

<b>1.1.1 Late Item - Rate Capping</b>		
<b>MEETING DATE:</b>	6 August 2018	
<b>AUTHOR:</b>	David Singe, Chief Executive Officer	
<b>RESPONSIBLE OFFICER:</b>	David Singe, Chief Executive Officer	
<b>PREVIOUS MEETING:</b>	Nil	
<b>REFERENCES:</b>	Nil	
<b>FILE NO:</b>	7.69.2/3	
<b>ATTACHMENTS:</b>	<ul style="list-style-type: none"> <li>Email from the Mayor of the City of Prospect</li> <li>LGA of SA Analysis of the Local Government (Rate Oversight) Amendment Bill 2018</li> </ul>	
<b>IN CONFIDENCE:</b>	No	
<b>POLICY REFERENCE:</b>	There are no known policy requirements related to this item.	
<b>LEGISLATIVE REFERENCE:</b>	There are no known legislative requirements related to this item.	
<b>STRATEGIC MANAGEMENT PLAN REFERENCE:</b>	Goal:	
	Outcome:	
	Strategy:	
<b>FINANCIAL CONSIDERATIONS:</b>	Budget:	\$
	Actual (YTD):	\$
	Budget Variation Required:	[Yes / No]
<b>CONSULTATION UNDERTAKEN:</b>	Nil	

#### **PURPOSE OF REPORT:**

Council to consider a response to the Local Government Association of South Australia regarding the State Governments proposal to introduce rate capping in South Australia.

#### **BACKGROUND:**

The LGA has visited the Limestone Coast to raise the issue of rate capping, proposed by the State Government.

On Friday 13 July 2018 I attended the Local Government Association Special General Meeting at the Adelaide Town Hall, hearing presentations from the President of the New South Wales Local Government Association and the Deputy President of the Municipal Association of Victoria.

Each of them presented compelling stories about the difficulties and imposts caused by rate capping, in New South Wales with 40 years' experience.

A professor from the University of Technology Sydney also presented a research case which highlighted major issues in the policy.

A copy of a factually compelling and community committed item from the Mayor of the City of Prospect outlines his view on the potential impact to local government.

As local government has wide variations in size and location, the one size fits all policy has serious limitations for both regional councils and councils with significant and/or potential growth rates. This affects both the City of Mount Gambier and the District Council of Grant.

Norman Waterhouse Lawyers conducted an information session on Thursday 19 July 2018 with representatives from a number of Limestone Coast councils in attendance. This provided an opportunity for attendees to raise questions about the concept and the impacts of rate capping.

#### **COMMENT:**

The Local Government Association of South Australia has gone to press indicating the large number of councils opposed to the policy. A number of councils are scheduled to discuss on Monday 6 August 2018 and a few councils have not yet responded to the Local Government Association of South Australia.

The Local Government Association of South Australia Board will determine a sector position on the Bill on Friday 10 August 2018, and will communicate this to all parties. The Board's decision will be informed by the feedback received from councils. The Board will also consider the position of parties in the Legislative Council, the long term financial sustainability of the sector, and the best interests of our communities.

#### Potential issues for Council:

The lack of detail in the Bill means that it is challenging to forecast and model the specific impacts on council services and the long-term financial sustainability of the local government sector and Council.

The LGA's research confirms that there is overwhelming evidence that shows rate capping is not an effective public policy. The New South Wales and Victorian experience show that rate capping:

- undermines local democracy, centralises decision making about council rate revenue and shifts accountability from community representatives to an unelected bureaucracy;
- limits councils' ability to provide local services – putting discretionary services at risk;
- leads to higher user pays fees, charges and fines;
- creates asset renewal and infrastructure backlogs; and
- does not make councils more efficient or financially sustainable – in fact council debt increases as councils struggle to meet community expectations.

