

RATING POWERS AMENDMENT BILL

AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL
GOVERNMENT COMMITTEE

COMMENTARY

Recommendation

The Internal Affairs and Local Government Committee has examined the Rating Powers Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Introduction

The Local Government Law Reform Bill which was introduced and referred to the committee on 6 December 1994 made a range of amendments to the Local Government Act 1974 and the Rating Powers Act 1988, and contained new provisions to control dogs. Part VI (clauses 119 to 128) of the Local Government Law Reform Bill has been divided from that bill to form this bill, the Rating Powers Amendment Bill. Clause 119 has been replaced by clause 1 Short Title and commencement of this bill.

Dividing the bill

On 1 June 1995 the House gave the Internal Affairs and Local Government Committee authority to divide the Local Government Law Reform Bill into such separate bills as it thought desirable and to report the bills separately to the House.

- Part VII and the Ninth Schedule were divided from the bill to form the Chatham Islands Council Bill, which was reported to the House on 20 July 1995.
- Clauses 18 to 21 were divided from the bill to form the Local Government Amendment Bill (No. 4), which was reported to the House on 19 October 1995.
- Parts II to V (clauses 33 to 118) and the Sixth, Seventh and Eighth Schedules formed the Dog Control Bill, which was reported to the House on 5 December 1995.

- Clauses 3, 4, 22 to 32 and the First, Second, Third, Fourth and Fifth Schedules formed the Local Government Amendment Bill (No. 5), which was reported to the House on 19 December 1995.

Clauses 15 to 17 and Part VI (clauses 119 to 128) have been divided in tandem from the Local Government Law Reform Bill. We also intend to report that clauses 15 to 17 be reprinted as a separate bill to form the Local Government Amendment Bill (No. 7). The remaining 12 clauses of the bill will be retained by us for further consideration.

We spent some 3 hours considering the waste management and rating powers provisions. Advice was received from the Department of Internal Affairs.

This commentary sets out the details of our consideration of the Rating Powers Amendment Bill and the major issues we addressed.

Overview of submissions

Most of the 17 submissions relating to rating powers were received from regional, city, and district councils and local government associated bodies. Submissions expressed general support for the provisions, and we appreciated the useful and constructive suggestions that we received.

Amendments to Rating Powers Act 1988

Clauses 120 to 126 will amend the terminology in the Rating Powers Act 1988 to reflect the strategic change from a “refuse collection” to a “waste management” philosophy contained in proposed new Part XXXI of the Local Government Act 1974. The new Part XXXI is contained in the Local Government Amendment Bill (No. 7).

Replacement of invalid rates

Clause 127 inserts a new Part VIIIA, Replacement of Invalid Rates, comprising sections 150A to 150M, into the Rating Powers Act 1988. The new Part provides for local authorities to replace invalid rating decisions. Its purpose is to allow the retrospective adjustment of rating decisions which have been or are likely to be declared to be invalid where the invalidity affects or might affect the allocation of rates between ratepayers. This might occur, for example, to remedy a procedural defect where the correct public notification provisions were not followed, where an incorrect rating notification may have been advertised, or where there was failure to include sufficient detail in the rating notification.

The proposed procedure is not a means of validating invalid rating decisions, but of replacing invalid decisions with new decisions. The enactment of the rates replacement procedure will not always prevent Parliament being asked to validate rating irregularities by means of local bills.

Amendments proposed by committee

We have proposed the following 3 significant amendments:

1. To amend the new section 150c to extend the application of the rates replacement procedure where, for example, insufficient detail had been provided to the local authority members responsible for making rating decisions.
2. To add a new section 150CA to require the local authority’s intention to make replacement rates to be publicly notified and noted on the local authority’s rate records in order that prospective buyers and other interested parties are aware of this.

3. To amend the new section 150¹ to provide for the local authority to refund on the application of the ratepayer any excess payment resulting from the rates replacement process.

