

VLGA RESPONSE

TO THE VICTORIAN GOVERNMENT RESPONSE TO
ESSENTIAL SERVICES COMMISSION FINAL REPORT



On 21 October 2015, the Essential Services Commission (ESC) released its final report on the Local Government Rates Capping & Variation Framework Review.

The State Government responded to the 18 recommendations contained in the final report, along with other matters that the government has considered.

As a service to our local government members, the VLGA has made an initial examination of the State Government's response to all 18 recommendations, along with the 'other matters' we deem most relevant to our members at this time.

The first table below outlines the 18 recommendations with the VLGA's response. The second table outlines the other matters.

The VLGA will continue to work with our members, the Minister for Local Government and the ESC to ensure the integrity and consistency of the rate capping policy and variation application process.

RECOMMENDATION	GOVERNMENT RESPONSE	VLGA RESPONSE
<p>Recommendation 1 The Commission recommends that there should be one rate cap that applies equally to all councils in Victoria</p>	<p>The government does not accept this recommendation.</p>	<p>The VLGA welcomes the proposed legislation to provide the Minister for Local Government with the authority to set different caps for a class of councils or individual councils in any given financial year.</p> <p>The decision by the Minister to set a series of rate caps allows flexibility and reflects the diversity of Victoria’s 79 councils and acknowledges that a ‘one size fits all’ rate cap is not appropriate</p>
<p>Recommendation 2 The Commission recommends that:</p> <ul style="list-style-type: none"> • revenue from general rates and municipal charges should be subject to the rate cap • revenue from special rates and charges, ‘revenue in lieu of rates’ and the fire services levy should not be included in the rate cap • service rates and charges should not be included in the rate cap, but be monitored and benchmarked • supplementary rates received should be excluded from the rate cap in the year that they are received and • the revenue base for the following year will be adjusted to include the annualised amount of the supplementary revenue received for the current year. 	<p>The government accepts the recommendation to only include general rates and municipal charges in the cap when the Fair Go Rates System is implemented in 2016-17.</p> <p>However, again in the interests of flexibility, the government will propose legislation to provide the Minister with the authority to expand the cap to include other categories of rates and charges at a later date, if necessary to ensure the integrity of the system. The government also accepts the recommendation to monitor and benchmark service rates and charges.</p>	<p>The VLGA supports the inclusion of general rates and municipal charges in the average rate cap.</p> <p>We are not supportive of expanding the cap to include other categories of rates and charges.</p> <p>If there is a decision to expand the cap at a later date, this should be done in active consultation with the local government sector.</p>
<p>Recommendation 3 The Commission recommends that the rate cap (calculated in recommendation 4) be applied to average rates per rateable assessment. For each council, the allowed increase in the average rates per rateable assessment in the first year of the framework (2016-17) is given by a formula (refer ESC final report)</p>	<p>The government accepts in principle the ESC’s recommended approach of applying the rate cap to the average rate paid by ratepayers in a municipality, noting that the average ratepayer is a notional term and that very few ratepayers will actually be paying the average rate in any given year.</p>	<p>Agree.</p>