#### **STAFF RECOMMENDATION:**

***That Council consider an immediate response to the Local Government Association of South Australia advising of District Council of Grant's opposition to rate capping.***

# Attachment

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**From:** David O'Loughlin [<mailto:david.oloughlin@prospect.sa.gov.au>]

**Sent:** Friday, 20 July 2018 5:54 PM

**Cc:** [lgapresident@lga.sa.gov.au](mailto:lgapresident@lga.sa.gov.au); [Matt.Pinnegar@lga.sa.gov.au](mailto:Matt.Pinnegar@lga.sa.gov.au)

**Subject:** IE195338 - Re: Rate Capping

Attn administrations, please distribute to your Mayor or Chair, your Elected Members and CEO.

Dear All,

Next week our Council will consider the LGASA's request for us to choose to support or not support the Government's rate-capping proposal.

There has been a lot of discussion and media around this proposal and, like many of you, I have given the topic much personal thought.

In my view, this proposal ceased to be about 'cost of living' pressures when the new Government refused to freeze their 15% waste levy increase, or to stop their NRM levy increases of up to 9%, or when they issued a China National Sword rescue package that denied ratepayers a single dollar of relief. They refused to act upon or even reduce any one of these cost pressures.

Sadly this is not the first time they have failed to help us fight cost of living impacts. In Opposition they barely lifted a finger to help us when Commonwealth pensioner concession funding was cut, or when Financial Assistance Grants were frozen, or when our road grants fell to the worst in the nation, or when broader community housing rebates were implemented, or rubble royalties were introduced or the recent Litter and Nuisance Bill was introduced, totally unfunded.

Instead of standing with us, fighting side by side against each of these cost impacts on our communities, they have pursued us.

The Government often justify their position by quoting rate increases over a ten year period. They fail to acknowledge the long period of adjustment we all had to make following the LGA's 2006 Financial Sustainability Review which found many of our councils were financially unviable and few were robust. In response we developed detailed Asset Management Plans and ensured they were funded via ten year Long Term Financial Management Plans. This took years to resolve, and cost money - in addition to the numerous cost impacts above.

They ignore the harsh reality that if Councils had failed financially, the State would have been obliged to step in - and it wouldn't have been cheap.

If this proposal is about reducing the tax burden, note that Local Government taxes comprise only 3.6% of all tax revenue in Australia. State taxes total 16%, impacting households and businesses over four times more.

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SA Government's expenditure is close to \$20b a year. Our sector's expenditure totals only around \$2b a year. And our average residential rates are among the lowest in the nation despite receiving among the lowest State and Federal grants in the nation.

If the Government's motivation is to reduce the cost of living, or the size of the tax burden, Local Government seems an odd place to start.

And how is a statewide rate cap going to account for differing council needs? Some have airports and other major revenue sources that offset rates for residents. Other have huge road networks but few rate-able properties to provide revenue. Some receive large federal grants, others very little. Some have coastal erosion issues, others flooding or bushfire risks. Some are growing in size and need additional facilities fast, others have aged infrastructure and facilities and no way of funding replacements. How can one size possibly fit all? Surely many variations will be sought and justified.

This has proven to be the case in the decades old NSW rate pegging system, where individual councils are forced to spend tens of thousands to justify alternate rate rise requests, only to have over 90% of requests routinely approved. What is the point of this? Other than employing more public servants to prepare submissions and others to assess them, costing local and state taxpayers more, exactly contrary to the initial intent.

Nationally, our colleagues in Qld and WA are concerned that if a third state succumbs, it will be seen as the trend to follow and soon Local Governments everywhere will simply be outposts of the State.

Local government means local decision making. If locals want more then let them elect people who will do more. If they want less, let them elect people who will do less. Localism is the cornerstone of a healthy community, and a healthy democracy.

This is not just my opinion. According to their official website, the SA Liberal Party believe:

- "In the separation and distribution of powers as the best protection for the democratic process.
- In a federal system of government and the decentralisation of power, with local decisions being made at the local level."

Rate capping will add red tape, employ more public servants, centralise power, and undermine local decision making. Members of ESCOSA will be appointed by the State. They will not be elected by locals, nor will they be accountable to local communities.