Charging orders for rates arrears on Māori freehold land

Clause 128 will reinstate the jurisdiction of the Māori Land Court to make charging orders over Māori freehold to cover rate arrears. The specific words conferring this jurisdiction on the Māori Land Court appear to have been inadvertently omitted when the provision was re-enacted in 1988. Charging orders are the last resort means of recovering rates arrears from Māori freehold land which, unlike other land, cannot be sold to recover unpaid rates.

KEY TO SYMBOLS USED IN REPRINTED BILL
AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL GOVERNMENT
COMMITTEE

Struck Out (Unanimous)

The quick brown fox

Text struck out unanimously

New (Unanimous)

The quick brown fox

Text inserted unanimously

(The quick brown fox)

Words struck out unanimously

The quick brown fox

Words inserted unanimously

Hon. John Banks

RATING POWERS AMENDMENT

ANALYSIS

| Title | |
|--|---|
| 1. Short Title and commencement | |
| 120. Interpretation | 150A. Interpretation |
| 121. Non-rateable land liable for certain separate rates | 150B. Replacement of invalid rates |
| 122. Separate rates on serviced properties only | 150C. Power of Governor-General to order rates to be remade |
| 123. Certain separate rates payable for proportionate part of year in certain circumstances | 150CA. Notice of intention to make replacement rates |
| 124. Separate uniform annual charges in respect of each separately used or inhabited portion of property | 150B. Making of replacement rates |
| 125. Waste management charges | 150E. Replacement rates |
| 126. Local authority to give notice of making rate | 150F. Rates replacement proposal |
| 127. New Part VIII inserted | 150G. Adoption of rates replacement proposal |
| | 150H. Adjustment of rates accounts |
| | 150I. Allocation of excess |
| | 150J. Levying of shortfall |
| | 150K. Subdivision of property |
| | 150L. Replacement of postponed rates |
| | 150M. Remission of deficit |
| | 128. Charging orders for rates |

PART VIII

REPLACEMENT OF INVALID RATES

A BILL INTITULED

An Act to amend the Rating Powers Act 1988

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Rating Powers Amendment Act 1996, and shall be read together with and deemed part of the Rating Powers Act 1988* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1996.

*1988 No. 97

Amendments: 1989, No. 38; 1989, No. 135; 1991, No. 55; 1992, No. 44

120. Interpretation—Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “ward”, the following definitions:

“‘Waste collection’ includes the storage, recovery, recycling, treatment, and disposal of waste collected under a waste management plan: 5

“‘Waste management plan’ has the same meaning as in Part XXXI of the Local Government Act 1974:”.

121. Non-rateable land liable for certain separate rates—(1) Section 7 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph: 10

“(b) For waste collection; or”.

(2) Section 7 (2) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph: 15

“(b) Provides any such land with waste collection services or sewage disposal services, but does not make and levy a separate rate or charge for such services,—”.

122. Separate rates on serviced properties only— 20
Section 17 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Where a separate rate or separate uniform annual charge is made for waste collection, the territorial authority may, if it considers it appropriate, instead of making and levying a separate rate or separate uniform annual charge on all properties, by resolution make and levy that rate only upon— 25

(a) Those properties for which it is prepared to provide that service; or 30

(b) Those properties for which it does provide that service.”

123. Certain separate rates payable for proportionate part of year in certain circumstances—(1) Section 18 (1) (a) of the principal Act is hereby amended by repealing subparagraph (ii), and substituting the following subparagraph: 35

“(ii) Commences to receive a waste collection service,—”.

(2) Section 18 (2) (a) of the principal Act is hereby amended by repealing subparagraph (ii), and substituting the following subparagraph: 40

“(ii) Commences to receive a waste collection service separately from the rest of the property—”.

124. Separate uniform annual charges in respect of each separately used or inhabited portion of property— Section 24 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

5 “(b) Waste collection,—”.

