

14 EXEMPTIONS FROM LIABILITY FOR RATES

The Local Government Rates Inquiry was asked in its terms of reference to examine the impact and ongoing need for existing exemptions from liability for rates, including Crown exemptions from liability for rates. In undertaking this task the Panel reviewed each of the current statutory exemptions and considered submissions from local authorities that illustrate the effects of such exemptions.

SUMMARY OF KEY POINTS

14.1 Statutory exemptions from the liability for rates apply to the categories of non-rateable and 50% non-rateable land listed in Schedule 1 of the Local Government (Rating) Act 2002.

14.2 Exemptions have been part of national rating legislation since 1867, and the number and categories of exemptions have grown since. The original need or justification for exemptions is not clear. Crown land exemptions probably reflected the historic perspective that the Crown was not bound by the law and the old common law concept that the Crown should not have to pay tax on the land it owns. Other exemptions probably reflect a perceived community benefit.

14.3 The Panel has considered the arguments supporting exemptions that were advanced when the rating powers legislation was reviewed in 2001. It considers these do not justify retaining a blanket statutory exemption on either Crown or non-Crown land. The Panel's conclusion is that land should not be exempt from rates, unless there is a clear justification.

14.4 Exempt land is still liable for a limited range of targeted rates but not liable for general rates, uniform annual charges, and other targeted rates. The Panel considers that all landowners benefit, to greater or lesser extent, from the services offered by councils. Exemptions from rates mean that other ratepayers must pick up the costs. The impact of exemptions averages about 4% of local authorities' rates, but the impact on some local authorities is more significant.

14.5 Almost universally, local government supports removing statutory exemptions and having the power to determine what land should continue to be exempt. Local government would exercise this power through its rates remission policies. The Panel supports this position, which is consistent with the principles of strengthening local autonomy and the partnership between central and local government. It also provides the opportunity for a more consistent approach to the remission of rates for community and charitable organisations.

14.6 The Panel considers that a strong case can be made to exempt Crown land from rates where land involves a nationally important public good, provides clear net national benefits, and where a reasonable valuation of the land is difficult to establish.

14.7 The Panel believes there is a strong case for retaining the existing statutory exemption on the following categories of land:

- national parks, reserves, and conservation areas, most of which are administered by the Department of Conservation, and also other land used for conservation purposes that is open to the general public.
- Crown land that is part of any foreshore, territorial seabed, or the bed of any navigable lake or river.
- land vested in roads
- Parliament and vice-regal residences.

The reasons for continuing these exemptions are discussed in the body of the report.

14.8 The Panel acknowledges that the removal of exemptions is a major policy change with financial implications for the Government and uncertainty and potential costs for other parties. It considers that additional costs to Government-funded institutions from their becoming liable for rates should not be at the expense of services, and funding should be increased, and in the case of schools provided centrally to meet these costs.

14.9 The Panel expects that many categories of land that would lose their statutory exemption would be given a similar exempt status in the rates remission policies of local authorities. The Panel also expects a high degree of consistency in the new remission policies developed by local authorities. However, this decision is one for each council to make.

14.10 There are a number of categories of Māori land in Schedule 1. The Panel considers these should continue to remain statutory exemptions and provision for this should be made in Te Ture Whenua Maori Act 1993.

14.11 The removal of exemptions should be clearly communicated in advance and sufficient time provided before its implementation to enable local authority rates remission policies to be reviewed. The Panel considers that this could be implemented in 2009 when local authorities next review their long-term council community plans.

14.12 The Panel also considers that the powers of local authorities to set targeted rates on exempt land should be extended and that regional councils should have the same powers.

14.13 A second possible measure that could help local authorities with the impact of exemptions is the payment of grants in lieu of rates on Crown land. Government officials have been considering this measure for some time. The Panel's view is that this is very much a "second best" option to the removal of exemptions.

What were we asked to do and what approach did we take?

14.14 The Panel was asked to examine the impact of and ongoing need for existing exemptions from liability for rates, including Crown exemptions. In doing this it looked at the reasons behind rates exemptions, the impact of exemptions on councils and on the owners of exempt land, and what it would mean for all parties if the land were liable for the full payment of rates. The Panel obtained independent policy advice on the issues.²⁰⁰

²⁰⁰ Philipson, Ross, *Exemptions from Liability for Rates*, Report to the Local Government Rates Inquiry, Ross Philipson Consulting Limited, 2007 (available at <http://www.ratesinquiry.govt.nz>; referenced subsequently in this chapter as the "Philipson report to the Rates Inquiry").

What land is exempt?