Which would explain why this centralist and undemocratic policy was not supported by many in the Liberal party room, where it apparently only got up by one vote.

Even the SA Property Council told me they don't support rate capping. Nor do any of the other political parties.

I can't help but wonder why the Government remains so focussed on pursuing us over this proposal when, working together, we could achieve so much more. What we all really need is more jobs. Jobs for young and old, and especially our kids. We need to be globally engaged and locally innovative. We need all levels of business, community and government working together, firmly focused on creating a positive

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future.

This means maximum cooperation, coordination, leadership and inspiration. It needs open and creative minds and flexible thinking - at all levels.

It been one of our key strategies at City of Prospect, and it is yielding real dividends, investments, and accolades from locals who still can't believe how vibrant and prosperous our city has become. I fear our economic development thrust would never have been funded if rate capping had been in place and none of this would have been possible.

I'm going to vote this proposal down so we can resume getting on with what South Australians really want, more jobs, great communities, and local councils who listen locally and deliver locally.

I'm going to stand up for local decision making, stand up for local democracy, and keep local taxes a decision for local people.

Please accept my apologies for sharing my views with you. My passion for local government and grass roots action sometimes runneth over!

David O'Loughlin  
0408 598 863  
Mayor, City of Prospect  
President, Australian Local Government Association

PS:

I'm especially proud that my Council consulted our community in seven different ways about this year's budget, which was discussed and developed in public meetings, and open to public budget bids. We listened to the feedback from the public and our independent Audit Committee, and we responded with many changes. Full public scrutiny, ample public engagement, detailed asset management plans made public and ten year forecasts provided. Local listening and local decision making at work.

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## LGA of SA Analysis of the Local Government (Rate Oversight) Amendment Bill 2018

The Bill was provided to councils on 18 June 2018. The key elements of Bill were highlighted in the LGA President Newsletter, 19 June 2018, as follows:

- The Essential Services Commission of South Australia (ESCOSA) will be responsible for making rate cap determinations, assessing applications from councils for variations to the rate cap and reporting on the outcomes of the system.
- ESCOSA will determine the basis of the rate cap. For example, whether it will relate to a price or particular index (CPI, LGPI etc) and whether the cap will include any efficiency or productivity component. The details of how the rate cap will be determined will be subject to ESCOSA guidelines that are yet to be developed.
- A cap may be determined for councils generally, a class of councils or individual councils. There is no definition provided of a 'class' of councils.
- The cap will be applied to a 'base standard rate', which is a nominal rate that is arrived at by dividing the total annualized general rate revenue for a council area by the number of rateable properties in that area at the end of a base year (30 June). This model accounts for growth in the number of rateable properties over the course of a year.
- A council may apply to ESCOSA for a variation from the rate cap for a maximum period of up to 5 years. In applying for a variation, councils will need to provide the reasons for the variation application, evidence of community consultation, an assessment of the likely impact on ratepayers.
- Councils will be expected to make efficiencies across their operations before applying for a rate cap and will need to demonstrate they have considered funding priorities and alternative sources of revenue.
- Consistency with long term financial plans and infrastructure and asset management plans will be a critical component of an application for a variation.
- ESCOSA may charge councils a fee for assessing a variation application and applications will need to be lodged by 31 March.
- Further details of the variation process will be provided through ESCOSA guidelines that are yet to be developed.
- Separate rates and service rates and charges are excluded from the rate cap calculation, but a council must inform ESCOSA if they proposed to introduce a separate rate or service rate or charge as this will be taken into consideration when they set the primary rate cap for that council.
- ESCOSA must monitor and review councils' compliance with the system and prepare reports on the effects of rate capping on councils and any trends that may arise as a result of the rate capping scheme.
- The Minister may take action in relation to a council under Section 273 on the basis of a report by ESCOSA. Currently this provision includes ICAC, the Auditor-General and/or the Ombudsman.
- A review of the legislation will be required before 31 December 2023 (five years from the proposed commencement).

