RMA Revenue Management Association

REVENUE MANAGEMENT ASSOCIATION (RMA) SUBMISSION

LOCAL GOVERNMENT ACT 1989 REVIEW – DECEMBER 2015

Introduction

The Revenue Management Association (RMA) is a professional association who's Membership is made up of rate administrators from all 79 Councils across Victoria, plus other related industry service providers.

The RMA provides support and advice to its Members through the dissemination and communication of information, primarily in respect of the application of Part 8 of the local Government Act 1989. The Association has actively participated in forums and working parties with various State Government Departments (LGV, VGV, SRO, DTF, DHS, VEC) and Local Government Bodies (MAV, LGPro), on matters relevant to our area of responsibility and expertise.

Our submission on the "Local Government Act 1989 Review" is officer focused and will address Chapter 6 of the Discussion Paper, Council Rates and Charges, plus some key issues identified by our Members.

Questions on Council Rates and Charges (Chapter 6)

1. **Is the current method of declaring rates and charges based on "land" still appropriate?**

   Declaring rates and charges based on property values is still the most appropriate method for raising revenue for Councils. Whilst property valuations do not necessarily represent 'capacity to pay' there is currently no viable alternative method available. This was further confirmed in the recent Henry Taxation Review and the Productivity Commission report into Assessing Local Government Revenue Raising Capacity 2007/2008

   The Capital Improved Valuation (CIV) system of rating is the most common used by the majority of Councils. No Council uses Site Value and very few use Net Annual Value. Consideration should be given to using CIV only and allowing Councils to distribute the rate burden fairly and equitably by applying differential rates.

   The general public view rates as a form of taxation and continually expect the amount they pay to match the services they access. Rather than a tax, rates should be viewed as a form of "*contribution to the community, providing infrastructure and services for all who use them during their life-cycle*".

2. **What powers do Councils require in relation to levying rates and charges?**

   The RMA reaffirms and supports the recognition of Local Government in the Victorian Constitution.

Owner liability should be retained and any unpaid rates and charges should continue to be protected as a first charge on the land.

3. **What obligations or restrictions should be imposed on Councils in relation to these powers?**

   Restrictions have recently been placed on Councils with the passing of legislation in regard to "Rate Capping."

   It is considered that the current differential rate ratio limit of 4:1 should be reviewed.

   The limitation that revenue raised from a Municipal Charge cannot exceed 20% of the combined revenue raised from general rates and the Municipal charge should be reviewed. At the very least the wording could be simplified to state that the revenue raised from a Municipal Charge cannot exceed 25% of the revenue raised from General Rates, which achieves the same outcome.

4. **What rights should ratepayers have in relation to the exercise of Council's powers in relation to levying rates and charges?**

   The "Appeal Rights" as they currently exist are considered adequate, although Section 184 is considered somewhat confusing as to how and when it can and should apply. Addressing this issue to clarify the intent and process would be considered appropriate as part of this review.

5. **Should there be detailed legislative provisions regarding processes associated with levying rates and charges? If so, are the current processes for levying rates and charges in the Act appropriate? If not, what changes should be made?**

   The current legislative provisions are considered to be appropriate and all processes should be incorporated with the Budget Process and controlled by regulation rather than detailed legislation.

6. **What sanctions should be imposed on Councils failing to comply with the requirements relating to levying rates and charges?**

   Compliance is important and we acknowledge that appropriate sanctions need to exist. In certain circumstances, sanctions could be applied by the Minister through the rate capping provisions.

Key Issues

The RMA has identified some key issues within Part 8 of the Local Government Act 1989. A thorough review of S154 in particular is considered necessary. The relevant issues identified are discussed as follows along with some suggested changes, solutions or questions.

Charitable

Currently, land used exclusively for charitable purposes is regarded as not rateable (S154(2)(c)).

Councils are receiving more and more applications from organisations claiming rate exemption under this provision. It is often unclear as to whether or not these applications qualify as ***'exclusively charitable'***, resulting in confusion and inconsistency between Councils. The growth in 'not for profits' and Public Benevolent Institutions providing services to the health and disability sectors has compounded the problem for Council rate administrators.

There is no clear definition or set of criteria that can be drawn on to assess eligibility for exemption on the grounds of 'exclusively charitable'. It is felt that the original intention of this provision was to provide some concession to charities who support the ***'relief of poverty'***. In reality, this provision provides rate exemptions to many organisations that operate substantial businesses.

There are also many instances where charities lease property from private individuals and claim the rate exemption under this provision. Arguably, the property owner is 'using' the property for a commercial purpose, which conflicts with the use by the charity. Additionally there are full commercial businesses operating with an environment that are considered by the courts to be ancillary to the charitable nature of the environment so they also must be treated as non-rateable. Examples include commercial retailers (banks, hairdressing saloons, travel agencies etc.) operating within grounds of a university.

Suggestion

- The intention of this provision needs to be re-considered and amended accordingly to eliminate current confusion and inconsistency. At the very least, a clear and concise definition and set of criteria needs to be determined (by regulation if needed) for ***'charitable'*** if this terminology is to be reflected within legislation.
- Linking rate exemption to 'ownership' rather than 'use' should be considered, given that the underlying principle of the Act is that the owner is liable for rates and charges.
- Religious organisations, if they are to be exempt, should only receive rate exemptions for 'places of worship' or education, not residential properties, including those occupied by Ministers of religion. All residents utilise Council services in some way and therefore it is not unreasonable to make all properties used for residential purposes rateable. The entire ethos in respect of granting exemption to Religious organisations is premised on twelfth century thinking (Monarchy and Church) and should be reconsidered to bring it into line with twenty first century thinking.
- Ineligibility for rate exemption based on the property being 'used for the retail sale of goods' (S154(4)(c)) should be extended to include 'services'.