14.15 The Local Government (Rating) Act 2002 provides for certain categories of land to be non-rateable. Schedule 1 of the Act lists 22 categories of land that are exempt from most rates, and three categories of land that are 50% non-rateable (see Table 14-1).

14.16 Land owned or used by the Crown for defence establishments is liable for rates; but local authorities can only collect rates based on a property's land value,²⁰¹ and only one uniform annual general charge may be collected regardless of the number of dwellings on the property. In effect, this is a partial exemption from rates. The Panel concludes that this partial exemption should be removed.

Why was land exempted from rates?

14.17 The Panel was advised that there have been statutory exemptions from rates since 1876, when New Zealand's provinces were disestablished and the funding of local government from rates was centralised.²⁰²

14.18 All three of the exemptions placed in the 1876 rating legislation exist today, although with different wording: "land in the property of Her Majesty", "land occupied by churches and chapels", and "land over which native title has not been extinguished".²⁰³

14.19 The Parliamentary record is silent on the reasons given for these exemptions.²⁰⁴ It is, however, reasonable to assume that exemption of Crown land reflected the historic perspective that the Crown was not bound by the law and the old common law concept that the Crown should not pay tax on the land it owns.

14.20 The exemption provided for churches probably reflected the community value of these institutions. The provision remains, in a wider form, in the current rating legislation.

14.21 The exemption of native title flowed on from exemptions in the rating laws of the provinces.²⁰⁵ This provision remains, in part, in the exemptions currently given to Māori customary land, Māori burial grounds, Māori reservations, and marae.

14.22 Since 1876 the categories of exemptions have grown into the long list in Schedule 1 of the Local Government Rating Act. In some cases previously exempt land has become fully rateable, mainly through the sale of Crown assets and the devolution of functions to entities that are legally separate from the Crown. Local government has benefited from these policy changes as more land has become liable for rates. For example, State-owned enterprises (such as Housing Corporation and Landcorp) and Crown research institutes pay full rates.

Impact of exemptions on councils

14.23 Councils with significant levels of non-rateable land have three major concerns about the impact on their ratepayers:

- ♦ that ratepayers bear the costs of delivering services which primarily, and in some cases exclusively, benefit non-rateable land

201 Local Government (Rating) Act 2002, section 22(2).

202 Philipson report to the Rates Inquiry.

203 The Rating Act 1876 section 37.

204 The Rating Bill, second reading, 7 July 1876, Parliamentary Debates, Vol. 20, 15 July–28 July.

205 Bennion Tom, *Maori and Rating Law*, Waitangi Tribunal Rangahaua Whanui National Theme I, 1997, p. 5.

Table 14-1 Summary of the categories of non-rateable land, Local Government (Rating) Act 2002

Clause of Part 1	Part 1 of Schedule 1: Land fully non-rateable
1	National parks, reserves, and conservation areas
2	The foreshore, seabed, lakes, and rivers
3	Publicly accessible land owned by private entities for conservation purposes, which is not for profit
4	Land used by local authorities for the provision of various amenities (such as parks, swimming pools, and libraries) or for soil conservation and river control, for which no revenue is received
5	Land owned or used by certain named charitable trusts
6	Schools and early childhood centres that do not operate for profit
7	Religious institutions
8	Hospitals
9	Churches and other places of worship
10	Cemeteries and crematoria
11	Māori customary land
12	Marae, Māori reservations, and meeting places
13	Māori meeting houses
14	Māori land that is non-rateable by virtue of an Order in Council
15	Electricity generation and transmission equipment
16	Any land declared non-rateable by other Act of Parliament
17	Roads
18	Operational areas of airports
19	Operational areas of railways, owned by New Zealand Railways Corporation
20	Wharfs
21	Land used for charitable purposes
22	Parliament and vice-regal residences
Clause of Part 2	Part 2 of Schedule 1: Land 50% non-rateable ¹
1	Agricultural and Pastoral Society (A&P) showgrounds
2	Sports grounds (excluding horse and greyhound race tracks)
3	Land used for the arts

¹These three categories of land must not be for profit, and not hold a liquor licence.

- that the Crown benefits from council services whose cost cannot be recovered through targeted rates (for example, district plan administration)
- that non-rateable land reduces the total rates base, with the result that either a reduced level of services is provided or the rates bill is higher than it would otherwise be.

14.24 The financial impact of exemptions on councils is thus the rates revenue forgone. For many councils, this is not a substantial proportion of their revenue. The Local Authority Funding Project reported that approximately 4% of the total value of land in New Zealand is in exempt properties.²⁰⁶

²⁰⁶ Local Authority Funding Project (phase one), *Local Authority Funding Issues*, Report of the Joint Central Government/Local Authority Funding Project Team, Wellington, 2005, p. 37.

