



OFFICE OF LOCAL GOVERNMENT

# ***Local Government Amendment Act 2021***

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Guidance on local government rating reforms

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## Preamble

The NSW Government is committed to strengthening the performance and sustainability of local government. Local communities need to be able to rely on their council now, more than ever, as we work together to manage the COVID-19 pandemic, recover from multiple natural disasters and to drive new economic activity and recovery.

Our system of local government needs to support councils to provide local leadership, services and infrastructure to residents and ratepayers. A key part of that system is the local government rating system, which provides each council with a stable and reliable revenue base. It is clear that greater flexibility is needed within that system to make rates fairer and to support councils to respond to population growth, service and infrastructure costs.

In June 2020 the Government committed to rating reform in response to the Independent Pricing and Regulatory Tribunal's (IPART's) review of the local government rating system. This response acknowledged that local government needs a more flexible rating system, whilst ensuring rates are applied fairly and equitably to local communities.

In 2021 important reforms to the rating system were made through the *Local Government Amendment Act 2021* (the Amendment Act). This followed many years of consultation by both the Government and IPART.

A number of rating reforms have already come into effect. The Office of Local Government (OLG) is working closely with councils and other key organisations to provide guidance and support about how best to take up those options, including this guidance document.

At the same time, OLG has formed a Local Government Rating Reference Group to provide technical input as it prepares draft regulations and guidelines for consultation. This will enable the Minister for Local Government to commence further rating reforms.

I encourage you to review this guidance material and consider what opportunities are available for your council to better meet the needs of its residents and ratepayers, now and into the future.



**Melanie Hawyes**  
**Deputy Secretary Crown Lands and Local Government**  
**Department of Planning and Environment**

## **Acknowledgment of Country**

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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## Introduction

The *Local Government Amendment Act 2021* (the Amendment Act) delivered important reforms to our system of local government. The Act was passed by the NSW Parliament on 13 May and assented to on 24 May 2021.

The Amendment Act introduces changes to strengthen the local government rating system and ensure it continues to be fair and equitable for both councils and ratepayers across the State.

Four of these changes came into effect immediately on 24 May 2021. This means that councils are already able to choose to take advantage of these options to change their rating structures, in consultation with their communities.

Firstly, the changes allow councils created by merger in 2016 to harmonise their rating structures gradually over up to eight years, in consultation with their communities.

At the same time, a different rate peg can now be set for each council, or for different cohorts of councils. It may be set as a methodology rather than a percentage, including by specifying a base percentage to which an additional figure may be added in specified circumstances. The rate peg set by IPART for 2022-23 is the first year that multiple rate pegs have been set, with the rate peg calculated under the methodology which incorporates population growth.

Two further reforms apply to all councils across the State, including those councils harmonising their rating structures. Councils are now able to set separate rates for different residential areas in certain circumstances, whether or not they have different 'centres of population'. Further, all councils can now set farmland rates based on geographic location.

## Using this guidance

OLG is working closely with councils and other organisations to provide guidance on how best to take up these new options, including through this guidance document. This guidance is designed to help rating professionals and other council staff to understand the new options that are now available under the more flexible rating framework.

Section 1 of this document provides an overview of the rating reforms that formed part of the Amendment Act and the background to these reforms.

Section 2 then provides further detail about those reforms that took effect immediately on 24 May 2021 when the Amendment Act was assented to. This document covers what has changed, any options this provides for councils and what actions may be needed to take up those options.

## Next steps

This guidance does not cover other non-rating related reforms that formed part of the Amendment Act, or those further rating reforms which have been enabled but not come into effect.

An overview of the rating reforms including the immediate reforms and the reforms yet to commence are provided in Section 1 of this document.

OLG has formed a Local Government Rating Reference Group (Reference Group) to provide technical input as it prepares draft regulations and guidelines about those further rating reforms that will be enabled but have not come into effect.

The Reference Group is made up of a range of key stakeholders including council finance and rating professionals and Local Government NSW.

This will enable further consultation prior to the Minister for Local Government commencing those further rating reforms in the Amendment Act, by proclamation at a later date.

In addition, OLG will work with the Reference Group to develop an updated Rating and Revenue Raising Manual for the sector, which will draw on this guidance and provide an up-to-date reference point for rating professionals.

# Section 1

## Local Government Amendment Act 2021

The *Local Government Amendment Act 2021* (the Amendment Act) was passed by the Parliament on 13 May and assented to on 24 May 2021. The Amendment Act provides for changes to rating reform, made in response to the IPART 2016 local government rating review.

