
- provides that person who is a ratepayer (in accordance with *clauses 10 and 11*) is primarily liable to pay rates that are due on the rating unit (*clause 12*):
- states how a local authority may set rates in respect of rateable land. Rates may be set as general rates or targeted rates. Both categories of rates may be set either on a uniform basis in relation to all rateable land or on a differential basis in relation to certain land that is defined in terms of the matters listed in *Schedule 2*. If a local authority sets targeted rates, it must calculate the rates using the factors listed in *Schedule 3 (clauses 13 to 20, Schedule 2 and Schedule 3)*:
- limits the amount of revenue that a local authority may obtain in any financial year from certain rates. The amount of revenue must not exceed 30% of the total revenue that a local authority obtains from all rates in the financial year (*clause 21*):
- provides a cap on the amount of revenue that a local authority may obtain from rates set for defence land (*clause 22*):
- provides that a local authority must set rates by a resolution that relates to a financial year (or part of a financial year) and is in accordance with the relevant provisions of its annual plan. A rate that is not provided for in the local authority's annual plan may only be set if the local authority is satisfied that it is necessary to meet an urgent and unforeseen need for revenue that cannot be met by any other means and the local

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authority has given at least 14 days' public notice of its intention to set the rate (*clause 23*):

- provides that a resolution setting a rate must state the financial year to which the rate applies and the date (or dates) by which specified amounts of the rate must be paid (*clause 24*).

Part 3

Rating information database and rates records

Part 3 contains provisions about the rating information database and rates records that must be kept by a local authority to record information that is relevant to setting rates and establishing liability for rates. This Part—

- provides that a local authority must keep and maintain a rating information database, states the purpose of the database, lists the information that must be entered in the database (*clause 25*):
- provides special provisions that relate to the entry in the database if a rating unit includes non-rateable land (*clause 26*):
- provides that the database must be available for inspection (*clause 27*):
- provides that a person who is named as a ratepayer in the rating information database may object to the information contained in the database if certain information has been omitted from the database or incorrectly entered (*clause 28*):
- states when the rating information database may be updated due to a change in ownership of a rating unit or the surrender, termination, or assignment of a lease or licence to occupy a rating unit (*clauses 29 to 35*):
- provides that a local authority must keep and maintain rates records that clearly show the amount of a ratepayer's liability for rates that are due on a rating unit and enables the person who is named in the rates record to inspect the record and object to it (*clause 36 to 38*):
- provides that a local authority may correct errors in the rating information database or rates records (*clause 39*):
- provides that a local authority must issue an amended rates assessment in substitution for an original assessment if it has

corrected an error in the rating information database or a rates record within 5 years of issuing the assessment (*clause 40*):

- provides the basis upon which a local authority may recover additional rates, as if they were a penalty, where the local authority has not collected the full amount of rates because the ratepayer has failed to comply with a requirement to notify a change in any matter that affects the ratepayers liability (*clause 41*).

Part 4

Assessment, payment, and recovery of rates

The framework for the assessment and payment of rates, and for the recovery of unpaid rates is set out in this Part, which provides as follows:

- rates are assessed on the basis of either the rateable value or the factors relevant to the rating unit, as contained in the rating information database, corrected as at the end of the financial year before the year for which the rates are set (*clause 42*):
- liability for rates is triggered by the delivery of a rates assessment; a rates invoice notifies a ratepayer of the rates payable and the due date for payment; local authorities may co-operate in rates collection; and there is for a discretion not to collect uneconomic amounts of rates (*clauses 57 to 53*):
- a local authority, using the special consultative procedure, may adopt a policy to allow early payment of rates for the current financial year or for subsequent financial years. These provisions allow local authorities to accommodate the preference of some ratepayers to pay rates in advance, including those who prefer to make lump sum contributions to capital works (*clauses 54 to 55*):
- penalties, not exceeding 10%, may be added to unpaid rates, after the rates become payable, with an option for cumulative penalties, and a remedy for continuing default (*clauses 56 to 57*):
- rates are a charge against a rating unit, and a local authority may commence proceedings in the High Court to recover as a debt rates unpaid for 4 months after the due date for payment, subject to a limitation period of 6 years. A charging order

imposed by the High Court (including charging orders registered under previous rating legislation) means that a ratepayer is unable to register any dealing with the land without the consent of the local authority (*clauses 58 to 65*):

- a local authority may enforce a judgment by a rating sale or lease of the land that is the subject of the judgment if, after notice, the rates remain unpaid for 6 months. The sale or lease is conducted by the Registrar of the High Court (*clauses 66 to 75*):
- land is defined as **abandoned land** if the rates have not been paid for 3 years or more and the ratepayer comes within the defined status. A local authority may apply to the District Court for the sale or lease of abandoned land by public auction or public tender and for authority to execute all documents in relation to the transfer or lease (*clauses 76 to 82*):
- the provisions for recovery of unpaid rates (*clauses 60 to 82*) do not apply to Māori freehold land (*clause 60*):
- the interest of a transitional lessee or licensee (as described in *clause 11(2)*) in Crown land held under the Land Act 1948 may be sold for the non-payment of rates in accordance with section 111 of the Land Act 1948.