But for some councils, and particularly those with significant areas of Crown land, the exemption from rates is seen as imposing a considerable cost.

14.25 Almost all exempt land is valued. However, there is a question whether the valuations of exempt land are fair and reasonable, given the nature of the land involved. For example, the Crown's conservation estate often consists of rugged, remote land of little productive value, and the Panel questions whether the valuation ascribed to this land is necessarily appropriate. Because these lands are exempt from rates, there has been no need to critically question the valuations currently made. The discussion below draws on information provided by councils and is based on valuation information. Although the valuations can be questioned, the Panel accepts this information as reasonably illustrating the impact on local authorities of statutory exemptions.

14.26 The submissions received from the three West Coast district councils – Buller [S432], Grey [S601], and Westland [S558] – indicate that non-rateable land makes up 85% of total land area and 27% of total land value. Although much of this land is non-rateable Department of Conservation (DOC) land, which the Panel considers should remain exempt, councils, nevertheless, incur related costs.²⁰⁷

14.27 Westland District Council [S558] estimated the total cost to it of the Crown's share of roading, waste management, public toilets, district inspections, resource management, and governance was \$656,252 or 21.3% of its total expenditure. The council calculated that even if the rating exemption for all Crown land were removed, at current rating levels the Crown would pay \$407,510, below what the council sees as the actual cost of the main services from which the Crown benefits.²⁰⁸ In particular, councils may incur costs concerning DOC land for roading access and pest control, which at present cannot be recovered through targeted rates. These costs should be able to be recovered by extending the range of targeted rates on exempt land.

14.28 The situation of Dunedin City [S755] illustrates the situation faced by one metropolitan council with a significant number of large properties exempt from rates. Table 14-2 shows the impact of all non-rateable property on the council's rates revenue, and illustrates the rating impact of exemptions for the University of Otago and churches.

14.29 The Panel notes that the University of Otago occupies office and other space in the central business district and can see no reason why it should not pay rates on the same basis as adjacent commercial properties. The Panel does not claim that the West Coast councils and Dunedin City are typical of local authorities throughout New Zealand, but their situation illustrates the significant impact that land exempt from rates can have on some councils.

Impact of exemptions on the Crown

14.30 Crown land is held for many purposes; conservation, education, health, defence, transport, and utilities are the major ones. The vast majority of the land is DOC land, which accounts for almost all (97%) of Crown non-rateable land by land area. By capital value, however, 50% of land is used by the education sector, 18% by conservation, and 15% by district health boards (see Chart 14-1).

14.31 The Panel examined the extent to which various agencies benefit from the Crown exemptions. Using 2005 values it is estimated the total rates payable would be approximately \$120 million per year.²⁰⁹ This is net of any targeted rates already collected.

207 Submission from Grey District Council [S601], p. 3.

208 Reeves, Robin, "The exemption of Crown land from rates, and its effects in Westland District", Draft Position Paper, Westland District Council, pp. 6–7.

209 This figure of \$120 million is an estimate supplied by the Department of Internal Affairs, which acknowledges the "lack of robustness" in some valuation information.

Table 14-2 Effect on rates revenue of non-rateable properties in Dunedin City Council

	Example non-rateable property: University of Otago	Example non-rateable property: churches ¹	Total non-rateable property
Capital value (\$)	429,009,350	49,552,000	1,107,228,580
Rates, targeted, 2006/07 (\$)	1,204,017	13,000	3,107,443
Estimated rates if fully rateable (\$)	3,714,224	582,445	9,586,079
Rates "loss factor"	3.08	44.80	
"Subsidy" per residential property ² (\$)		12	198

Source: based on information from Dunedin City Council. Data are indicative only. Notes: ¹Excludes halls and houses which are fully rateable. ²Number of residential properties = 48,420.

14.32 Broadly the rates on Crown land for the main categories of land use would be as follows:

- conservation, \$21.7 million
- education, \$59.2 million
- health, \$17.8 million
- railways, \$10.2 million.

14.33 The balance of the \$120 million is split between 19 other Crown agencies. The Panel has not established the amount involved in the current "partial exemption" provided for Defence land.

Reasons for land continuing to be exempt

14.34 In the work done for the 2000–2001 review of the rating powers, officials said "no single, clear and coherent policy rationale has been identified as underlying all the current exemptions."²¹⁰

14.35 The Panel was advised that more recent work undertaken by officials as part of the Local Authority Funding Project²¹¹ acknowledged that the policy rationale for each exemption varies but considered that it is generally one or more of the following:

- Properties are held for public good purpose (that is, they are meeting some national good purpose).
- Properties have no or very limited economic use and thus may not be able to pay rates.
- Properties do not consume services provided by local authorities, or consume only limited amounts.

