

2020

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

RATES AMENDMENT BILL 2020

EXPLANATORY STATEMENT

**Presented by
Andrew Barr MLA
Treasurer**

RATES AMENDMENT BILL 2020

The bill has been determined not to be a significant bill.

OVERVIEW OF THE BILL

The Rates Amendment Bill 2020 ('the Bill') amends the *Rates Act 2004* (Rates Act).

Average unimproved value

The Bill amends the Rates Act to lengthen the period used to calculate the 'average unimproved value' of parcels of land in the Territory, extending the period from three (3) years to five (5) years.

The change to the period for determining the average unimproved value of properties for commercial purposes was announced in the 2019-20 Budget. The average unimproved value of residential and rural properties will also be extended to a 5-year period. This change affects the determination of rates, the fire and emergency services levy, the city centre market improvement levy, land tax and the foreign ownership surcharge.

The Bill provides for the change to be phased in, whereby:

- for the 2020-21 rating year – the average unimproved value of properties will be based on an average of four years of unimproved values; and
- for the 2021-22 rating year and beyond – the average unimproved value of properties will be based on an average of five years of unimproved values.

The legislative changes proposed in the Bill primarily involve amendments to the definition of 'average unimproved value', which previously appeared within the Dictionary to the Rates Act.

Airport land 'growth index'

A consequential amendment is required to the formula for 'growth index', which is used in the calculation of the 'AUV' of Airport land under Part 5A of the Rates Act. Other formulae referencing average unimproved value throughout the Act will not require amendment.

The calculation of the growth index for a particular year involves looking at the total average unimproved value of all commercial land in the Territory (other than airport land) and working out the percentage by which there has been a change in value from the previous year.

The Bill provides for a consequential amendment to a component of the growth index formula. This amendment is to ensure that, during the phase in period for 5-year average of unimproved values, the change in commercial land average unimproved value is calculated on a consistent basis using the same parameters.

Unimproved value of varied nominal rent leases

The Bill also amends the Rates Act to require the Commissioner to redetermine the unimproved value of a parcel of land as soon as practicable after a lease is varied. The process is linked to chargeable variations of nominal rent leases under the *Planning and Development Act 2007*. In these circumstances, in calculating the average unimproved value for rating purposes Crown leases subject to variation will be treated as not having previously been rateable.

These amendments clarify and improve current practice to require the Commissioner to redetermine the unimproved value of a parcel after the lease has been varied.

Commencement

The amendments will commence on 1 July 2020 to align with the imposition of rates for the 2020-21 financial year.

CONSULTATION ON THE PROPOSED APPROACH

The Legislative Assembly Standing Committee on Public Accounts Committee (PAC) *Inquiry into Commercial Rates* during 2018-19, made several recommendations about substantial, unanticipated increases in rates due to uplifts in property values.

In the 2019-20 Budget, the Government, in response to the Inquiry announced that it would lengthen the period used to calculate the average unimproved value for commercial properties from 2020-21 and in effect reduce the impact of sudden increases in rates.

CONSISTENCY WITH HUMAN RIGHTS

Right engaged

The Bill promotes the right to privacy and home. The Bill does not limit human rights.

The extension of the period used to calculate the average unimproved value of parcels of land in the Territory will play its part, over time, to provide many property owners with benefits as different suburbs undergo periods of growth in demand due to factors including population growth, demographic shifts, and property market conditions.

The extension of the period used to calculate the average unimproved value is applied consistently across land types, as it is currently applied under 3-year averaging approach. Accordingly, the right to equal protection of the law under section 8(3) of the *Human Rights Act 2004* (HR Act) is not engaged.

Other amendments in the Bill are technical or consequential in nature.

The Bill does not alter the rights of individuals in relation to the administration and enforcement of tax laws.

The promotion of the right to privacy and home

The right to privacy and home in section 12 of the HR Act, is supported as there will be a further smoothing of the impact of unexpected, sharp increases in unimproved values (through rates and other taxes) for individual property owners. This will lessen unpredictable shifts in rates and assist to support individual owners in the maintenance of the home. The impact of similar increases on commercial property owners was raised in the PAC *Inquiry into Commercial Rates* during 2018-19.

The change to the averaging period does not disproportionately affect any particular social or economic group. There are multiple components to the calculation of rates (for example, marginal rating factors applied against different levels of average unimproved values) affecting outcomes that are considered through Budget processes.

Any efforts to reduce the impact of substantial and unexpected changes in unimproved values will result in some level of distributional change in the outcomes to individuals for rates. Alternate approaches would require more whole-scale systemic and administrative changes to the rating system.