<p>Recommendation 4</p> <p>The Commission recommends that the annual rate cap should be calculated with a proposed formula (refer ESC final report).</p> <p>The efficiency factor should initially be set at zero in 2016-17 and increase by 0.05 percentage points each year from 2017-18. The Commission will undertake a detailed productivity analysis of the sector to assess the appropriate long-term rate for the efficiency factor.</p>	<p>The government accepts in principle the ESC's proposed approach to the calculation of the cap in the early years of the system. However, in the government's view, flexibility should always be retained by the Minister to consider different factors or weightings to be taken into account at the outset of the system and as circumstances confronting the sector evolve.</p> <p>Should an efficiency factor be included in setting of the cap, the government accepts the recommendation to set the efficiency factor at zero for 2016-17 and accepts in principle that it should increase by 0.05 percentage points thereafter, subject to a detailed productivity analysis of the sector by the ESC to determine the appropriate long term rate.</p>	<p>We are disappointed that the Wage Price Index (WPI) is not included in the rate cap as employee costs are a significant cost-driver for local government. The State Government needs to give consideration of wages in the sector when setting the annual rate cap.</p> <p>While efficiency dividends may be applied by the ESC in other sectors, local government is not a single-service provider but a complex organisation, delivering services that have a social dimension.</p> <p>The VLGA does not support an efficiency factor in rate capping.</p>
<p>Recommendation 5</p> <p>The Commission recommends that the framework should not specify individual events that would qualify for a variation. The discretion to apply for a variation should remain with councils.</p>	<p>The government accepts the recommendation to not specify any qualifying events for application for a higher cap.</p>	<p>This ensures an emphasis on the holistic picture of councils' long-term financial plan and agreed priorities with communities, rather than a narrower variation process on single 'cases' or projects as suggested by the ESC.</p>
<p>Recommendation 6</p> <p>The Commission recommends that the following five matters be addressed in each application for a variation:</p> <ul style="list-style-type: none"> • the reason(s) a variation from the cap is required • how the application takes account of ratepayers' and communities' views • how the variation reflects the efficient use of the council resources • what consideration has been given to alternative budgetary priorities and funding options and • that the assumptions and proposals in the application are consistent with the council's long-term strategic planning and financial management instruments. 	<p>The government accepts the recommended five matters to be addressed in each application and will propose legislation to require that any application to the ESC must address these five matters.</p>	<p>The VLGA supports the principles outlined in the five assessment criteria.</p> <p>However, to achieve a variation, a council will need to provide evidence across the five categories and all indications are that these will require substantial amounts of new resources and capacities to attain 'service level' comparative information.</p> <p>The VLGA's Rate Variations Taskforce concluded that councils' variation applications starts with the integrity of councils' long-term strategy(criteria 5), which includes how the planned expenditure</p>

		<p>fits with council's Strategic Resource Plan, Asset Management Plan and financial plan.</p> <p>This then allows councils to build a case for a variation based on the suite of services (and associated facilities) agreed upon by council rather than seeking community support for a specific rate rise and/or particular project.</p>
<p>Recommendation 7 The Commission recommends that it should be the decision-maker for variation applications under the framework.</p>	<p>The government accepts the recommendation to empower the ESC to approve applications for a higher cap.</p>	<p>The VLGA supports the ESC being the decision-maker. However the VLGA will continue to advocate that all applications be made public, along with the ESC's decision and reasoning.</p>
<p>Recommendation 8 The Commission should be empowered to accept or reject an application in its entirety. However, where the Commission would otherwise accept (reject) an application but considers the material supporting an individual project within that application to be insufficiently (sufficiently) developed or supported, it may reject (accept) the individual proposal.</p>	<p>The government accepts the recommendation that the ESC be empowered to accept or reject an application in its entirety and in certain cases accept or reject individual proposals within applications, and will propose legislation accordingly. The government is of the view that the nature of the approval is a matter for the ESC as part of its authority to approve applications for a higher cap.</p>	<p>Where a part or whole application may be rejected, the VLGA advocates that councils must be given the opportunity to provide further and/or more sufficient information before a decision is made. Given that so many unknowns exist in the initial roll out of rate capping, this is critical to improving councils' success rate.</p> <p>The VLGA does not support that the ESC should be able to determine which individual projects within the variation application are approved/rejected, given that these applications are based upon a holistic strategic plan and budget.</p>
<p>Recommendation 9 The Commission recommends that it monitor and publish an annual rates report on councils' adherence to the cap and approved variations.</p>	<p>The government accepts the recommendation for the ESC to monitor and publish an annual compliance report.</p>	<p>Agree.</p>