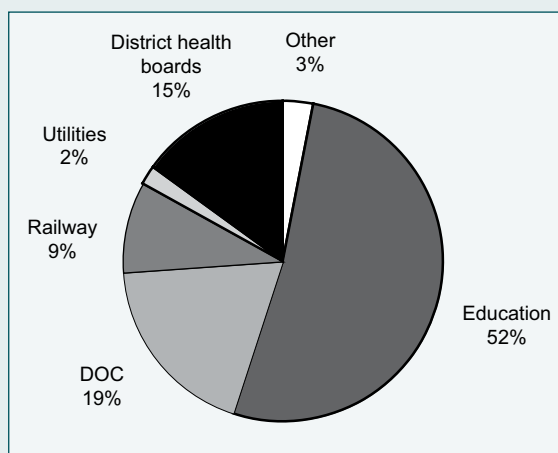
14.36 More specific reasons have been advanced to justify exemptions on different categories of land. These are discussed below under four broad headings: conservation, education and health, religious and charitable, and transport.

210 *Review of the Local Government Funding Powers, Progress Report to the Minister of Local Government, Department of Internal Affairs, Wellington, 18 December 2000.*

211 Advice received from the Department of Internal Affairs.

Chart 14-1**Non-rateable Crown land by capital value, 2004/05**

Source: Philipson report to the Rates Inquiry. Note: DOC = Department of Conservation.



Conservation estate

14.37 The following reasons are commonly asserted in support of the conservation land exemption:

- ✦ Conservation land attracts tourists who enhance businesses and industry and provide economic benefits to local communities.
- ✦ DOC's management of the conservation estate provides broader environmental benefits (for example, its maintenance of the upper reaches of the water catchment contributes to better water control and quality).
- ✦ The land surrounding the conservation estate benefits from DOC's work (for example, pest management).
- ✦ DOC meets the costs of those using conservation land in some cases (for example, by providing facilities and services such as rubbish removal and toilets).

14.38 The conservation exemption has narrowed as commercial activities on Crown conservation land have grown, and any conservation land that is used for private or commercial purpose under a legal agreement is now rateable.

Education and health

14.39 The reasons given for health and education exemptions are based almost exclusively on the national interest argument; that it is in the national interest to have healthy and educated people.²¹²

14.40 The education exemption has, since at least 1925, covered land that is used to provide housing for teachers.²¹³ This amendment illustrates how an exemption has been broadened to cover an activity (providing residential accommodation) that could be considered ancillary to the purpose of the original exemption.

14.41 The hospital and education exemptions also raise an issue of competitive neutrality between public and private providers. Private suppliers in the tertiary education sector and private suppliers of hospital services pay full rates when their public sector equivalents do not.

²¹² Cabinet Policy Committee Paper, Minister of Local Government, "Review of Local Government Funding Powers Paper 4: Exemptions from property rates; rates rebate scheme and petroleum tax", paragraphs 39–42, May 2001.

²¹³ Note 4 to Part 1 of Schedule 1 of the Local Government (Rating) Act 2002 requires land used as residential accommodation for a principal, teacher, or caretaker that is let at a discounted rent to be treated as being used as education land.

Religious and charitable

14.42 Broadly, the reason given for exempting land used for religious and charitable purposes is that such use benefits the communities in which religious and charitable institutions are based.

14.43 As charities and churches broaden the activities undertaken on their land to obtain revenue, the boundary between exempt and non-exempt land use becomes an issue. The Court of Appeal recently considered the issue of whether the current activities that an entity undertakes are consistent with the purpose for which their exemption was granted. The Court considered whether land leased by a charity (the Royal New Zealand Foundation of the Blind) to a third party on commercial terms fell outside the society's rating exemption. The Court found it did fall outside the exemption because the land was being used for commercial purposes and not for charitable works. Thus use, not ownership, was determined as the basis of exemption from rates.

14.44 The Panel notes that the Court also observed,

Over the 130 years which have elapsed since a national system of rating was introduced, there have always been some statutory exemptions from rating. These exemptions have always been disparate in nature and some of those which remain in the current Act seem distinctly odd.²¹⁴

Transport

14.45 Two main reasons cited in support of the transport-related exemptions (for roads, wharves, airports, and railway land) are

- the need to maintain inter-modal neutrality between transport types (consistent exemptions for wharves, airport operational area, railway, and roads are necessary to avoid distortions in the transport market)
- the difficulty and/or the cost involved in valuing the roads and railway corridor.²¹⁵

14.46 The transport exemption has been maintained over time, despite the change in the entities owning the infrastructure. When various Crown assets were sold (such as airports) or their ownership changed to a legal entity distinct from the Crown, the continuation of historical exemptions for transport reflected the purpose the land was being used for, such as landing aircraft or a wharf, rather than the changed ownership.

