
South Australian inquiry into local government rate capping policies

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Introduction

On 8 July 2016, the South Australian Economic and Finance Committee (the Committee) tabled its report, *Inquiry into Local Government Rate Capping Policies* (the Report).

The Report comes just 1 month after the Liberal Party, in opposition, failed to gain the support of the Lower House for its private members Bill, the Local Government (Rate Increases) Amendment Bill (the Bill), seeking to introduce rate capping in SA.

In forming the Report, the Committee received submissions from a range of sectors, including the Local Government Association (the LGA), the Australian Services Union (ASU), the Property Council of Australia, as well as from a number of mayors and CEOs, on behalf of local councils.

There was notably limited support in the submissions received for the introduction of rate capping, with only one senior council official advocating for such a position.

In forming its final opinion, the Committee also considered the experience of rate capping in other jurisdictions, including NSW, Victoria and NT, as well as overseas.

Ultimately, based on the weight of the evidence received, the Committee has recommended (among other things) that the authority of local government to have control over its own financial affairs remain unchanged.

What is rate capping?

Rate capping is a state government imposed limit on the amount that a local council may increase its rates in any financial year. The cap is represented as a percentage of permitted growth and is usually consistent with inflation.

Rates are the number one revenue stream for local councils, accounting for two-thirds of the income, with the money collected from rates going toward funding local council services.

Councils increase the cost of rates each financial year in order to reflect not only inflation, but also the growing cost of providing council services, as well as the implementation of projects and initiatives that are seen

as desirable in the local area. Accordingly, councils are generally required to increase rates in excess of the consumer price index (CPI).

However, rate capping is a tool utilised by state governments to “fix” the amount that councils can impose by way of rates in any financial year, and to ensure that the cost of rates remains consistent across the state.

Of note, the Committee received a number of submissions refuting this position, and suggesting that having one tier of government impose rate capping provisions on another tier was “a direct attack on democracy itself”.¹

“Rate pegging” in NSW

Rate capping or rate pegging as it is known in NSW, was introduced by the State Labor Government in 1976. The introduction of rate pegging came as a result of councils increasing rates by close to 200% over the course of the 3 preceding financial years.

This increase in rates occurred at a time when, over the same time period, the rate of inflation was at an average of 56% and the average weekly earnings rose by 75%.²

The NSW State Government proposed that the rate pegging policy would result in increased accountability and responsibility of councils, and would give ratepayers confidence that their rates would not be disproportionately raised.

The rate peg in NSW has been determined by the Independent Pricing and Regulatory Tribunal (IPART) since 2010 and is based upon the NSW local government cost index. The 2016–17 rate peg has been set at 1.8%.

However, while there have been some benefits derived from the introduction of rate pegging in terms of transparency and accountability in NSW, there have also been numerous reports of infrastructure backlog and loss of vital services at the local government level, as a direct result of councils not being able to increase rates to reflect proposed (and desired) expenditure.

As commented by the Property Council in its submission to the Committee,³ after the introduction of the rate peg, councils in NSW deferred important infrastructure investment and began relying on levies to fund infrastructure projects.

Moreover, as a result of rate pegging, NSW councils now frequently run at a loss; a fact compounded by the expectation among ratepayers that rates should not increase (or should increase at a low rate) indefinitely.

Despite then NSW councils being eligible to apply for a special rates variation (SRV) from IPART — whereby councils can apply to be exempt from the rate peg in order to avoid running at a loss — it is uncommon for councils to make an application.

The evidence provided to the Committee of the NSW experience demonstrated that in 2013, only 23 of 152 councils applied for a SRV, despite figures from the previous financial year demonstrating that at least 83 councils would have needed an increase of at least 5% in order to break-even.⁴

The Victorian experience

Following an inquiry conducted by the Essential Services Commission (ESC) in 2015, which found in favour of rate capping, the Victorian State Labor Government resolved to adopt 16 of the 18 recommendations made by the ESC.

The Victorian State Government resolved to impose rate capping in 2015; commenced on 1 July 2016, for the 2016–17 financial year.

The Victorian model is slightly different to the NSW model, in that it is the Minister for Local Government that determines the rate cap for each financial year.

In December 2015, it was announced that the 2016–17 financial year rate cap would be 2.5%, consistent with the rate of inflation.

Victorian councils are able to apply to the ESC for an exemption to the rate cap by 31 March each year.

However, as the rate cap has only just been introduced, no useful conclusions can yet be drawn from the Victorian experience.

Northern Territory

After a series of council amalgamations in the NT between 2007 and 2010, rate capping was introduced for a period of 3 years.

Similar to the experience in NSW, the rate cap resulted in a severe infrastructure backlog as councils were unable to raise sufficient funds to maintain, support or repair the infrastructure inherited through the amalgamations. Moreover, the introduction of rate capping exacerbated what was already a somewhat restricted rating system in the NT, as unlike other States in Australia, councils are subject to a system known as “conditional rating” in which certain land is only considered rateable, after a rating proposal has been approved by the Minister.⁵

The overseas experience

Rate capping was introduced into the United Kingdom (the UK) under the Thatcher Conservative Government in 1984. Legislation was introduced to impose a rate cap on 15 local councils which the government deemed were “unjustifiably” increasing rates.