<p>Recommendation 10 The Commission recommends that it monitor and publish an annual monitoring report on the overall outcome under the rate capping and variation framework for ratepayers and communities.</p>	<p>The government accepts the recommendation for the ESC to monitor and publish a monitoring report on the overall outcomes of the Fair Go Rates System for ratepayers and communities but is of the view that the report should be prepared and published biennially, commencing from 2018.</p>	<p>The VLGA supports a monitoring report but strongly believes this should be annually, and should commence from the first onset of rate capping in order to highlight any initial rasmifications for councils and communities.</p>														
<p>Recommendation 11 The Commission recommends that councils notify us of their intention to seek a variation by 1 January of each year and lodge that application by the end of March of each year.</p>	<p>The government accepts in principle ESC's recommended timeframes for notification and application and will propose legislation to require that councils seeking a higher cap must submit their applications to the ESC by 31 March in the year prior to the capped year.</p>	<p>The VLGA recommends to every council that they notify the ESC by 1 January that they will be lodging a variation application to ensure flexibility in their budget discussions.</p>														
<p>Recommendation 12 The recommended timelines for the 2016-17 rating year are set out below. The Commission will be flexible about when it receives application from councils and will use its best endeavours to make a decision within two months of receipt of a council's application.</p> <table border="1" data-bbox="208 842 909 1203"> <thead> <tr> <th colspan="2">Recommended Timelines for 2016-17 Rating Year 2015-16</th> </tr> </thead> <tbody> <tr> <td>ESC announces cap</td> <td>December 2015</td> </tr> <tr> <td>Councils notify ESC of intention to seek a variations</td> <td>January 2016</td> </tr> <tr> <td>Council applies for variation</td> <td>From 1 February 2016</td> </tr> <tr> <td>Last date for submission of application</td> <td>End March 2016</td> </tr> <tr> <td>ESC notifies councils of decisions</td> <td>Within 2 months of receipt</td> </tr> <tr> <td>Councils formally adopt budget</td> <td>June 2016</td> </tr> </tbody> </table>	Recommended Timelines for 2016-17 Rating Year 2015-16		ESC announces cap	December 2015	Councils notify ESC of intention to seek a variations	January 2016	Council applies for variation	From 1 February 2016	Last date for submission of application	End March 2016	ESC notifies councils of decisions	Within 2 months of receipt	Councils formally adopt budget	June 2016	<p>The government accepts in principle the ESC's recommended timelines for implementing the Fair Go Rates System in the 2016-17 rating year and will propose legislation that establishes the requirement for the cap to be set by the end of December and applications for a higher cap to be made to the ESC by the end of March in the year prior to the capped year.</p> <p>The government does not accept the proposal that the ESC announces the cap. As indicated in the response to Recommendation 3, it is proposed that the Minister set the cap. The proposed legislation will require that the Minister makes the Order about the cap on or before 31 December or another date fixed by the Minister by notice published in the Government Gazette before the capped year. In doing so, it is expected that the Minister will announce the cap shortly after.</p>	<p>The VLGA agrees that the Minister should set and announce the cap.</p> <p>The VLGA will continue to lobby for a more efficient timeframe for councils to lodge variation applications and receive responses from the ESC.</p> <p>The ESC's reasons for decisions should be made public.</p>
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<p>Recommendation 13</p> <p>The Commission recommends that the Government, as part of the broader review of the Local Government Act 1989, reconsider the purpose of the current obligations on councils to place their budgets on public notice for a minimum of 28 days under sections 129, 130 and 223 and how this might be achieved more efficiently following the introduction of the rate capping framework.</p>	<p>The government accepts the recommendation to reconsider the purpose of and requirements specified in sections 129, 130 and 223 of the Act in undertaking a review of the Act.</p> <p>In the meantime, the government will propose legislation to allow councils to propose both a budget that is under the cap and an amended budget that is subject to ESC approval of a higher cap for the purposes of the section 223 requirements.</p> <p>Legislation will also be proposed to require a council to indicate in its draft budget whether it intends to apply for a higher cap and whether the budget is subject to ESC approval.</p>	<p>The proposal to run two budgets side-by-side as the basis of a community consultation process flies in the face of good governance.</p> <p>We will continue to actively participate in the review of the Local Government Act about these and related matters.</p>
<p>Recommendation 14</p> <p>The Commission recommends that in 2016-17, variations for only one year be permitted. Thereafter councils should be permitted to submit and the Commission approve multi-year variations of up to 4 years in length.</p>	<p>The government accepts the recommendation to allow applications from 2017-18 to seek higher caps for up to four years.</p>	<p>2016/17 is the last year in a four-year plan. Therefore, our expectation is that any variation to the rate should, at a minimum, support the integrity of the democratic process used by councils in developing their four-year plan.</p> <p>The VLGA urges all councils to apply for a variation in the first year, 2016/17.</p> <p>The VLGA supports the ability of councils to seek a full four-year variation from the second year of the cap's operation. This process recognises the first year of a new council term and supports the long-term planning process.</p>