Part 5

Remission and postponement

This Part provides that rates may be remitted or the requirement to pay rates may be postponed, as follows:

- rates (including penalties) on a rating unit may be remitted if the relevant annual plan includes a remission policy and the local authority is satisfied that the requirements of the policy are met. The local authority must notify the ratepayer of the rates that have been remitted (*clause 84*):
- rates that have been remitted must be recorded in the rates record as paid on the due date. The remitted rates and their net cost must be recorded in the accounting records as having been paid on behalf of the ratepayer in accordance with the relevant objective of the policy (*clause 85*):
- a local authority must postpone the requirement to pay rates (including penalties) if the relevant annual plan includes a postponement policy, the ratepayer has applied in writing,

and the local authority is satisfied that the requirements of the policy are met. The local authority must notify the ratepayer of the rates that have been postponed and when, or in what circumstances, they will be payable (*clause 86*):

- interest may be added to postponed rates in order to cover the administrative and financial costs to the local authority of the postponement (*clause 87*):
- a local authority may register postponed rates as a charge on the rating unit, and no dealing with the rating unit may be registered while the charge is registered, except with the consent of the local authority (*clause 89*):
- there are no provisions equivalent to those in the Rating Powers Act 1988 for rates-postponement values of farmland, special rateable values, and the remission or postponement of rates in the case of hardship.

Part 6

Rating of Māori freehold land

The rating of Māori freehold land, including Māori freehold land that is multiply owned, is provided for as follows:

- Māori freehold land is liable for rates in the same manner as if it were general land, and owners of Māori freehold land (or their representatives) or trustees, as the case may be, must be included as ratepayers in the district valuation roll (*clauses 90 to 92*):
- if Māori freehold land is vested in trustees, the trustees must pay the rates out of income derived from the land and held by the trustees for the beneficial owners of the land, but they are only liable for rates to the extent of the money derived from the land and held by them as trustees (*clause 92*):
- in the case of Māori freehold land in multiple ownership (that is, land beneficially owned by more than 2 persons), the local authority may apply to the Māori Land Court for the appointment of an owner or agent to receive rates assessments and rates invoices, and that person's name must be entered as the ratepayer in the district valuation roll, designated as "(Court appointee)". An appointment does not confer or create an estate or interest in the land in the person so named, and the appointee does not become liable for rates on that land, unless that person would in any case be liable (*clauses 93 and 94*).

- a person in actual occupation of Māori freehold land in multiple ownership is liable for the rates on that land if the person is on the land for profit or financial benefit, or uses the land in certain stated ways, whether or not that person is one of the owners of the land or has been appointed by the Māori Land Court to receive rates assessments and rates invoices. Rates notices must be delivered to a person in actual occupation (*clauses 95 and 96*).
- a local authority may, within 6 years of rates being due, may apply to the Māori Land Court for a charging order if rates on Māori freehold land are unpaid for 6 months after the due date. The Māori Land Court, in determining an application by a local authority for a charging order, must have regard to the stated matters, including the objectives of the Court's jurisdiction under section 17(1) of Te Ture Whenua Māori Act 1993 (*clauses 97 to 99*):
- if the Māori Land Court is satisfied that there has been a default in the payment of rates for more than 6 months, it must make a charging order against the land in favour of the local authority, provided it is satisfied that all reasonable steps have been taken to obtain payment from the trustees or from the occupier (if applicable), unless those proceedings are unlikely to result in a recovery of rates. A charging order must be registered in accordance with section 123 or section 124 of Te Ture Whenua Maori Act 1993 (*clause 100*):
- the Māori Land Court may make a charging order in favour of an owner who pays the rates on multiply-owned Māori freehold land in excess of the rates properly apportionable to that owner's interest in the land, if the owner has been unsuccessful in recovering the rates from trustees or a person in actual occupation (*clauses 100 to 102*):
- subject to the limitation under section 20 of the Limitation Act 1950, a charging order means that owners are unable to deal with the land subject to the charging order, except with the consent of the local authority or with the leave of the Māori Land Court. If land is partitioned, a charging order must be apportioned according to the area of each partition unless the Māori Land Court, in its discretion, apportions the charge in any other manner that it considers fair and equitable (*clauses 103 to 106*):