The Amendment Act also enabled superannuation contribution payments for councillors and aligned terms of office of chairpersons for county councils and joint organisations to their member councils and allows greater flexibility in the administration of elections. Separate guidance has been provided to councils on these reforms.

While the Amendment Act has been assented to, not all changes have come into effect yet. Some changes took effect on 24 May 2021, others will commence in future by proclamation once regulations and guidance, if required, have been developed to support implementation.

The Government is seeking to implement the key rating reforms in a way that is fair and reasonable for both councils and ratepayers. With that in mind, this guidance has been prepared to provide councils with information about each of the rating reforms that have commenced and advice about how it may be implemented.

## Overview of rating reforms

In June 2020 the Government committed to rating reform in response to the IPART's review of the local government rating system. This response acknowledged that local government and the communities they serve need to have a more flexible rating system, whilst ensuring rates are applied fairly and more equitably to local communities.

Reforms to the rating system were made through the *Local Government Amendment Act 2021* (the Amendment Act).

### Immediate reforms

Four rating reforms came into effect immediately on 24 May 2021. These are:

1. allowing each council created by merger in 2016 to bring together (harmonise) its rating structures gradually, over up to eight years, in consultation with its community
2. enabling a different rate peg to be set for each council, or for different cohorts of councils, and allowing it to be set as a methodology rather than a percentage, including by specifying a base percentage to which an additional figure may be added in specified circumstances
3. allowing all councils to set separate rates for different residential areas within a contiguous urban area, in certain circumstances, whether or not they have different 'centres of population', and
4. allowing all councils to set farmland rates based on geographic location.

### Reforms yet to commence

Six further rating reforms formed part of the Amendment Act but did not come into effect on assent. These will be commenced by the Minister for Local Government, the Hon. Wendy Tuckerman, by proclamation once supporting regulations and guidelines, if required, have been developed to support the change. These are:

1. allowing councils to levy a new type of special rate for services or infrastructure, whether or not they are a function of local government, above the rate peg, where these are jointly funded with the NSW Government or Australian Government



2. establishing a new, fifth rating category for environmental land – this will apply where meaningful development is constrained by geography or regulation that imposes significant restrictions on use of the land, such as some conservation agreements
3. enabling councils to set different rates for business land based on whether it is predominantly used for industrial activities
4. better targeting the existing exemption for land subject to a conservation agreement
5. providing councils that levy special rates for water and sewerage services with discretion about whether to exempt certain properties, and
6. limiting those future ratepayers eligible to postpone their rates due to a change in the permitted use of their land.

## Implementation timeline

The following table summarises when each rating reform will commence and to whom it applies.

**Table 1. Implementation of local government rating reforms**

Reform	Commences	Applies to	Comments
Gradual rates harmonisation	On assent	Merged councils only	Guidance in this document
Separate residential rates in contiguous urban areas	On assent	All councils	Guidance in this document
Farmland rates by location	On assent	All councils	Guidance in this document
Multiple rate pegs	On assent	All councils	Guidance in this document
New environmental land rating category	By proclamation at a later date	All councils	Guidance and supporting regulations will be developed prior to commencement
Change to exemption for conservation agreements	By proclamation at a later date	All councils	Guidance and supporting regulations will be developed prior to commencement
More flexible business rating subcategories	By proclamation at a later date	All councils	Guidance and supporting regulations will be developed prior to commencement
New special rate for joint infrastructure	By proclamation at a later date	All councils	Guidance will be developed prior to commencement

Reform	Commences	Applies to	Comments
Exemptions for certain special rates	By proclamation at a later date	All councils	Guidance will be developed prior to commencement
Limiting postponement of rates in future	By proclamation at a later date	All councils	Guidance will be developed prior to commencement

## Section 2

### Immediate rating reforms

Four rating reforms took effect immediately on 24 May 2021 and provide options that may already be taken up by councils. These are:

1. **Gradual rates harmonisation** – allowing each council created by merger in 2016 to bring together (harmonise) its rating structures gradually, over up to eight years, in consultation with its community
2. **Multiple rate pegs** – enabling a different rate peg to be set for each council, or for different cohorts of councils, and allowing it to be set as a methodology rather than a percentage, including by specifying a base percentage to which an additional figure may be added in specified circumstances
3. **Urban residential rating subcategories** – allowing all councils to set separate rates for different residential areas within a contiguous urban area, in certain circumstances, whether or not they have different ‘centres of population’, and
4. **Farmland rates by location** – allowing all councils to set farmland rates based on geographic location.