125. Waste management charges—The principal Act is hereby amended by repealing section 31, and substituting the following section:

10 “31. (1) Instead of, or in addition to, making and levying for waste collection—

“(a) A separate rate under section 16 of this Act; or

“(b) A separate uniform annual charge under section 20 or section 24 of this Act,—

15 the territorial authority may, (*be*) by resolution, fix and levy on every property in respect of which such a rate would be payable a charge in respect of each container of waste which the territorial authority is prepared to collect as part of its normal waste collection services.

20 “(2) Where a territorial authority provides different waste collection services for different categories of waste, different charges may be levied under subsection (1) of this section in respect of those different categories of waste.

25 “(3) In any case where, in the opinion of the territorial authority, the waste from any property is principally not of a domestic nature or excessive in quantity, the territorial authority may, if it thinks fit,—

30 “(a) Instead of levying such a rate or uniform annual charge or charge under subsection (1) of this section, make a reasonable charge for the collection of the waste, or require the owner or occupier of the property to have the same removed regularly at his or her own cost; or

35 “(b) In addition to such a rate or uniform annual charge or charge under subsection (1) of this section, make a reasonable charge for the collection of waste in excess of a prescribed amount.”

126. Local authority to give notice of making rate— Section 110 (2) (c) of the principal Act is hereby amended by 40 repealing subparagraph (vii), and substituting the following subparagraph:

“(vii) Per container of waste,—”.

127. New Part VIIIA inserted—The principal Act is hereby amended by inserting, after section 150, the following Part:

“PART VIIIA

“REPLACEMENT OF INVALID RATES

“150A. **Interpretation**—In this Part of this Act, unless the context otherwise requires,— 5

“‘Current year’ means the rating year in which a rates replacement proposal is adopted:

New (Unanimous)

“‘Rate’ means any rate made and levied under this Act or any other enactment, or any charge deemed by section 32 of this Act to be a rate; and ‘rates’ has a corresponding meaning: 10

“‘Relevant year’, in relation to a rates replacement proposal, means the year in respect of which the rates to be replaced under that proposal were made. 15

“150B. **Replacement of invalid rates**—A local authority shall make, in respect of any specified rate or rates, a replacement rate or replacement rates under **section 150b** of this Act where— 20

“(a) Any Court of competent jurisdiction—

“(i) So orders; or

“(ii) Directs the local authority to reconsider and determine any matter relating to the making of any rate or rates or the allocation of liability under any rate or rates and the local authority, after reconsidering that matter determines that a replacement rate or replacement rates under **section 150b** of this Act should be made; or 25

“(b) An Order in Council under **section 150c** of this Act so directs. 30

“150c. **Power of Governor-General to order rates to be remade**—(1) The Governor-General may, by Order in Council, made on the recommendation of the Minister of Local Government, direct any local authority to make, in respect of any specified rate or rates, a replacement rate or replacement rates under **section 150b** of this Act. 35

“(2) The Minister of Local Government shall not recommend the making of an Order in Council under this section unless— 40

“(a) The local authority that made the rate or rates has made application for a recommendation under this section; and

5 “(b) The Minister is satisfied that the local authority has been advised by a barrister or solicitor that the rate or rates would, if they were subjected to review by the High Court under section 4 of the Judicature Amendment Act 1972, be likely to be set aside or declared invalid; and

10 “(c) The Minister is satisfied that the defects or irregularities that would be likely to invalidate the rate relate to *(either)*—

“(i) The allocation of rating liability between ratepayers of the district of the local authority; or

15 “(ii) The opportunity for ratepayers to comment or make representations on either the rate or rates themselves, or the rating system or the differential basis adopted(.); or

New (Unanimous)

20 “(iii) The extent and accuracy of the information presented to members of the local authority in relation to the making of the rate or the adoption of any relevant rating system or differential basis.

25 “150CA. **Notice of intention to make replacement rates**—(1) Where a local authority is required—

“(a) By an order under **section 150B (a) (i)** of this Act to make a replacement rate or replacement rates; or

30 “(b) By a determination made by the local authority under **section 150B (a) (ii)** of this Act to make a replacement rate or replacement rates; or

“(c) By an Order in Council made under **section 150c** of this Act to make a replacement rate or replacement rates,—

the local authority shall give public notice of the requirement.