**LGA of SA Analysis of the Local Government (Rate Oversight) Amendment Bill 2018** – please also refer to the State Government’s accompanying Explanatory Paper.

Summary of the provisions of the Bill as outlined in Explanatory Paper	LGA of SA Secretariat comments	Potential issues for councils/local government
<p><b>Clause 4—Amendment of section 3—Objects</b></p> <p>The Bill amends section 3(f) of the Act to clarify that the objects of the Act are to encourage local government to provide appropriate services and facilities to meet the present and future needs of local communities while also ensuring that these are supported by appropriate financial contributions by ratepayers.</p>	<p>There is no further definition or interpretation of what ‘appropriate services’ or ‘appropriate financial contributions’ may mean.</p> <p>This is a subjective issue, one which SA councils currently attempt to balance through public consultation policies that set out the steps councils will take to ensure interested community members are consulted where the act requires.</p>	<p>Councils already consult extensively to seek community views through engagement on annual business plans and budgets, and strategic management plans (long term financial and asset management plans), plus other matters identified in the Act or their public consultation policy.</p> <p>In Section 187(G) the process may require councils to undertake additional community engagement when seeking to apply for a rate cap variation and demonstrate their willingness and capacity to pay rates in accordance with the proposed varied rate cap.</p> <p>This may prove to be difficult for councils to achieve, noting the existing challenges councils face in receiving responses from the community when feedback/input is sought via consultations.</p>
<p><b>Clause 5—Amendment of section 123—Annual business plans and budgets</b></p> <p>The Bill amends section 123(2) of the Act to ensure that an annual business plan and budget released by a council states that the council has applied for or has received a rate cap variation for that financial year, if this is the case.</p>	<p>Timing will be a challenge as ESCOSA will publish rate cap by 31 December (or later if it chooses). Councils will need to submit variation requests to ESCOSA by 31 March which includes evidence of the community engagement process that has been undertaken by the council on the proposed varied rate cap.</p>	<p>This means that Council will need to consult on next year’s Annual Business Plan prior to 31 March. However, councils generally consult on these plans in May/June. Moving this timing will mean that Councils are developing Annual Business Plan projects up to 6 months before the completion of this year’s projects.</p>
<p><b>Clause 6—Insertion of Chapter 10 Part 1A – Rate Oversight</b></p> <p>The Bill proposes the inclusion of Part 1A to Chapter 10 of the Act — Rates and Charges. It inserts sections 187C–187K of the Bill, which contain most of the detail of the rate oversight (capping) system.</p>	<p>There is no reference in the Bill to any provisions of an automatic review (at any level) of this chapter if there is other legislation / government policy decision that may affect these inclusions or require changes to the legislation. Such a provision would be expected for an issue that has the potential to be affected by a number of policy areas.</p>	<p>Councils need to consider the impact that future state legislation and other policies may have on councils’ ability to perform their functions if rate capping is introduced. Any change in legislation or policy that increases costs for councils could have a greater impact in the future if councils cannot generate additional revenue to adequately fund new responsibilities.</p>