14.47 The definition of exempt transport land has also changed, and the boundaries of what is and is not rateable land have come into question and become increasingly complex. This is particularly an issue for airports and wharves. The legislation expressly provides that land used for a variety of purposes including administration, parking, cleaning, buying and selling of tickets, and freight consolidation is rateable.

Consideration of the arguments for continuing to exempt land

14.48 It is clear to the Panel that the reasons for exempting land are varied and the reasons have changed over time. The Panel does not agree with all the arguments supporting exemptions, as discussed below.

14.49 The benefit provided by the activities on exempt land is used as a major argument in support of exemptions. Clearly, activities on non-rateable land such as hospitals or schools provide local or even wider benefits. However, activities on fully rateable land can also provide considerable benefits

²¹⁴ *Auckland City Council v Royal New Zealand Foundation of the Blind* (29 August 2006), CA 112/05.

²¹⁵ Cabinet Policy Committee Paper, Minister of Local Government, "Review of Local Government Funding Powers Paper 4: Exemptions from property rates; rates rebate scheme and petroleum tax", paragraphs 30–31, May 2001.

for communities. Many benefits enjoyed by the citizens of Kawerau, for instance, are derived from the privately owned pulp and paper mill established in the area in 1954. In Hutt City a public hospital is located close to a private hospital. One has a statutory exemption from rates, the other does not.

14.50 The argument that properties should be exempt because they consume little or no services appears to the Panel to carry little weight. Almost all properties benefit to a greater or lesser degree from the broader services undertaken by councils, such as roading, planning, and governance. Although the extent of benefit will vary widely, the Panel considers that this variation is better addressed through flexible rating tools such as targeted rates.

14.51 Similarly, the Panel is unconvinced by the argument that because land has little or no economic value (and may not generate income to pay rates), this is a reason for a general exemption from rates. Again, the Panel considers these circumstances would be more appropriately addressed through the valuation system or through council remission policies, rather than a general statutory exemption. An exception to this, discussed further below, is the conservation estate, which, like Māori freehold land, is not available for sale and cannot be seen as having valuations equivalent to other land.

14.52 Some of the activities on land exempt from rates are “public goods” such as those provided by libraries, public gardens, and national parks, where excluding people from the benefits provided is difficult or costly, and where use by one person does not detract from another person’s use. Some public goods, for example, public swimming pools, are “local” public goods; and some, like national parks, are “national” public goods. The characteristics of public goods can be used as an argument for rates exemptions.

14.53 There is a question as to who should meet the cost of council-provided public goods. The answer to this depends on who benefits. The Panel’s view is that, generally, local public goods benefit local communities and should be paid from local authority and that benefits of national public goods enjoyed at the national level should be funded from taxation. Although exempting local public goods from rates may seem sensible, the same result can be achieved more transparently through councils’ remission policies.

14.54 The Panel agrees that there will be some complex issues to work through in the removal of exemptions, but considers that these are capable of resolution.

The advantages and disadvantages of removing exemptions

14.55 The advantages of removing statutory exemptions and folding them into local authority remission policies include

- a more fair and equitable treatment of land for rating purposes (for instance, it would provide the opportunity to treat all registered charities equitably)
- an increase in rating revenue, which may be significant for some councils although modest for others
- removal of the “subsidy” that existing ratepayers provide to those exempt from rates
- an increase in local authority autonomy over its rating base, which is consistent with the general principle of empowering local government
- the ability to continue “exemptions” involving activities that benefit the community through councils’ remission policies
- the desirability of private and public service providers enjoying competitively neutral circumstances when they are competing in the same market (for example where tertiary

education providers compete with private training establishments it seems inequitable for one to be liable for rates and not the other)

- greater incentives for agencies managing Crown land to make efficient use of the land when confronted with the full costs of rates.

14.56 The disadvantages would mainly affect those liable for rates and include

- the additional rating costs to the Crown, and possibly other landowners, arising from the removal of exemptions
- uncertainty for Crown landowners, including individual schools and hospitals about their future, and for other landowners associated with what would be a major policy change requiring legislative amendment
- the potential for different “exemptions” policies in different councils and competition between councils to attract government facilities by offering rates remissions. (However, the latter is not necessarily a disadvantage but rather would reflect local preferences.)