- if a charging order is unsatisfied for 6 months, the local authority may apply for its enforcement by the Māori Land Court, which may provide for the receiver or trustees to recover money from other persons who have been actual occupiers of the land in the past. The Māori Land Court must cancel an order enforcing a charging order if it is satisfied that the rates have been paid and that proper provision has been made for the payment of future rates:
- a charging order must be discharged by the Māori Land Court if the rates are paid by a liable person; or the local authority must discharge the order if it remits the rates, and in both cases, the discharge must be endorsed on the charging order and registered (*clauses 107 to 117*):
- rates on Māori freehold land may be remitted or postponed if the local authority provides for those policies in a rates relief policy for Māori freehold land under section 122XD of the Local Government Act 1974 (*clauses 113 and 114, Schedule 5*):
- specified Māori freehold land may be exempt from some or all liability for rates by Order in Council, made by the Governor-General on the recommendation of the Māori Land Court and with the consent of the relevant local authority. An order may be varied or cancelled by Order in Council. The effect of an order is to release the owners of the land from the liability for rates unpaid before the order was made, and the local authority must write-off rates if an exemption order applies (*clauses 115 and 116*).

Part 7

Replacement of invalid rates

This Part, which essentially repeats the provisions of Part VIIIA of the Rating Powers Act 1988, provides as follows:

- a local authority may be required to set replacement rates as a result of a court order or an Order in Council (*clauses 118 and 119*):
- the local authority must publicly notify the requirement to set replacement rates (*clause 120*):
- replacement rates are set by the adoption of a rates replacement proposal that is prepared in accordance with the special consultative procedure contained in the Local Government

Act 1974. On the adoption of the rates replacement proposal, the replaced rates cease to have effect (*clauses 121 to 124*):

- the local authority must adjust the rates on individual rating units accordingly (*clauses 125 to 127*);
- in the particular circumstances of subdivision or the cancellation of a deficit there are separate provisions for the replacement of rates (*clauses 128 and 129*).

Part 8

Miscellaneous matters

The provisions of this Part cover a number of miscellaneous matters:

- it continues to be possible to extend time or validate proceedings by Order in Council (*clause 133*);
- as under the existing Act, Judges, Justices, and Community Magistrates must not be treated as interested in a case merely by being ratepayers (*clause 134*);
- the provision that relates to evidence of resolutions to set rates and of extracts from the district valuation roll, rating information database, and rates records, remains largely unchanged from the existing Act (*clause 135*);
- a general notification provision is included in the Bill so that it is not necessary to refer to the Local Government Act 1974. The provision contemplates notification by fax or electronic means in addition to personal service and post (*clause 136*);
- the Rating Powers Act 1988 is repealed, and a number of consequential amendments and repeals are made to other enactments (*clauses 137 and 138, Schedules 4 to 6*). One amendment is a new section 5A inserted into the Rating Valuations Act 1998. It allows the Valuer-General to make rules that define the types and categories of land that constitute rating units and for the purposes of determining what land constitutes a rating unit. The section is subject to notification and consultation provisions and the rules are to be treated as regulations for the purposes of Regulations Disallowance Act 1989.

The Part also contains a number of transitional and savings provisions:

- a local authority may continue to remit or postpone rates under the provisions of the Rating Powers Act 1988 until the

local authority includes a relevant policy in its annual plan or until the close of **30 June 2004**, whichever is earlier. Rates that have been postponed before the commencement of the Act or have been postponed under the transitional provision must be treated as if they were postponed under the Bill (*clauses 139 and 140*):

- rates-postponement values and special rateable values that were determined before the commencement of the Bill continue to apply, as modified (*clauses 141 and 142*);
 - a general provision applies to references to terms in legislation that are replaced with new terms in the Bill. A similar provision applies to certain terms in contracts, leases, or licences (*clauses 143 and 144*);
 - a special provision applies to a lump sum contribution under the Rating Powers Act 1988 so that the ratepayer who has elected to make a lump sum contribution under that Act continues not to be liable for the relevant rates (*clause 145*);
 - the Bill does not affect the power of a local authority under another Act to make a charge, or recover costs, for work performed or services provided (*clause 146*).
-