Summary of the provisions of the Bill as outlined in Explanatory Paper	LGA of SA Secretariat comments	Potential issues for councils/local government
<p><i>Sections 187C–187K of the Bill are outlined below</i></p>		
<p><b>187C – Objects of Part</b></p> <p>This section states that the objects are:</p> <p>a) to ensure that there is appropriate oversight of the financial contribution of ratepayers for the provision of council services and infrastructure meet the current and future needs of local communities; and</p> <p>b) to ensure that a council has the financial capacity to perform its duties and exercise its powers.</p>	<p>As elected bodies, councils are accountable to their local communities.</p> <p>Having robust processes and legislative requirements for public consultation on council Annual Business Plans and Budgets means that local government already subject to community oversight and is arguably the most transparent sphere of government.</p> <p>The same oversight is not given to state and commonwealth budgets, as their considerations are subject to cabinet-in-confidence.</p> <p>The experience of rate capping systems in both NSW and Victoria is that council debt increases and they have less capacity to deliver services. This has occurred despite the availability of a rate cap variation process being available in both interstate rate capping models.</p>	<p>Placing oversight of financial matters in the hands of ESCOSA and the State Government will ultimately diminish the local decision making of Councils. Decisions about service levels and funding priorities will be referred to an unelected body that is not accountable to ratepayers and the democratic process.</p> <p>It can be inferred that ‘perform its duties and exercise its powers’ is a reference to the statutory responsibilities of local government. Many of the service provided by councils are discretionary and are provided - following public consultation - to meet the needs of and enhance communities. In some circumstances services are provided by councils because there is no alternative provider within the local community, or other government funding/support has been withdrawn. Some of these services may not meet an independent ‘essential service’ or ‘value for money’ test, but they are responding to community need.</p> <p>Through setting a rate cap and determining variation applications, ESCOSA council have more influence than local communities about the services they will receive.</p>
<p><b>187D – Interpretation</b></p> <p>This section sets out definitions for the various terms and phrases used throughout the Bill, with particular reference to the definition and formula of ‘base standard rate’ and ‘capped standard rate’</p> <p>Base Standard Rate is the total annual revenue recoverable from general rates as at 30 June in</p>	<p>These formulas take into account the number of rateable properties in any given year. As such, the rate capping model gives appropriate consideration to residential and business growth within the area of the council.</p> <p>The LGA considers the methodology for ‘revenue recoverable from general rates’ to be revenue from General Rates (Gross) plus Penalties for late payment minus Discretionary</p>	<p>The relevance of the Base and Capped Standard rates for councils is explained in the following sections.</p>

Summary of the provisions of the Bill as outlined in Explanatory Paper	LGA of SA Secretariat comments	Potential issues for councils/local government
<p>the base year, divided by the number of rateable properties in the base year.</p> <p>Capped Standard Rate is the total annual revenue from general rates as at 1 July in the capped year, divided by the number of rateable properties in the capped year.</p>	<p>Rebates, Remissions and Write-Offs, and Mandatory Rebates.</p>	
<p><b>187E - Primary rate cap determination</b></p> <p>Refer to the Explanatory Paper for a detailed description of the 'Primary rate cap determination'.</p> <p>The Bill states that a primary rate cap determination may apply to councils generally or a class of councils, or a particular council.</p>	<p>The Bill states that ESCOSA must set a primary rate cap by 31 December before the next capped year, or by another date set by ESCOSA. This means that ESCOSA could potentially specify a date at any point up 30 June (being the day before the capped year), which would severely limit councils ability to consult on and set an annual business plan and budget.</p> <p>The Bill does not require ESCOSA to use a particular index (CPI or LGPI) as the basis for the primary rate cap. As this is a matter of discretion for ESCOSA, there is no certainty that a consistent or fair and reasonable approach will be taken to setting the cap each year.</p> <p>ESCOSA may consider including an efficiency or productivity component when determining the primary rate cap. Note that the formula used by the Victorian Essential Services Commissioner has a 0.05 per cent efficiency factor for 2017-18 and 0.1 per cent for 2018-19.</p> <p>As there is not detail available about the calculation of an annual cap, it is not currently clear whether there will be a requirement for</p>	<p>Noting the wording of the legislation states that ESCOSA 'may' apply a rate cap determination to councils (generally/class/individual). Given this does not say ESCOSA 'must' apply a rate cap determination, councils may wish to test whether there is scope for no rate cap to be applied based on their previous performance and rate increases.</p> <p>Setting a primary rate cap that recognises growth in rateable properties over the year is a positive intention.</p> <p>However, more relevant for councils will be the index (CPI/LGPI) or other matters ESCOSA takes into consideration when setting a rate cap. This is entirely open to interpretation and the discretion of ESCOSA (subject to any directions provided by the Minister).</p> <p>There is no information available on the criteria to be used by ESCOSA in making these determinations (which could potentially change year-to-year) or the information available to ESCOSA to inform their decisions. This creates a potential risk of significant red tape and duplication of reporting requirements on councils.</p> <p>The conditions that may trigger a primary rate cap to be determined for any particular council may be viewed as a punitive response.</p> <p>There is potentially only five month gap between declaration of current year's budget (July/August) and then having an advanced plan for next financial year (in December of same year when ESCOSA declares rate). This will place pressure on council</p>