A special case for exempting Crown-owned land?

14.57 The Panel considered the question of whether Crown land presents a special case because the origins of its exemption appear based on old common law and constitutional arguments.

14.58 New Zealand law has contained a provision that no Act binds the Crown unless it expressly says it does.²¹⁶ However, in recent times the Government has recognised that fairness requires that the Crown should be subject to the general law of the land, including statute law. The general principle to be followed when assessing whether or not an Act should bind the Crown has changed. The present approach is now incorporated into Cabinet Office guidelines as, “that the Crown should be bound by Acts unless the application of a particular Act to the Crown would impair the efficient functioning of the Government.”²¹⁷

14.59 The report prepared for the Panel on exemptions briefly considered how other countries treat Crown land for rating purposes.²¹⁸ The report discusses policies adopted in Australia, the United Kingdom, and Canada, countries that have a similar common law history to New Zealand. The Australian Federal government has a constitutional exemption from local government taxes although it does provide untied grants to local authorities. In the United Kingdom, the Crown is not exempt from the local council tax, although this has not always been the case. The Canadian Government has a constitutional exemption from taxes levied by local and provincial government;²¹⁹ the Government makes payments in lieu of property taxes to local governments in recognition of “the valuable benefits received from both provincial and municipal levels of government in Canada.”²²⁰ Overall this indicates that Governments are willing to make a contribution to the costs of local government, even where a constitutional exemption from tax liability continues to exist.

14.60 The Panel concludes that a generic exemption in favour of Crown land is not justified. However, it is agreed that there may be special constitutional issues concerning the rating of Parliament buildings and vice-regal residences, and on balance considers those exemptions should remain.

216 Law Commission, *To Bind Their Kings in Chains: An Advisory Report to the Ministry of Justice*, Study Paper 6, Wellington, December 2000, para 4. Current provision is section 27 of the Interpretation Act 1999.

217 Cabinet Office Circular CO (02) 4, “Acts Binding the Crown: Procedures for Cabinet Decision”, 13 March 2002.

218 Philipson report to the Rates Inquiry.

219 Section 125 of The Constitution Act 1867, Canada.

220 Public Works and Government Services Canada, “Payments in Lieu of Taxes Frequently Asked Questions”, <http://www.pwgsc.gc.ca/pilt/text/faq-e.html>, last accessed 4 July 2007.

Retention of exemptions on specific categories

14.61 The Panel considers there is a good case for retaining the existing exemption on the conservation estate administered by DOC (land covered by clause 1 in Part 1 of Schedule 1 of the Local Government (Rating) Act 2002) and other land used for conservation purposes that is open to the general public. This estate is a nationally important public good with benefits that extend well beyond the local authorities in which the land is located. Although the land is currently valued, there is a question whether this is an appropriate basis for rating purposes. However, the extensive and remote nature of these lands suggest that a valuation for rating purposes would need to be very low if a reasonable proportionality was to be achieved between rates paid and benefits received.

14.62 The foreshore and the beds of the territorial sea, navigable lakes, and navigable rivers (Schedule 1, Part 1, clause 2(b)–2(d)) are other categories of “land” where the arguments for exemption from rates are strong and similar to those for the Crown conservation estate. The Panel considers these exemptions should remain. Flood ponding areas vested in the Crown form a part of this category of the statutory exemption (Schedule 1, Part 1, clause 2(a)). The Panel considers if this land is to be exempt from rates, it should be a decision for the local authority involved.

14.63 Roads (Schedule 1, Part 1, clause 17) are not currently valued for rating purposes, and the land used for roads is non-rateable. The cost of constructing and maintaining roads was one of the early reasons why rates were introduced. The roading network is an important national and local public good, which is currently funded in a partnership between central and local government and with an increasing degree of user pays. The transaction costs of valuing this land would be high. The Panel considers this exemption should remain.

14.64 The Panel has considered arguments about valuation difficulties and “inter-modal neutrality” in the transport sector, which were made during the review of the rating powers legislation in 2001. These arguments were used to support the retention of exemptions on the permanent way of the railway. The Panel does not see the permanent way being a public good in the same way as roads. Although in some centres the permanent way is used for public transport, the benefits from its use are mainly private benefits. The Panel considers that roads should remain exempt from rates but that all other transport land (rail, airports, and wharves) used for commercial purposes should be fully rateable.

14.65 Transit New Zealand, in its submission [S470], pointed out that there are segregation strips and severances associated with roads that are rated. It considered this unreasonable and that it created a disproportionate administrative burden on councils and these areas of land should also be exempt. It is possible that the costs to councils might outweigh the benefits, but the Panel considers that this should be a decision for local authorities through their remission policies.