The legislation resulted in the “rate capping rebellion” where the affected councils refused to set budgets for the 1985–86 financial year, in direct breach of the legislation, in an attempt to force the Government to intervene and provide the services that the councils could no longer implement. However, the rebellion ultimately failed to change government policy, with the affected councils conceding, setting their rates in accordance with the policy.⁶

While the rate capping policy in the UK is still in force to this date, the Cameron lead Coalition Government introduced the Council Tax freeze scheme for the 2011–12 financial year, whereby councils are offered cash bonuses by the government for “freezing” rates. The scheme has seen certain councils impose five successive freezes, resulting in the government expending upwards of £5 billion in grants.⁷

A further statutory limitation was introduced in 2013, which requires that if a council wants to increase rates above the limit imposed by the government, it will be required to hold a referendum among constituents. A referendum of this kind is yet to be held.⁸

Rate capping in SA

On 15 May 2015, the Committee resolved to undertake an *Inquiry into Local Government Rate Capping Policies*. This was later tabled in the Lower House on 8 July 2016, with debate on the Report commenced on 27 July 2016.

The inquiry received a total of 21 written submissions, and 23 oral submissions, from persons representing 12 different organisations, over the course of five public hearings.⁹

The arguments opposing rate capping were generally focused on a loss of sovereignty and independence; as well as a council’s inability to manage services and infrastructure if its ability to increase rates in accordance with the demands of the community were to be fettered.

There were also several submissions received on the detrimental impact rate capping would have on the local community. These submissions outlined the situation whereby many councils would have to resort to a “user pays” scheme for many projects and services, to substitute for a loss in rates revenue, adversely affecting those in the community who could least afford it.

The NSW experience with rate capping was also a prominent point of opposition, with many submissions

citing the likelihood of an infrastructure backlog occurring in SA should rate capping be introduced.

Indeed, in making the comparison for SA to the NSW experience, an ASU representative submitted that:¹⁰

South Australian councils are particularly reliant on rate income, having less access to their interstate counterparts to grants from other government sectors and interest income. Rates account for almost two-thirds of local government revenue in South Australia and an artificial limit on councils' capacity to gather income would be uniquely devastating.

Minority report

Annexed to the Report is a minority report of three Liberal Committee members — Mr David Speirs MP, Mr Vincent Tarzia MP and Mr Stephan Knoll MP (collectively, the Members).

The minority report presents an alternative conclusion and recommendation to the Report; endeavouring to “represent the interests of the individuals and businesses whose rates are being increased year on year well above the [CPI]”.¹¹

There is only one recommendation put forward by the minority report, namely that rate capping *should be introduced* to help “reduce cost pressures on households and property owners”.¹²

The Members considered this to be the responsible way forward as they contended that the majority of the submissions received by the Committee were subject to bias, and not a true representation of the interests of the community.

The Members also suggested that the infrastructure backlog in NSW, as emphasised by the Report, is not a result of rate capping, but rather of financial mismanagement, citing that an infrastructure backlog is not unique to NSW, but rather extends to a number of councils, in a number of states, where rate capping is not used.¹³

Moreover, it was the Members submission that it is financial mismanagement at the SA local government level that was driving rates up, rather than a legitimate need for increased funding. Accordingly, they concluded that it is:¹⁴

... incumbent upon the state to intervene on behalf of ratepayers by capping rate rises. Ratepayers should not be held responsible for all expenditure not being carried out as efficiently as possible.

Findings in the Report

Irrespective of the position presented in the minority report, the Committee's final recommendation was against the introduction of rate capping, and the Report set out four recommendations to the state government for its consideration:

- Local Councils retain full authority to set their own rates and that no rate cap be introduced. Following the submissions received, and the consideration given to the experience of rate capping in other jurisdictions, the Committee determined that rate capping *should not* be introduced into SA.

- Local Councils continue to set rates after full consultation with their communities. The Local Government Act 1999 (SA) provides at ss 123(3) and (4) that a council should consult with its local community prior to the adoption of its annual business plan and budget.

The Committee has recommended that councils consult more broadly with constituents, including both online and through different forms of social media, so as to encourage more community involvement. This will ultimately lead to ratepayers having a greater understanding of what their rates are being spent on, and why rate increases are necessary.

- Councils be subject to a thorough auditing process under the auspices of the Auditor-General, consistent with s 36 of the Public Finance and Audit Act 1987 (SA).

- Councils be required to publish, on an annual basis, these audits.

Recommendations 3 and 4 are inextricably integrated. The Committee recommended that the Auditor-General take on an oversight role in regards to council audits, consequently adding:¹⁵

... to the legitimacy and autonomy of Local Government by making it subject to the same scrutiny and accountability to both the community and the Parliament as other spheres.

Further, by implementing this recommendation, SA would be aligned with Queensland, Victoria and Tasmania, who utilise this oversight practice.

Conclusion

The debate on the Report has now been adjourned in the Lower House until a later date.

In the period leading up to the Report being published, the Liberal Party, in opposition, introduced the Bill advocating for the introduction of rate capping.

While the Bill ultimately failed to gain the support of the Labor Party, it is anticipated that any debate to ensue will see the recommendations set out in the Report supported by the state government, and opposed by the opposition.

It is also of note that despite the findings of the Committee, the SA Liberal Party has vowed to take the policy to the 2018 state elections.

Accordingly, the issue of rate capping in SA is by no means a settled matter, and only time will tell where the debate will subsequently take us.



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Footnotes

1. Economic and Finance Committee 2016, *Inquiry into Local Government Rate Capping Policies Report*, p 3.
2. Above n 1, p 31.
3. Property Council of Australia, *Rate Capping Parliamentary Inquiry* — Submission, 2015 p 4.
4. Above n 1, p 12.
5. Above n 1, p 35.
6. Above n 1, p 35.
7. GOV.UK, *Council Tax freeze scheme*, 29 April 2014, accessed 19 September 2016, available at www.gov.uk.
8. Above n 1, p 36.
9. Above n 1, p 3.
10. Above n 1, p 23.
11. Economic and Finance Committee 2016, *Minority Report*, p 3.
12. Above n 7, p 3.
13. Above n 7, p 5.
14. Above n 7, p 4.
15. Above n 1, p 40.