In relation to each of the above reforms, the following guidance covers what has changed, any options this provides for councils and what actions may be needed to take up those options.

#### Gradual rates harmonisation

##### What is this change about?

In 2017, the *Local Government Act 1993* (the LG Act) was amended to ‘freeze’ the rates path of new councils created in 2016 for four years so that ratepayers would pay the same rates as they would have if the council had not merged for an initial period. In 2019, the LG Act was amended so that the Minister could allow councils formed in 2016 a further year to harmonise their rates, until 1 July 2021. Ultimately, seventeen councils took up the extension of time.

As part of its response to IPART’s 2016 rates review, the Government agreed to IPART’s recommendation to allow new councils the option to gradually harmonise rates across their former council areas.

##### What does the legislation say?

See Schedule 8, Part 41 Division 1 and Division 2, *Local Government Act 1993*

##### What does this mean in practice?

Under the Amendment Act, from 24 May 2021, each new council is able to decide whether to harmonise its rate structure gradually over up to eight years. Importantly, councils that chose to harmonise gradually were required to set out their intended approach over all relevant years in their Integrated Planning and Reporting (IP&R) documents.

Each of these councils has now determined its way forward – some have taken up the option to gradually harmonise their rating structure over more than one year, while others have chosen to move to a new rating structure in a single financial year.

**Q Can a council pass a further resolution changing its way forward?**

**A** Yes, a council can pass a new harmonisation resolution changing its intended harmonisation path in future years. A council cannot, however, change its resolution in respect of the current year or past years where a rates notice has already been levied. Any further resolution must also still comply with the 'no more than 50% in any one year' rule and cannot extend beyond the eight year period legislated.

Councils that took up the gradual harmonisation option will need to apply no more than 50% of the total increase in rates at the rating category level over the period, in any one of the eight financial years. Rather than set a maximum percentage increase each year, this allows each new council to set rates each year according to community needs and prevailing economic conditions and to account for different legacy rating structures, in consultation with their communities.

The '50% in any one year' cap ensures that councils that choose this option take a gradual approach that protects ratepayers against sudden and excessive rate rises in any specific year. This will not, however, preclude rates from increasing due to changes in land valuation, special rates or any special variation.

**What does this mean for my council?**

This rating reform only applies to those seventeen councils that were formed in 2016 that did not harmonise their rating structures before 1 July 2021. Each of these councils has set out its path to move to a single rating structure and issued rates notices for 2022-23.

**Multiple rate pegs****What is this change about?**

The NSW Government committed to aligning rating income growth with population growth within the rate pegging system. This will help councils provide for growing communities while still protecting residents from sudden, excessive rate rises.

To kick-start this reform, the Government asked IPART to recommend a new rate peg methodology that allows the general income of councils to be varied annually in a way that accounts for population growth.

Through the Amendment Act, the LG Act was then changed to clarify that an order for the variation of general income (i.e. setting the rate peg each year) may:

- specify different percentages for different areas of councils, and
- specify a methodology for calculating a percentage rather than specifying a particular percentage, including by specifying a base percentage to which an additional figure may be added in specified circumstances.

**What does the legislation say?**

See new sub-section 506 (2), *Local Government Act 1993*.

## What does this mean in practice?

Essentially, more than one rate peg can be set which means that different percentages can be set for different councils. Further, the order that sets out the rate peg can specify a methodology to calculate a percentage for the rate peg, or a base percentage plus an additional figure.

Since this reform came into effect, IPART concluded its review of the rate peg to include population growth and issued a Final Report in October 2021. The Government accepted IPART's recommendation that a new rate peg methodology apply from 2022-23.

Essentially, this adds a new, council-specific population factor to the current methodology. The population factor will equal the maximum of the change in residential population less the supplementary valuations percentage (or zero). This means that:

- if a council experiences no growth or has a declining population the population factor will be zero, and that council will be no worse off
- councils that have recovered income from supplementary valuations will have that percentage deducted from the change in their residential population.

Under the new methodology, a separate rate peg will be determined and published each year for each council. The following formula sets out the methodology:

Rate peg = Change in Local Government Cost Index (LGCI) – productivity factor + other adjustments + *population factor*

*Population factor* = max (0, change in population – *supplementary valuations percentage*)

*Supplementary valuations percentage* = max (0, supplementary valuations/notional general income yield).

