

## Key issues in the final debate on the Rate capping Bill 2015

The Local Government (Fair Go Rates) Bill 2015 was passed by the Victorian Legislative Council on 26 November 2015 via 32 votes to 7.

During the debate on the Bill, a number of important issues were raised. Together with the VLGA's perspective, these issues are listed and discussed below.

- **Wage cost allowance** – Hansard reads that the Government *'accepts that wage costs will be an element of the calculation by the ESC should there be a variation request'* (Hansard; 56). It was further stated that the ESC will have the ability to look at a range of factors that may include wages and EBA's when providing advice to the Minister (Hansard; 59). The VLGA argues that wage costs needs to be one of the factors considered by the ESC when giving advice to the Minister on setting the annual 'average' rate cap, as well as when considering variation requests
- **Publication of information about the annual rate cap** – During the debate it was noted that there is no requirement in the legislation for the Minister to publish the factors that led to a determination of the annual average rate cap (although this question was taken on notice and will be referred to the Minister for Local Government). Nor are there any requirements for the Minister to publish the ESC's advice (Hansard; 68). The VLGA argues that it will be important for the sector and the community to demand full transparency and disclosure as to the factors considered (or not considered) in the setting of the cap, by the ESC and the Minister. A decision to adjust (or not adjust) the rate cap to all, some, or one council, needs to be transparently and publically explained. Likewise, the ESC's advice about what should be included should be publically available for scrutiny.
- **Publication of decisions on variation applications** – The debate reiterated that these decisions are to be published. It is presumed that this intention to make the information publically available will also extend to the supporting materials submitted as part of a variation application and the factors that led to a decision to grant a variation. The VLGA supports all information on an application for a variation being made publically available – including what factor led to an agreement about a higher rate cap.
- **Use of debt** – Debt levels will be monitored by the ESC and *'if a council chooses to have a variation, then obviously, the ESC can consider the debt levels as part of that variation request'* (Hansard; 61). The VLGA notes that the decision to borrow or not borrow rests with individual local governments in consultation with their communities. The State Government, in discussion with the sector, should develop guidance on the use of debt, particularly with regard to funding long-lived infrastructure.
- **Fees and charges** – The debate revealed that there is an expectation that all local government fees and charges will be cost reflective. Fees and charges will

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be monitored, especially items such as waste charges, which appear on rate notices. The Government has committed to amending the Local Government 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 currently underway. It was stated that *'we will monitor and we will report accordingly on anything that local governments do in relation to fees and charges'* (Hansard; 63). The VLGA notes the monitoring arrangement, but considers that it should be for information purposes only. The VLGA argues strongly that fees and charges should always be excluded from any cap in place.

- **Consultation with community** – In response to a question asked about the benchmark evidence the ESC will accept from local governments that the views of rate payers and the community have been taken into account, it was stated that *'the requirement is that you can provide that you have undertaken that consultation. Whatever form that consultation takes is best left to that council in determining the best way'* (Hansard; 67). The VLGA is strongly supportive of community consultation and engagement and agrees that the form in which this activity takes place is best left to individual local governments to decide.
- **Valid reasons for a variation** – During the debate, the question of whether variations to the cap can be sought for specific projects, specific pieces of infrastructure and/or general operational expenses was asked. The answer was unclear, but the implication was that variations may be sought for all these cases, including operational costs (Hansard; 66). The VLGA will be seeking clarification about the scope of the variations process. The VLGA argues, based on the views of members of our Rates Capping Variations Taskforce, that the variations process must not be limited or designed solely for specific cases. It must also be able to be accessed for general costs.
- **Best Value principles** – It was noted that the ESC will apply the principles of Best Value, as outlined in the current Local Government Act, to the evaluation of applications for a cap variation (Hansard; 67). The VLGA supports that use of Best Value principles in this way, but the VLGA will also be encouraging an examination of Best Value through the review of the Act currently underway.
- **Ministerial discretion** – *'...the local government sector advised the Government that they thought ministerial discretion in the setting of the cap was preferential, as it would give them the ability to speak to government about the issues they were facing'* (Hansard; 57). The VLGA supports consideration of issues facing local government by the Minister. However, the VLGA does have concerns about the degree of discretion provided to the Minister, which can also be used in a disadvantageous way. The VLGA argues strongly that full transparency in the exercise of ministerial discretion is essential, as is consistency of approach.

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- **General Order and Special Orders in setting a rate cap** – The debate did not provide sufficient clarity about whether the ESC’s decision to grant or reject a variation application is final, or whether the Minister has the final say. The legislation reads that that the Minister sets the annual rate cap through a General Order and the ESC can make a Special Order for a cap variation. But during debate it was stated that ‘...*the ESC is not the decision-maker. The ultimate decision obviously will be determined by the Minister*’ (Hansard; 68). The VLGA will be seeking information on this matter for our members.