35 “(2) The public notice shall specify the rate or rates to which the requirement relates.

“(3) The local authority shall also, as soon as practicable, note on the rates records for all rateable property within the district—

40 “(a) The requirement that the local authority make replacement rates; and

New (Unanimous)

| |
|--|
| “(b) The rate or rates to which the requirement to make replacement rates relates. |
|--|

“150D. **Making of replacement rates**—(1) Where one or more rates made by a local authority for any year are to be replaced under **section 150B** of this Act, the local authority shall make one or more replacement rates in respect of that year. 5

“(2) Subject to this section, replacement rates shall be made by the adoption of a replacement rate proposal prepared in accordance with the special consultative procedure. 10

“(3) A replacement rate proposal—

“(a) Shall replace all rates to which **section 150B** of this Act applies and which are made and levied in any year; and

“(b) Where in the opinion of the local authority **section 150E** of this Act so requires, may replace other rates levied by the local authority in the year in which the rates referred to in **paragraph (a)** of this subsection were made. 15

“(4) No replacement rate proposal may replace rates made and levied in different years. 20

“(5) For the purpose of making a replacement rate, the local authority shall have all the powers, duties, and responsibilities that it had under any Act on the date on which the rate to be replaced was made, notwithstanding anything in any Act that has come into force since that date. 25

“150E. **Replacement rates**—(1) Except as otherwise provided in this section,—

“(a) The total revenue sought from replacement rates in any proposal shall equal the total revenue sought from the rates to be replaced; and 30

“(b) The purposes to which the total revenue sought from replacement rates in any proposal is to be applied, and the amounts to be applied for those purposes, shall be consistent with the purposes and amounts for which the rates to be replaced were made and levied; and 35

“(c) The replacement rates shall—

“(i) Where the relevant year is the year ending with the 30th day of June 1996 or any earlier year, be consistent with the rating policy outlined in the 40

annual report adopted by the local authority under section 223D of the Local Government Act 1974 for that year; and

5 “(ii) In any other case, be consistent with the funding policy adopted by the local authority under section 122E of the Local Government Act 1974 for the relevant year.

10 “(2) A local authority may, if it considers it necessary or desirable to do so, having regard to the order of the Court referred to in **section 150B(a)** of this Act, or the reasons for application for an Order in Council under **section 150C** of this Act,—

15 “(a) Omit to make replacement rates for any purpose for which rates to be replaced were made and levied, or make replacement rates in order to apply a lesser amount of revenue for any such purpose; or

20 “(b) Make and levy as a replacement rate, any rate or charge authorised in terms of **(subsection (2) of this section) section 150D** of this Act, notwithstanding that the rate or charge, or the basis on which it is made or levied, is inconsistent with the rating policy or the funding policy, as the case may be, referred to in **subsection (1)(c)** of this section; or

25 “(c) Make and levy any replacement rate on a differential basis, notwithstanding that no special order under section 80 or section 85 of this Act was in force at the time the rate to be replaced was made; or

30 “(d) Make and levy any replacement rate on a differential basis that differs from that prescribed by a special order under section 80 or section 85 of this Act that was in force at the time the rate to be replaced was made; or

35 “(e) Make and levy any replacement rate on a uniform basis, notwithstanding that any special order under section 80 or section 85 of this Act was in force at the time the rate to be replaced was made.