### **Q How are supplementary valuations calculated for 2022-23?**

A The total value of adjustments to a council's general income for 2019-20 that the council made under s.509(2)(b) and (c) of the LG Act. This is the amount recorded as 'plus/minus adjustment' for 2020-21 in each council's 'Special schedule – Permissible income for general rates' submitted to the OLG.

### **Q What is my council's notional general income yield?**

A The general income of the council for the previous financial year prior to adjustment under paragraphs 509(2)(b) and (c) of the LG Act.

The methodology does not change the operation of the supplementary valuation process under the *Valuation of Land Act 1916* or the calculation of notional general income under section 509(2) of the LG Act. Councils will still calculate their notional general income in the same way as they do now. The rate peg methodology will, however, account for the value of supplementary valuations when determining the population factor to be applied.

### What does this mean for my council?

This rating reform was made to ensure that a new rate peg methodology which takes account of population growth could be made. Since this reform came into effect the Government has accepted IPART's recommendation that a new rate peg methodology which includes population growth be applied.

Each year, IPART will publish on its website:

- a rate peg for each council based on the methodology, and
- the change in residential population for each council, based on ABS data for the previous two years, and
- the supplementary valuations percentage for each council.

Each council should:

- Review further information about this process on [IPART's website](#).

In future, each council may also choose to:

- review its Statement of Revenue Policy and financial modelling in light of likely future income from this change to the rate peg methodology
- consider if this changes any plans to apply for a Special Variation (SV)
- consider how council's current rating structure, including any rating subcategories, may impact how the burden of any increased rates will be distributed amongst different types of ratepayers
- not apply the full percentage increase of the rate peg (or any applicable Special Variation) in any one or more of the next 10 years and to return it to the original rating trajectory
- consider the impact of this change in reviewing its IP&R documentation, including Long Term Financial Plans, and
- consider the impact of future supplementary valuations in its local area.

## Urban residential rating subcategories

### What is this change about?

Until this rating reform came into effect, the LG Act prevented councils from applying different residential rates on properties within a single 'centre of population.' This has effectively prevented councils in urban areas from setting different rates in different locations across their local government area, as occurs in regional and rural NSW.

As part of its response to IPART's review, the Government agreed to:

- allow councils to separate residential rates in contiguous urban areas if there is, on average, different access to, demand for, or cost of, providing services and infrastructure
- apply a limit so that the highest rate structure is no more than 1.5 times the average rate structure across all residential subcategories (i.e. so the maximum difference between the highest and average rates, including ad valorem rates and base amounts, is 50%) except any new vacant land subcategory, and
- enable councils to apply for approval to exceed this limit.

### What does the legislation say?

See new sub-sections 529(2), 529(2A) and 529(2B) and section 530 *Local Government Act 1993* and clause 124 Local Government (General) Regulation 2021.

A council can create different rating subcategories for residential land in contiguous urban areas, provided the council is satisfied on reasonable grounds that it is necessary to differentiate residential areas because of significant differences between the areas in relation to access to or demand for, or cost of, providing services and infrastructure.

Prior to this rating reform coming into effect, councils in regional and rural NSW could also effectively set different residential rates by 'centre of population'. Where that was already possible, these councils need not meet any new or additional criteria.

For the purpose of setting different rating subcategories for residential land, 'contiguous urban area' has not yet been defined by any regulation or Ministerial Guideline. This may however capture a portion of an area that is urban in nature and comprises residential land where the properties within that area, taken together, are not entirely separated by land that falls within other rating categories.

Councils are required to use geographic names published by the Geographical Names Board to objectively define different residential areas to which to apply different residential rates, rather than being enabled to simply draw 'lines on a map'. While an alternative option may be prescribed by regulation, no regulation has been made to date.