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	<p>ESCOSA to consider 'asset renewal gaps' as part of their determination.</p> <p>While a primary rate cap determination may apply to councils generally, a class of councils, or a particular council, the Bill outlines that ESCOSA will only make a determination to apply a rate cap to a particular council if there is cause, such as non-compliance with the previous rate caps, or if there is a proposal to change the basis on which rates are assessed against land, if a separate rate is declared or taking into account the level of fees or charges imposed by the council.</p>	<p>resources and may result in increased administrative costs. This also reduces ability of CEO to shift/adjust for unexpected circumstances (project overruns or delays/new funding availability/asset failures/force majeure events).</p>
<p><b>187F – Rate cap variation determinations</b></p> <p>The Explanatory Paper confirms that “Along with the setting of a primary rate cap, an ability for councils to apply for a variation on a primary rate cap is critical to achieving the objectives of the rate oversight system.”</p>	<p>This section enables ESCOSA to receive and assess council applications for a variation of a primary rate cap from councils. Applications must be received by 31 March of the year before the capped year.</p> <p>Councils may apply for a rate cap variation for 1 or more years up to a maximum of 5 years.</p> <p>Councils subject to an individually determined primary rate cap (see punitive comment above) will not be able to seek a rate cap variation (noting that in these circumstances the relevant council will be consulted before a cap is set).</p>	<p>Although a primary rate cap may apply generally to all councils or to a class of councils (class is not defined) applications for rate cap variations can only be made by an individual council.</p> <p>There is no specification on how long ESCOSA will take to consider applications to vary the rate cap or if the application is denied whether the council has any right of review or appeal.</p>

Summary of the provisions of the Bill as outlined in Explanatory Paper	LGA of SA Secretariat comments	Potential issues for councils/local government
<p><b>187G – Rate cap variations determination applications</b></p> <p>The Bill is specific in the detail required in applications, which are also set out in the Explanatory Paper. In summary, councils must specify:</p> <ul style="list-style-type: none"> <li>• Number of financial years</li> <li>• Reasons for variation</li> <li>• Proposed varied rate cap for each specified year (could be different over more than one year)</li> <li>• Community engagement process</li> <li>• Likely impact on ratepayers, their capacity and willingness to pay</li> <li>• Considerations of reprioritising spending measures and alternative funding options – plus explanation of why these are not suitable</li> <li>• How varied rate cap represents value for money</li> <li>• Consistency with council’s long term financial management plan.</li> </ul>	<p>ESCOSA can set a fee for an application, not in excess of the reasonable costs of determining the application. There is no further detail on this point, or on the broader issue of how ESCOSA will be funded to administer the rate capping system. In Victoria, these costs were nearly \$3 million in 2016/17.</p> <p>There is no information on when ESCOSA’s guidelines for applications to vary a primary rate cap and the community consultation required will be available.</p> <p>There is no indication of what weighting/ importance ESCOSA will place on any criteria when assessing applications for variations.</p> <p>The current criteria appears to place emphasis on ‘value for money’ however there are some services/infrastructure that Councils provide which it may be hard to justify are ‘value for money’, Council’s provide them essentially as a community service obligation (ie. local government does it because the private sector doesn’t). Consideration should be given to expanding the criteria regarding ‘How varied rate cap represents value for money’ to include a reference to ‘and/or achieves increased/ enhanced community/social outcomes’.</p> <p>The Bill does not outline a process for councils to seek a review or appeal ESCOSA decisions on variations. This is a significant issue/omission, insofar as other individuals,</p>	<p>While it is not clear, councils would be significantly impacted if they are expected to cover the costs of administering the overall rate capping system. If they are, this would be a further example of cost shifting.</p> <p>It is uncertain if councils will have the ability to apply for any changes to previously approved variations – for example if there is a change in circumstances, events or an unforeseen impact on the council’s long term financial management plan.</p> <p>Councils will be disadvantaged by the lack of review and appeal provisions in the Bill.</p>