Mining Purposes

Currently, land used exclusively for mining purposes is regarded as not rateable (S154(2)(e)).

The reasons behind the inclusion of this provision in the current legislation are unclear. Many rural and regional Councils have active mining operations within their municipalities, either as underground or open cut. These operations do impact on Council infrastructure and it seems unfair that such large organisations are not rateable.

Suggestion

- Establish why this exemption was originally granted (1958 Act)
- In the interest of fairness and equity, review eligibility for rate exemption for land used exclusively for mining purposes.
- Consider making use of rating agreements for land used for mining.

RSL Clubs

Currently RSL Clubs are specifically not rateable, (S154(2)(f)).

RSL Clubs play an important role in supporting ex-servicemen and servicewomen. Over recent decades, many RSL Clubs have expanded into major commercial venues providing food, entertainment and often gaming and gambling in direct competition with other similar privately owned rateable establishments. These Clubs memberships are now predominantly made up of the general public, not just returned servicemen and servicewomen. The original intention of the granting of exemption in the current legislation is considered unlikely to extend to format of the current operations of RSL Clubs.

Suggestion

- Review eligibility for rate exemption for RSL Clubs.

Rebates & Waivers

Under certain circumstances the current legislation allows Councils to provide rebates, concessions and waivers of rates and charges to ratepayers.

In recent years, more and more Councils are recognising that extra assistance needs to be given to lower income ratepayers and provide their own, Council funded, waivers or concessions. The current legislation does not make this process easy and straight forward, resulting in some Council's unintentionally applying such waivers or concessions incorrectly.

Suggestion

- A specific section, or sub-section, should be included to provide a straight forward process for Councils to offer and implement a waiver of rates to an identified group of ratepayers, if desired.

Payment of Rates & Charges

Under the current legislation Councils "***must"*** offer payment of rates and charges by four instalments and ***"may"*** offer a lump sum option, (S167). Many Councils also offer a monthly or fortnightly payment option, specifying this as part of their declaration of rates and charges during the budget process.

Suggestion

- Option for lump sum payment should be retained.
- Review the need to include further payment options that Council 'may' offer.

Interest on unpaid rates and charges

In 2012, amendments were made to S172 relating to the calculation of penalty interest on overdue rates and charges being paid by lump sum. Previous legislation back dated interest to the date rates and charges were declared. The 2012 changes now require Councils to calculate interest in the same way as overdue instalments. This change has created confusion and has proved difficult to administer and also to explain to ratepayers.

This change has, in real terms, reduced the interest penalty impact from 9.5% p.a. to approximately 4.1% p.a. (based on a full year of interest of unpaid rates and charges for 2015/2016). Effectively, the incentive to pay has been reduced and Councils will, in many cases, be forced to instigate collection procedures to recover these overdue amounts.

Suggestion

- Calculation of penalty interest on overdue lump sum payments should be reviewed.

Recovery of unpaid rates and charges

If rates and charges are unpaid for a period of 3 years, Councils may sell the land, or transfer it to itself, (S181).

The current provisions require that Council must have a court order before they can proceed to sell the land. Councils need to have sued for the debt in accordance with S180 before they can obtain a court order. Often, documents cannot be served because the property owner cannot be found or may be deceased. More recently, the increase in property

ownership by overseas residents has resulted in difficulties in recovering overdue rates and charges and also locating the owners for service of documents etc.

Councils are also restricted under this provision whereby they must sell the land for 'equal to or more than the estimated value of the land as set out in a written valuation'.

Suggestion

- Councils should have more power to recover overdue rates and charges from occupiers and/or mortgagees in circumstances where the owner cannot be located.
- Consider introducing flexibility to realise the land for a percentage of the valuation.

Recovery of costs

Currently Councils are only legally entitled to recover costs associated with legal action, as awarded by the Court. Most Councils now incur various other legitimate costs (e.g.; field calls, skip traces, mortgagee letters, etc), throughout the collection process that are not currently covered, unless they are specifically stipulated in Councils adopted fees and charges.

Suggestion

- The Act should include provision for Councils to recover any reasonable out-of-pocket expenses associated with tracing a person liable to pay overdue rates and charges.

Cultural & Recreational Land

The Cultural & Recreational Lands Act 1963 specifies how Councils should levy rates (or amounts in lieu of rates) on outdoor recreation and cultural lands. The methodology for calculating amounts is unspecified, other than stating that it should be 'reasonable having regard to the services provided by the municipal Council in relation to such lands and having regard to the benefit to the community derived from such recreational lands.'

Councils experience difficulties in applying this legislation and struggle to achieve consistent and fair outcomes. The legislation specifically applies to land used for ***'out-door sporting recreational or cultural purposes or similar out-door activities'***, therefore alienating any indoor sporting or cultural facilities.

Suggestion

- The C&RL Act is considered outdated and difficult to apply.
  The Local Government Act differential rating provisions provide Councils with enough flexibility to levy rates and charges on all sporting, recreational and cultural land.