“150F. **Rates replacement proposal**—(1) Every rates replacement proposal under **section 150D** of this Act shall—

40 “(a) Identify the relevant year; and

“(b) For each rate made and levied by the local authority in the relevant year, state—

“(i) The date on which the rate was made; and

“(ii) The name of the rate; and

- “(iii) The details specified in paragraphs (2) (b) and (2) (c) of section 110 of this Act; and
- “(c) Identify which of the rates referred to in **paragraph (b)** of this subsection are proposed to be replaced, and the reasons for their replacement; and 5
- “(d) In respect of each proposed replacement rate, state the details specified in paragraphs (2) (b) and (2) (c) of section 110 of this Act; and
- “(e) In any case to which **section 150E (2) (a)** of this Act applies, identify the difference between the revenue sought from the rates to be replaced and that proposed to be sought from the replacement rates, and the reasons for that difference; and 10
- “(f) In any case to which **section 150E (2) (b)** of this Act applies, explain the nature of the proposed departure from the rating policy or the funding policy, as the case may be, and the reasons for that departure; and 15
- “(g) In any case to which **section 150E (2) (c)** or **(d)** of this Act applies, state the information specified in paragraphs (c) and (e) (ii) of section 84 of this Act; and 20
- “(h) In any case to which **section 150E (2) (e)** of this Act applies, state the matters taken into account in proposing to make and levy the rate on a uniform basis; and
- “(i) Describe the general effect that the rates replacement proposal is expected to have on the overall liability of ratepayers or groups of ratepayers within the district for rates for the relevant year. 25
- “(2) In giving notice of the rates replacement proposal under section 716A (1) (b) of the Local Government Act 1974, the local authority shall give specific notice of the proposal to every ratepayer of the district. 30
- “(3) Every such notice of the rates replacement proposal shall include—
- “(a) A summary of the provisions of **sections 150I** and **150J** of this Act; and 35
- “(b) A statement that the proposal will not affect rates made and levied in years subsequent to the relevant year, and, where a rates replacement proposal is intended in respect of any of those years, a statement of that intention. 40
- “150G. **Adoption of rates replacement proposal**—(1) On the adoption of a rates replacement proposal,—

- “(a) The replacement rates identified in the proposal shall thereby be made; and
- “(b) The rates to be replaced identified in the proposal shall cease to have any effect.
- 5 “(2) Nothing in **subsection (1) (b)** of this section shall affect—
- “(a) The lawfulness of the actions of the local authority in levying any rate before the adoption of the rates replacement proposal; or
- “(b) The lawfulness of the payment of the rate and the receipt of such payment by the local authority before the adoption of the rates replacement proposal; or
- 10 “(c) Any rates rebate granted under the Rates Rebate Act 1973 before the adoption of the rates replacement proposal; or
- 15 “(d) Any discount given under section 131, or any additional charge imposed under section 132 of this Act, before the adoption of the rates replacement proposal; or
- 20 “(e) Any remission of rates granted under this Act before the adoption of the rates replacement proposal; or
- “(f) The lawfulness of any action taken by the local authority, before the adoption of the rates replacement proposal, to recover unpaid rates.
- 25 “**150H. Adjustment of rates accounts—**(1) Liability for replacement rates shall be calculated for the purposes of this section on the rateable properties and rateable values in the valuation roll for the relevant year.
- “(2) As soon as practicable after replacement rates are made, the local authority shall, for each property referred to in **subsection (1)** of this section, calculate the total liability of that property for replacement rates.
- 30 “(3) Where the total amount of replaced rates that were levied on any property exceeds the total amount calculated under **subsection (2)** of this section in respect of that property, the amount of that excess shall be dealt with in accordance with **section 150I** of this Act.
- 35 “(4) Where the total amount of the replaced rates that were levied on any property is less than the total amount calculated under **subsection (2)** of this section in respect of that property, the amount of that deficit shall be levied in accordance with **section 150J** of this Act.
- 40 “(5) The local authority shall deliver to the occupier of each property a notice which—

- “(a) Identifies the replaced rates levied on that property; and
- “(b) Describes the replacement rates levied on that property in sufficient detail to enable the basis for the total amount of replacement rates to be identified; and
- “(c) Where **subsection (3)** of this section applies, identifies the amount of the excess and the results of the application of **section 150I** of this Act; and 5
- “(d) Where **subsection (4)** of this section applies, identifies the amount of the deficit and the application of **section 150J** of this Act; and 10
- “(e) Contains such other explanatory material as the local authority thinks fit.