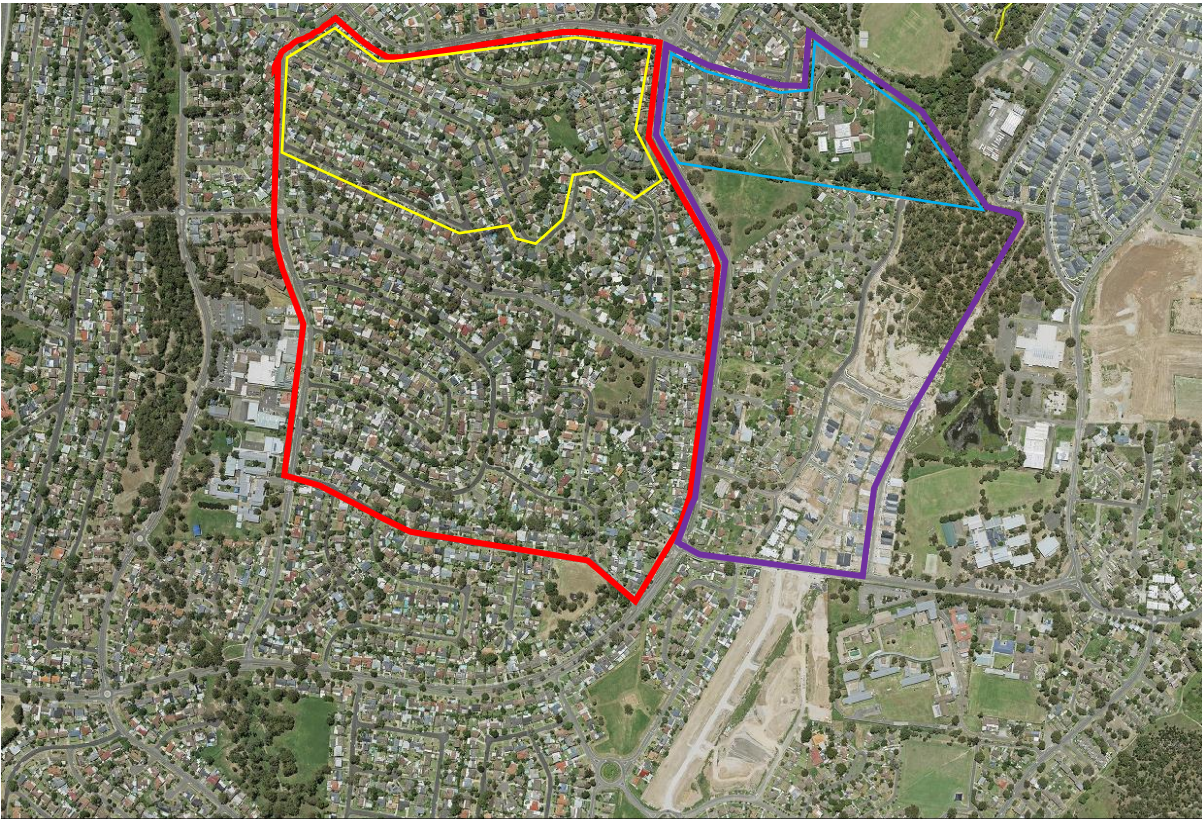
In setting a rating structure for different subcategories of residential land, the maximum difference between the highest and average rates, including ad valorem rates and base amounts, is 50%. This factor has been prescribed by regulation. This means that a limit applies so the highest rate structure is no more than 1.5 times the average rate structure across all residential subcategories, with the capacity to change this ratio in future by regulation.

Further, a council can seek approval to exceed this limit. This power has been delegated by the Minister for Local Government to IPART to exercise. This limit does not apply to a rating subcategory for vacant land.

The Minister is able to make further regulations and to issue guidelines that must be followed by councils in setting these rates including how the provisions may be used appropriately by councils. If developed, these further guidelines may cover matters such as community consultation requirements under the IP&R framework and publication of key matters and their rationale in each year's Statement of Revenue Policy.

An example of residential sub-categorisation is provided in Figure 1 below. The areas outlined in red and purple are a 'place' within the meaning of the *Geographical Names Act 1966*. Each area is not a 'centre of population' because it is surrounded by other residential land and is not a contiguous urban area in its own right.

Figure 1: Example of residential sub-categorisation



### What does this mean for each council?

This option may be taken up by any council that chooses to do so and has one or more contiguous urban areas.

Using the example in Figure 1, council can:

- Subcategorise the area in yellow as a sub-category of the area in red because the red outlined area is a geographical location within the meaning of the *Geographical Names Act 1966*.
- Subcategorise the area in blue as a sub-category of the area in purple because the purple area is a geographical location within the meaning of the *Geographical Names Act 1966*.
- Subcategorise the areas in red and purple to be in a subcategory separately or together because they are a geographical location (as a condition under Section 529).

Using the example in Figure 1, council cannot:

- Subcategorise the areas in yellow and blue as one conjoined sub-category because they are across two separate geographical locations within the meaning of the *Geographical Names Act 1966*.
- Create residential sub-categories to address or be based on valuation movements.