<p>Recommendation 15</p> <p>The Commission recommends that the Government consider making a formal review of the rates capping and variation framework a statutory obligation. The review should draw on any data and trends identified through ongoing monitoring and all interested parties should have an opportunity to provide input into the review. The Commission considers a review period of 4 years to be appropriate.</p>	<p>The government accepts in principle the recommendation for a 4-year review cycle of the Fair Go Rates System as a statutory obligation. The government will propose legislation for the Minister and the Minister for Finance (as the Minister administering the Essential Services Act 2001) to ensure that a review is completed by 31 December 2021 and that further reviews are completed periodically every 4 years after the date on which a review is completed.</p>	<p>This proposed review will follow five years of rate capping.</p> <p>Given the enormous effect that rate capping will have on councils and communities, the VLGA sees this as being far too long.</p> <p>A review by December 2018 would be more appropriate. This would fall midway through the second round of variation applications, still providing enough time to address issues with the process or abandon rate capping completely if appropriate.</p> <p>Any decision on amending or abandoning rate capping would fall early in the term of a new State Government.</p>
<p>Recommendation 16</p> <p>The Commission recommends that the Government provide councils with guidance on the responsible use of debt, particularly with respect to funding long-lived infrastructure, and green field and intergenerational assets.</p>	<p>The government accepts the recommendation to provide councils with guidance on the responsible use of debt.</p>	<p>The VLGA notes the State Government's response.</p> <p>In developing the guidelines it is imperative that the State Government consults widely across the sector.</p> <p>Ultimately any decision about debt sits with an individual council in consultation with its communities</p>
<p>Recommendation 17</p> <p>The Commission recommends that the Government consider amending the Local Government Act 1989 to require that service rates and charges must reflect the efficient costs of providing the underlying service.</p>	<p>The government accepts the recommendation to consider amending the Act to require that service rates and charges must reflect the efficient costs of providing the underlying service as part of the review of the Act being undertaken.</p>	<p>The VLGA does not agree that a further level of compliance reporting is required.</p> <p>At this stage we see no need to legislate for this. It is an issue which will be up for discussion through the review of the Local Government Act.</p>

<p>Recommendation 18 The Commission recommend that the Government consider initiating a periodic review to ensure that statutory fees to reflect councils' efficient cost of providing statutory services.</p>	<p>The government accepts in principle the recommendation to consider initiating a periodic review to ensure that statutory fees to reflect councils' efficient cost of providing statutory fees.</p> <p>Where possible, the government will seek to index statutory fees to CPI or provide for more frequent reviews.</p>	<p>The VLGA points out that many existing statutory fees for service, as determined by the State, do not reflect true cost of services delivered by councils – for example: developer contributions and planning application fees.</p> <p>Councils are wary of any process which may result in further cost-shifting.</p>
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OTHER MATTERS	STATE GOVERNMENT RESPONSE	VLGA RESPONSE
Appealing a Variation Decision	The government agrees that the existing judicial review avenue to appeal ESC decisions in relation to the Fair Go Rates System is sufficient.	<p>The VLGA supports the availability of an appeal process for councils. Such a process needs to be available in a timely manner and any issues promptly heard and determined.</p> <p>The VLGA remains concerned that the appeal relates only to process, and that councils have no recourse to seek a review on the merit of the decision made by the ESC – particularly in the first year.</p>
Funding the ESC's Assessment of Applications	The government has decided that it will fund the cost of the ESC's assessment processes for the 2016-17 year. This will assist councils to transition into the Fair Go Rates System and address any concerns about the uncertainty of assessment costs.	<p>The VLGA is not supportive of councils, and ratepayers, having to pay a fee to lodge an application for a rate variation.</p> <p>It is important that there are no impediments to a council when it decides to seek a rate variation and that a variation process out of reach of those councils that need it most. Councils will already incur a cost in developing an application for a variation and a fee will be an additional burden.</p>
ompliance	<p>Legislation will be proposed that specifies that if a council fails to comply with the cap, the non-compliance does not affect the validity of any rates or charges levied in respect to the year in which the non-compliance occurred.</p> <p>However, the proposed legislation will empower the Minister or the ESC to take into account the non-compliance in making decisions or recommendations in subsequent years. In cases of continued serious non-compliance the proposed legislation will empower the Minister to declare the rates collected by the council to be invalid in a specified year or years and/or to initiate action to suspend the council.</p>	The VLGA has concerns about any measures that may lead to the suspension of councillors and such powers need to be exercised by the Minister with great care.