“150I. **Allocation of excess**—(1) Where **subsection (3)** of **section 150H** of this Act applies, the amount of the excess shall be credited to the rates account for that property, and shall be used— 15

- “(a) First, in the payment of any rates arrears relating to the relevant year; and
- “(b) Next, in the payment of any other rates arrears owing in respect of the property; and 20

Struck Out (Unanimous)

- “(c) Next, in the crediting to that account, in anticipation of rates yet to be levied, a sum not exceeding the total rates payable on the property for the current year or, if the rates for the current year have yet to be made, the total rates payable for the previous year; and 25
- “(d) Next in refunding to the occupier any sum then remaining.

New (Unanimous)

- “(c) Next, by crediting to that account, in anticipation of rates yet to be levied, any sum then remaining. 30
- “(2) Notwithstanding anything in **paragraph (c) of subsection (1)** of this section, where, under that paragraph, an amount is credited to the rates account for a property, the occupier of that property may, at any time, apply in writing to the local authority for the refund of the whole or any part of any amount by which that rates account is in credit pursuant to 35

New (Unanimous)

that paragraph, and the local authority shall, as soon as practicable after receiving the application, make the refund.

5 “150J. **Levying of shortfall**—(1) Where subsection (4) of section 150H of this Act applies, the amount of the deficit shall be levied on that property—

“(a) Where, at the time that the replacement rates are made, the local authority had not made its general rates for the current year, in the current year; or

10 “(b) In any other case, in the subsequent year.

“(2) For the purposes of section 122 (1) (e) of this Act, the amount of the deficit shall be identified as a replacement rates adjustment in respect of the relevant year.

15 “(3) Parts VIII to XIV of this Act, and the Rates Rebate Act 1983, shall apply to the levying of the deficit as if it was a rate made and levied in the year it is levied.

“(4) The exclusion of all or part of a property from the district of a local authority after the relevant year shall not affect the ability of the local authority to levy any deficit in respect of that property.

20 “150K. **Subdivision of property**—(1) Where, at any time before replacement rates are made,—

“(a) Any part of any rateable property appearing on the valuation roll for the relevant year is sold or otherwise transferred; or

25 “(b) Any tenancy of any such rateable property is surrendered or terminated so far as it relates to part only of the property comprised in the tenancy,—

30 the excess or deficit calculated under section 150H of this Act in respect of that property shall be allocated among the several parts thereof in proportion to the rateable values of those parts.

“(2) Notwithstanding anything in subsection (1) of this section, where that subsection applies, the local authority may, if the local authority considers it expedient to do so,—

“(a) Credit each of the several parts with the amount of the excess calculated in respect of the total property; or

“(b) Cancel the deficit calculated in respect of the total property.

40 “150L. **Replacement of postponed rates**—
Notwithstanding anything in sections 150H to 150J of this Act,

where some or all of the replaced rates have been postponed under this Act and have not become payable at the date on which the replacement rates are made, the amount of rates postponed shall be deemed to have always been adjusted by the amount of any excess under **section 150H (3)** of this Act or the amount of any deficit under **section 150H (4)** of this Act, as the case may require, and any interest charged on the postponed rates shall be adjusted accordingly. 5

“150M. **Remission of deficit**—Without limiting the application of Parts XII, XIIA, XIIB, and XIII of this Act, the local authority may remit any deficit levied under this Part of this Act— 10

“(a) In accordance with a policy for such remissions included in the rate replacement proposal; or

“(b) Where the local authority considers it would be unreasonable not to do so in any particular case.” 15

128. Charging orders for rates—Section 186 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

“(4A) If after hearing the parties the Court is satisfied that the rates are payable, then, subject to subsection (5) of this section, the Court shall make an order granting a charge over the land in favour of the local authority for the amount of the rates so payable and the cost of obtaining the charge. 20