14.66 The land on which schools and other educational institutions, such as early childhood centres, universities, polytechnics, colleges of education, and wānanga are located is non-rateable (Schedule 1, Part 1, clause 6). The Panel considers that the land involved does not present any particular valuation problem for rating. Nor would the payment of rates on the land be out of proportion to the benefits received from local authority services. However, many schools offer other services to the local community, such as free use of sporting fields and school halls and areas used for civil defence purposes. If schools pay full rates they may choose to charge for these services. However, this issue will not arise if the Government agrees to fully or centrally fund any additional rating costs for schools, as is recommended later.

14.67 Land owned or used by district health boards and used to provide health and other related services is non-rateable (Schedule 1, Part 1, clause 8). This land includes that used by hospitals and living accommodation related to hospital services. The arguments for and against the retention of exemptions for this category of land are similar to that for educational institutions. Hospitals

are significant consumers of council services and the land presents no valuation difficulty. Public hospitals are clearly public goods, funded by the Government and having significant local public benefits. The Panel considers there is no reason for a statutory exemption.

14.68 Land on which any vice-regal residence or Parliament building is situated is non-rateable (Schedule 1, Part 1, clause 22). There may be particular constitutional issues in local government having full rating power over this property, and in balance the Panel supports retaining the existing exemption.

14.69 There are a number of categories of Māori land in Schedule 1 that are non-rateable and which could be candidates for local authority remission policies. However, the Panel has accepted that Māori land has several distinctive features that make it different from other land for rating purposes and that the Treaty of Waitangi has a potential bearing on this. For this reason we consider exemptions of this land should remain. This subject is discussed in Chapter 13 where the Panel recommends that the Māori land exemptions in Schedule 1 of the Local Government (Rating) Act 2002 be transferred to Te Ture Whenua Maori Act 1993.

14.70 Table 14-3 summarises the Panel's view on what categories of land should retain statutory exemptions from rates and what should be subject to local authority decisions.

Transition issues

14.71 The Panel recognises that the removal of exemptions will have a significant financial cost for the Crown and that there will be some complex issues to work through. It will require Parliamentary approval to a change in the law. It will also take time for local authorities to respond to the additional responsibility for considering what categories of land should continue to be exempt from rates and review their rates remission policies. The Panel considers this could be done by the next review of the long-term council community plans in 2009. There is a need for the Government and parties directly affected by changes to statutory exemptions to consider how the costs of any additional rates will be met. For those institutions that are funded by the Government, the Panel considers any additional costs should not be at the expense of services provided and considers that paying rates for schools should be done centrally to ensure schools remain funded at the same level and do not need to consider charging for some of the free services they currently provide to the community.

Conclusion on the future of exemptions

14.72 The Panel believes that there is an opportunity to rationalise an entrenched and uneven system of statutory exemptions from rates and give local government greater control over decisions on what land should be rated and what land should not. The Panel's conclusion is that, apart from several categories of Crown-owned land, the statutory exemptions in Schedule 1 of the Local Government (Rating) Act should be removed.

Table 14-3 Suggested treatment of existing categories of non-rateable land, Local Government (Rating) Act 2002

Clause of Part 1	Part 1 of Schedule 1: Land fully non-rateable	Opinion on ongoing need for exemption
1	National parks, reserves, and conservation areas	Exemption retained
2	The foreshore, seabed, lakes, and rivers	Exemption retained, but local authority decision for flood ponding areas
3	Publicly accessible land owned by private entities for conservation purposes, which is not for profit	Local authority decision
4	Land used by local authorities for the provision of various amenities (such as parks, swimming pools, and libraries) or for soil conservation and river control, for which no revenue is received	Local authority decision
5	Land owned or used by certain named charitable trusts	Local authority decision
6	Schools and early childhood centres that do not operate for profit	Local authority decision
7	Religious institutions	Local authority decision
8	Hospitals	Local authority decision
9	Churches and other places of worship	Local authority decision
10	Cemeteries and crematoria	Local authority decision
11	Māori customary land	Transfer to Te Ture Whenua Maori Act
12	Marae, Māori reservations, and meeting places	Transfer to Te Ture Whenua Maori Act
13	Māori meeting houses	Transfer to Te Ture Whenua Maori Act
14	Māori land that is non-rateable by virtue of an Order in Council	Transfer to Te Ture Whenua Maori Act
15	Electricity generation and transmission equipment	Local authority decision
16	Any land declared non-rateable by other Act of Parliament	Exemption retained
17	Roads	Exemption retained
18	Operational areas of airports	Local authority decision
19	Operational areas of railways, owned by New Zealand Railways Corporation	Exemption retained (permanent way of the railway only)
20	Wharfs	Local authority decision
21	Land used for charitable purposes	Local authority decision
22	Parliament and vice-regal residences	Exemption retained
Clause of Part 2	Part 2 of Schedule 1: Land 50% non-rateable¹	
1	Agricultural and Pastoral Society (A&P) showgrounds	Local authority decision
2	Sports grounds (excluding horse and greyhound race tracks)	Local authority decision
3	Land used for the arts	Local authority decision