Summary of the provisions of the Bill as outlined in Explanatory Paper	LGA of SA Secretariat comments	Potential issues for councils/local government
	<p>industries and requirements set out in the functions of ESCOSA has the legislative right to review and appeal under Part 6 – Reviews and Appeals in the Essential Services Commission Act 2002.</p>	
<p><b>187H – Ministerial requests and directions</b></p> <p>The Bill states that the Minister can direct ESCOSA to consider matters relating to:</p> <ul style="list-style-type: none"> <li>• A primary rate cap determinations, including a cap that may apply to a particular council</li> <li>• Applications for a rate cap variation determination</li> </ul> <p>While the Bill enables the Minister to request or direct ESCOSA to consider matters, the Explanatory Paper suggests that ESCOSA will maintain its discretion as to whether to act.</p> <p>Section 187H requires ESCOSA to publish copies of any Ministerial request direction on its website, to ensure the appropriate level of transparency.</p>	<p>While transparency of Ministerial direction may be maintained through Section 187H, the Bill provides Ministerial powers that seem to contradict the independent nature of ESCOSA.</p>	<p>Councils and local government will need to be mindful that given the ability for broad ranging Ministerial direction, the determinations of ESCOSA may be more aligned to recommendations to the Minister. This may allow for politically motivated decision making.</p>
<p><b>187I – Council must notify ESCOSA of certain matters</b></p> <p>The Explanatory Paper confirms that the proposed rate capping system in the Bill would only apply to general rates revenue. It considers that separate rates and other feed and charges are already restricted under the Local Government Act. This section sets requirements to ensure ESCOSA can set a future rate cap to</p>	<p>This section restricts council ability to change the basis on which rates are assessed against land, declaring separate rates or imposing a service rate or annual service charge. It requires councils to notify ESCOSA so that they can consider applying an individual primary rate cap to that council. Failure to inform ESCOSA will not affect the validity of rates or changes, but will</p>	<p>As they do now, councils will need to ensure that any review of separate rates, fees and charges are done in a transparent way, in consultation with their community.</p>

Summary of the provisions of the Bill as outlined in Explanatory Paper	LGA of SA Secretariat comments	Potential issues for councils/local government
<p>a particular council if they are of the view that they are using fees and charges unreasonably.</p>	<p>likely trigger an individual primary rate cap in the following financial year.</p>	
<p><b>187J – Compliance with rate cap determination</b></p> <p>This section requires councils' compliance with any rate cap determination made by ESCOSA.</p>	<p>The Bill states that failure to comply with a rate cap determination does not affect the validity of any income in the financial year in which the failure occurred.</p>	<p>Councils need to be mindful that in the case of non-compliance with a rate cap, the validity of general rate income is only guaranteed for the same financial year.</p> <p>There is the possibility for ESCOSA or the Minister to make a retrospective adjustment the following year through a primary rate cap that applies to that individual council.</p> <p>It is important to note Section 187E (6), which states a primary rate cap determination may be a positive or negative amount. This means a council could technically be required to ensure the general rates revenue for one financial year is actually less than the previous year.</p>
<p><b>187K – Administration</b></p> <p>This section provides ESCOSA with powers to perform the functions of the rate oversight system.</p> <p>Additionally, ESCOSA will be required to:</p> <ul style="list-style-type: none"> <li>• Monitor and review councils' compliance with the system;</li> <li>• Assess the effect of rate capping (both the primary rate cap and variations) on councils, and identify any trends that may arise from the application of the rate oversight system across local government.</li> </ul> <p>ESCOSA will make a report on these matters to the Minister every two years.</p>	<p>Noting that councils are directly accountable to their communities, there is no comment on how will ESCOSA be accountable for the decisions they make that impact local government? Beyond a report tabled in Parliament, who is ESCOSA accountable to?</p> <p>ESCOSA has been given a function to assess the effect of primary rate cap determinations on the provision of services and infrastructure by councils, and the financial sustainability of councils. However, there is no detail on what support or change in approach there would be if these are affected in any significant way or if ESCOSA has serious concerns.</p> <p>Also, there is no detail on how the Government would support ESCOSA to develop a thorough and practical knowledge of local government</p>	<p>Councils should note that there is no detail on how much the rate capping system will cost to administer each year or how will this will be funded. There is a potential for further cost shifting from the State Government.</p>