Each council must:

- Be satisfied on reasonable grounds that it is necessary to identify residential areas because of significant differences between the areas in relation to access to or demand for, or the cost of, providing services or infrastructure – see section 529(2A) of the LG Act.
- Publish the reasons for doing so on its website as soon as practicable after making the rates, and set out the reasons in councils Statement of Revenue Policy in its operational plan for the year concerned – see section 530(7)(a) and 530(7)(b).

Each council should:

1. Ensure the new rating category is included in councils operational plan with relevant maps (as required by the IP&R Framework)
2. Ensure the new rate (structure rate in dollar, base or minimum) is included in councils Statement of Revenue Policy
3. Ensure affected landowners are notified in accordance with Section 520 of the LG Act.
4. Ensure decisions are fair, transparent and defensible.

### **In-Practice Scenario**

Best Council proposes the following ordinary rates:

Residential Ordinary	0.0345	subject to minimum \$500
Residential subcategory Smithville	0.0300	+ base amount \$100
Residential subcategory Jonestown	0.0400	+ base amount \$50

#### **Test to apply:**

*Ad valorem rate* –

The highest ad valorem rate is Jonestown. The average of the other two is 0.03225. Multiply the average rate by 1.5 = 0.048375. The proposed rate of 0.0400 is within the maximum allowed.

*Base amount* –

The highest base amount is Smithville. There is only one other base amount of \$50. Multiply the 'average of all other rates' (i.e. \$50) by 1.5 = \$75. The proposed \$100 base amount exceeds the maximum allowed.

*Minimum rate* –

Minimum rates are to be the same within a category unless approved by the Minister (refer section 548(8)). The 1.5 factor does not apply to minimum rates.

## Farmland rates by location

### What is this change about?

Until this rating reform came into effect, the LG Act only permitted councils to sub-categorise farmland according to intensity of land use, 'irrigability' of the land or economic factors affecting the land. This was inflexible, subjective and difficult to apply in many council areas in an equitable way.

As part of its response to IPART's review, the Government agreed to allow councils a further option to set different farmland rates based on geographic location. To minimise disruption for councils in regional and rural NSW with rating structures that rely on the current provisions, this does not alter councils' existing options.

### What does the legislation say?

See new sub-sections 529(2) and 529(2B) *Local Government Act 1993*.

### What does this mean in practice?

This option may enable councils to more fairly distribute the burden of rates by creating rating subcategories that better reflect productivity, are easier to assess and may be more likely to reflect access to council services by landholders.

Councils that choose to take up this option are required to use geographic names published by the Geographical Names Board to objectively define different farmland areas to which to apply different farmland rates, rather than being enabled to simply draw 'lines on a map'. While an alternative option may be prescribed by regulation, no regulation has been made to date.

### What does this mean for my council?

This option may be taken up by any council that chooses to do so.

Each council should:

- Ensure the community is aware of the new sub-categories and the reasons for doing so are clearly set out.
- Ensure the new rating category is included in councils operational plan with relevant maps (as required by the IP&R Framework)
- Ensure the new rate (structure rate in dollar, base or minimum) is included in councils Statement of Revenue Policy
- Ensure affected landowners are notified in accordance with Section 520 of the LG Act.
- Ensure decisions are fair, transparent and defensible.
- Refer to the *Valuation of Land Act 1916* section 27(2) about where lands are to be separately valued.

## Further information

This document provides guidance on the rating reforms that came into effect in 2021.

OLG will continue to work with the Reference Group, councils and other key organisations to provide guidance and support about the rating reforms yet to commence.

In addition, the Reference Group will play a key role in developing an updated Rating and Revenue Raising Manual for the sector.

## Relevant resources

- The Local Government Amendment Act 2021 is available at <https://legislation.nsw.gov.au/>.
- IPART's final report on the local government rating system is available at <https://www.ipart.nsw.gov.au/Home/Industries/Local-Government/Reviews/Local-Government-Rating-System/Local-Government-Rating-System>
- The Government's response to IPART's review of the local government rating system is available at <https://www.olg.nsw.gov.au/wp-content/uploads/2020/06/IPART-Rating-Review-Government-Response.pdf>
- A range of rating resources including the Council Rating and Revenue Raising Manual are available on OLG's website at <https://www.olg.nsw.gov.au/councils/council-finances/financial-guidance-for-councils/rating-and-special-variations/>