¹These three categories of land must not be for profit, and not hold a liquor licence.

Recommendations

- 65 That the categories of non-rateable (and 50% non-rateable) Crown and non-Crown land listed in Schedule 1 of the Local Government (Rating) Act 2002 should be removed from the schedule with the exception of the following items (clause numbers of the schedule in parentheses):
- the Crown's conservation estate (clause 1) and other conservation land open to the general public (clause 3)
 - the territorial seabed, foreshore, and beds of navigable lakes and rivers vested in the Crown (clause 2)
 - the roads vested in the Crown and local authorities (clause 17)
 - Parliament and vice-regal residences (clause 22).
- 66 That the additional costs to Government-funded organisations and institutions arising from the payment of rates not be at the expense of services provided by the institutions whose land is rated and that provision for extra costs be provided through the votes of the funding agencies such as Health and Education, with central funding of schools for this increased cost.
- 67 That local authorities have responsibility for decisions about what land removed from Schedule 1 of the Local Government (Rating) Act 2002 should be non-rateable, in full or in part, and that this responsibility be exercised through their rates remission policies.
- 68 That a decision to remove statutory exemptions allow sufficient time to enable local authorities to consult their communities and review and modify their rates remission policies.
- 69 That the categories of exempt Māori land in clauses 10(b), 11, 12, 13, and 14 of Schedule 1 of the Local Government (Rating) Act 2002 remain and be transferred to a schedule in Te Ture Whenua Māori Act 1993.

Expanding the services for which targeted rates can be charged

14.73 Under current rating legislation non-rateable land is liable only for targeted rates for water supply, sewage disposal, and refuse collection. For these categories of land regional councils do not have the power to set targeted rates and territorial authorities have only a limited power.

14.74 The problem that arises for regional councils is clearly illustrated by Otago Regional Council's Leith Lindsay Flood Protection Scheme discussed in the council's submission [S513]. The council has commissioned flood protection works along a waterway that runs through University of Otago land. The council identified the land that would directly benefit from the works and found that 39% of that land, by capital value, is non-rateable.

14.75 For territorial authorities, the provisions of the rating legislation limit the range of activities that may be covered by targeted rates on exempt land. Councils may provide and maintain services such as road access and pest control that benefit the users of exempt land but cannot levy targeted rates for these purposes. The Panel concludes that local authorities should have the same power to use targeted rates on non-rateable land as they do for rateable land.

Recommendation

- 70 That the scope of targeted rates on non-rateable land be extended and that regional councils, as well as territorial authorities, be given the power to set such targeted rates.**

Crown contributions in lieu of rates

14.76 The idea of Crown contributions in lieu of rates has been around for some time. We note that “further consideration will be given to formulating a basis for a potential Crown contribution to local government, with respect to exempt land” was an outcome of the 2001 review of the rating powers legislation.²²¹ This exercise became part of the Local Authority Funding Project. The Panel understands that this matter has not yet been reported back to the Government.

14.77 Submissions from local government generally prefer the removal of exemptions to payments in lieu of rates. The joint submission from Local Government New Zealand and the Society of Local Government Managers [S581] says,

Payments/contributions in lieu of rates are very much the “second best” option. Effectively, such a regime allows the agency making the payment to choose its own tax rate which it can amend or even stop reasonably easily. The method for determining a payment is unlikely to be generally accepted or transparent – compromise and negotiation is inevitable. The value in such a regime (if any), is a transition to a complete removal of exemptions rather than an endpoint in itself.

14.78 Some such payments are already made, although these may not explicitly be considered as “in lieu of rates”. DOC has advised the Panel that it contributes directly to the preparation of regional pest management strategies at a level of about \$2 million a year and has made payments on a case-by-case basis in some circumstances where the department’s activities impose costs on councils.

14.81 The Panel concludes that the removal of exemptions is preferable to payments in lieu of rates.

221 Minute of the decisions of Cabinet Policy Committee, 23 May 2001, POL Min(01) 12/13.