Rates Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Rates Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

CLAUSE NOTES

Clause 1 Name of Act

This clause provides the name of the Act is the *Rates Amendment Act 2020*.

Clause 2 Commencement

This clause provides the Act commences on 1 July 2020.

Clause 3 Legislation amended

This clause provides the Act amends the *Rates Act 2004* (Rates Act).

Clause 4 Meaning of *unimproved value* Section 6(3), definition of *prescribed date*, paragraph (c)

This amendment is a consequential change to recognise the amendments to redetermination of unimproved values for land under section 11A and the new section 11B described herein.

Clause 5 Redetermination—error Section 11 (3), example and note

This clause amends an example within section 11 to reflect amendments to provide for calculating ‘average unimproved value’ of land based on up to a 5-year average.

Clause 6 Section 11A heading

Clause 7 Section 11A (1)

Clause 8 Section 11A (5), example and note

These clauses amend the application of section 11A to exclude from its scope the redetermination of unimproved values for a parcel of land for changes of circumstances now considered under new section 11B.

An example within section 11A is also omitted since changes of circumstances arising from chargeable variations to nominal rent leases are now dealt with under the new section 11B.

Clause 9 New section 11B

Clause 10 New section 13A [section 13A (2)]

Clause 12 Dictionary, note 2

New section 11B provides that if there is a chargeable variation of a nominal rent lease in relation to a parcel of land (under Division 9.6.3 of the *Planning and Development Act 2007*), then the unimproved value of the parcel must be redetermined, and that redetermination will take effect from when the planning and land authority executes the change to the Crown lease.

The change in mechanism retains the effect of section 11A – that is, from the date a chargeable variation to the nominal rent lease is executed, the Crown lessee will be required to pay rates on the basis of the unimproved value of the lease as varied.

Under new section 13A (2), the average unimproved value of the parcel will be determined as if the parcel had not been rateable prior to the time the Crown lease of the parcel is varied. This has the effect that where a Crown lease variation occurs during a rating year, rates will be re-assessed using a pro rata application of average unimproved values based on the date of the lease variation. For example, if a lease variation came into effect on 1 October then the rates for the property would be calculated based on one-quarter of the year using the average unimproved value as at 1 July and three quarters of the year using the new average unimproved value as at 1 October.

Under clause 12, ‘planning and land authority’ is defined by inclusion in a note to the Dictionary of the Rates Act referencing definitions in the *Legislation Act 2001*.

Clause 10 New section 13A [section 13A (1)]

Clause 13 Dictionary, definition of *average unimproved value*

These clauses amend the meaning of ‘average unimproved value’ to extend the period for calculating average unimproved value for properties to five years. This change will be reflected in the calculation of general rates, fire and emergency services levy, the city centre market improvement levy, land tax and foreign ownership surcharge.

New section 13A(1) provides for a phased introduction of the extended averaging such that, for the 2020-21 year the average unimproved value for properties is determined based on up to the previous four years’ unimproved values; and from the 2021-22 year onwards, average unimproved value is based on a 5-year average.

The associated reference in the Dictionary to the Act for average unimproved value is also amended to refer to new section 13A.

**Clause 11 Working out growth index
New section 40E (3) to (5)**

This clause amends the formula for working out the ‘growth index’ used in the calculation of AUV, which is then used for the calculation of rates for airport land. It is a consequential amendment to provide for the growth index to be calculated each year based on consistent averaging periods while the 5-year average unimproved value is phased in.

Specifically, new sections 40E(3) and 40E(4) provide for the ‘first commercial land AUV’ to be determined based on averaging period of:

- four years of unimproved values for relevant commercial land for the 2020-21 rating year; and

- five years of unimproved values for relevant commercial land for the 2021-22 rating year.

These new sections, read with new section 13A(1), operate to define the average unimproved values for relevant commercial land (in 2020-21) that have been rateable for less than four years, and (in 2021-22) relevant commercial land that have been rateable for less than five years.

New sections 40E(3) and 40E(4) will expire on 30 June 2022 under new section 40E(5). From the 2022-23 ratings year, the 'first commercial land AUV' will be based on the average unimproved value period of five years.

This amendment to section 40E in the Bill will ensure that, for the 2020-21 rating year for example, both the 'second commercial land AUV' (being the total of average unimproved values of relevant commercial land in relation to 2020-21) and the 'first commercial land AUV' (being the total of average unimproved values of relevant commercial land in relation to 2019-20) are calculated consistently using an average of unimproved values for commercial parcels rateable up to the preceding four years. Otherwise, in 2020-21 the comparison would be between the 'second commercial land AUV' (based on a 4-year average) versus the 'first commercial land AUV' (a 3-year average in 2019-20).