Summary of the provisions of the Bill as outlined in Explanatory Paper	LGA of SA Secretariat comments	Potential issues for councils/local government
<p>Reports received by the Minister from ESCOSA must tabled in Parliament, and may also be published on ESCOSA's website.</p>	<p>before they start making decisions on the parameters of the rate capping model and determinations of a preliminary rate cap. Note that the Victorian ESC develops resources for councils and undertakes inquiries, studies and reviews as required.</p>	
<p><b>Clause 7 – Amendment of Section 273</b></p>	<p>Refer to comments on section 187J</p>	
<p><b>Clause 8 – Amendment of Section 303</b></p> <p>Amends the Local Government Act to enable regulations to be made to deal with saving or transitional arrangements of the Bill</p>	<p>LGA comments will depend on future regulations.</p>	
<p><b>Clause 9 – Review</b></p> <p>Requires that the Minister review the legislation before 31 December 2023 (after 5 years operation)</p>	<p>There is no detail beyond a requirement to review the legislation, which does not appear to be linked to the outcomes of the rate capping system.</p>	<p>There is no sunset clause to the legislation. It is likely to remain in place once passed.</p>

## Some key questions - Local Government (Rate Oversight) Amendment Bill 2018

### Primary rate cap determinations

- Has the State Government undertaken a Regulatory Impact Assessment, including consultation with relevant stakeholders about any unintended outcomes that may result, any implementation issues, and suggestions on how to monitor the effectiveness of the proposed rate capping model?
- What information would ESCOSA have to make a rate cap determination by December for the following financial year? Will this include up-to-date valuation data?
- What financial modelling has been undertaken to assess the impact of a rate cap on councils, in particular growth councils, smaller and/or regional councils? The LGA and SA councils will not be able to assess the impact of the proposed rate capping system on services and operations until we have specific detail and modelling.
- Will the State Government fund a comprehensive benchmarking program as advocated by the LGA?
- What role would the South Australian Local Government Grants Commission (LGGC) have, noting they are a trusted source of data and have a well-developed understanding of the local government sector?
- How would ESCOSA develop a thorough and practical knowledge of local government over the coming months before they start making decisions that have a significant impact on local government operations?

### Variation applications

- When will ESCOSA guidelines be available and what assurances and processes would there be to ensure adequate and timely consultation with councils and the LGA on the guidelines?
- How much additional red tape and administrative costs would be generated by the processes required under the Bill, and are these processes practical and achievable for councils? Has any modelling been done on the costs to ratepayers of administering the system?
- What weighting/importance would ESCOSA give to criteria when assessing applications for variations? How would they treat unique community services that are being provided by councils because there is no one else filling an important need within their community – would these examples meet the test of ‘appropriate services’?
- Would councils have the ability to apply for any changes to previously approved variations?
- Would there be a process for councils to seek a review or appeal ESCOSA decisions on variations?

### Monitoring and reporting

- How much would the rate capping system cost to administer each year? How will this be funded?
- Councils are accountable to their communities for the decision they make through democratic election processes. How would an independent regulator be held accountable by the community for the decisions they make that impact on local services, infrastructure and facilities?
- How would the State Government report publically on the outcomes of a rate capping system and what opportunity will there be for communities to provide their feedback on these outcomes?