



Rates and Charitable Land Use Exemption Applications

Best Practice Guideline

WALGA

and



WA Rates Officers Association

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AIM

The WA Rates Officer's Association and WALGA has partnered to provide advice and guidance on a template application process for use by WA Local Governments to ensure a consistent and objective approach to rate exemptions under Section 6.26 of the Local Government Act 1995, with particular reference to applications to determine rateability of land under Section 6.26(2)(g) of the Act.

LEGISLATION

- Section 6.26, Local Government Act 1995
 - see Appendix 1
- Judicial Decisions in relation to Section 6.26(2)(g)
 - see Chapter 3 'State Administrative Tribunal Determinations'

1. WHAT IS A 'CHARITABLE PURPOSE'?

Section 6.26(2)(g) of the Local Government Act provides a rates exemption for 'land used exclusively for charitable purposes'. 'Charitable purposes' is not currently defined in the Local Government Act 1995 or other statutes; rather charity is defined at common law.

The definition is largely based on the preamble to the Statute of Elizabeth enacted by the English Parliament in 1601 and the judgment of Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel*. Lord Macnaghten classified the categories of charitable as follows –

- *trusts for the relief of poverty;*
- *trusts for the advancement of education;*
- *trusts for the advancement of religion; and*
- *trusts for other purposes beneficial to the community;*

The High Court of Australia incorporated the Statute of Elizabeth I's into Australian law, finding that in order for an institution to be charitable, it must be –

- (a) within the spirit and intendment of the Preamble to the Statute of Elizabeth I; and
- (b) for the public benefit.

The Western Australian case law (arising from both the Courts and the State Administrative Tribunal) summarise that for a purpose to be charitable –

- (a) it must fall within the purposes set out in the Statute of Elizabeth I, or by Lord Macnaghten (above); and
- (b) there must be a public benefit, being a benefit directed to the general community, or to a sufficient section of the community to amount to the public.

Australian case law further establishes that poverty need not be destitution and may extend to the promotion of culture. Further, indigenous people have been judicially and statutorily recognised as being severely disadvantaged in Australian society and are a "class which, generally speaking, is in need of protection and assistance."

Australian case law has found that some incidental uses of the land does not destroy the exclusiveness of the use of the land for charitable purposes and so fall within sub-section 6.26(2)(g). The proper test for determining whether land is used exclusively for charitable purposes is:

- (a) if land is used for a dual purpose, then it is not used exclusively for charitable purposes although one of the purposes is charitable; and
- (b) if the use of the land for a charitable purpose produces a profitable by-product as a mere incident of that use, the exclusiveness of the charitable purpose is not thereby destroyed.

2. RATE EXEMPTION APPLICATION PROCESS

Background

A claimant is required to evidence their right to an exemption under Section 6.26 of the Local Government Act by providing information upon which the Local Government can make an objective assessment as to their eligibility.

In the case of a charitable land use application, Section 6.26(2)(g) of the Act does not establish an '*as of right*' entitlement to a rate exemption on the basis of a claimant organisation's structure, purpose, objectives or the apparent land use.

Application Process

A rate exemption claimant ('the applicant') must apply in writing in a form approved by Council, and provide any supporting documentation according to the checklist on the form. A template is provided at Appendix 2. General rules for application may include the following considerations:

1. An objection should be made by the person named in the rate record as the owner of land or by the agent or attorney of that person.
2. If the applicant is applying for more than one property, a separate application must be completed for each property. This supports the principle that it is 'land use', not the claimant that is being assessed.
3. Check Section 6.26 (Appendix 1) of the Local Government Act to see what subsection applies to the application received.
4. If any information has not been provided or is unclear, the applicant is required to provide the additional information before the application can be assessed.
5. If the applicant is recorded as the owner of the property on the rate record, confirm the ownership details on the title via Landgate's website.
6. If the property is leased, ensure a copy of the lease has been provided with the application and check whether the lessee is responsible for payment of the rates in the terms of the lease. If necessary, a site check may be conducted to confirm the use of the property.
7. It is advisable to check with your Development/Approvals Department of Council to ensure property use aligns and complies with any relevant approval.
8. A part of a lot can be considered for an exemption. See Chapter 5 - 'Partial Rate Exemptions'.

9. Care should be taken not to focus too greatly on the fact that commercial activity is associated with the land use. The basis for an exemption is in regard to the activity that is taking place on the land not the status of the applicant. The fact that a not for profit is conducting an activity on the land is not the singular determining factor in the non-rateable status. The legislation states that it is the 'land use' that qualifies eligibility on a property and as such an application must be considered on that basis.

Making a Determination

Once the application is returned and regarded as complete, consideration is then given to determining whether non-rateable status applies, or is to be declined. Councils may do this in different ways:

- Councils may delegate authority for a rate exemption application to be determined by the CEO; or
- Councils may require an application to be referred to Council together with an Officer Recommendation to either approve or decline the request.

If the property has been used for the exemption purpose as of 1 July of a financial year, the non-rateable status may be applied from that date regardless of when the application for exemption was made. In the instance where there has been a change of use of the land during a financial year an exemption can only be approved to take effect from the date of the change of use.

If the application is refused, the applicant will need to be notified in writing of the decision. It is also recommended to note this action on your rate record. Where the application is refused, the applicant may object under s. 6.76 of the *Local Government Act 1995* to the rate record of the local government in question, on the basis that the land or part of the land was not rateable land. Further, the applicant has the right to appeal a decision made under s. 6.76 to the State Administrative Tribunal (SAT).

If the application is approved, the applicant is to be notified in writing, with the correspondence including details of the date the exemption is to apply from, the section of the Act applicable to the exemption, the review period (i.e. 3 years) and the amount of rates reversed. With regards to the review period that is set by the Council, consideration must be given to the likelihood of the land use circumstances changing within a year, two years or three years.

Your rate record will also need to be updated to reflect the new non-rateable status of the subject land, with a notation of the amount of rates foregone. Also update any separate external rates register, if applicable.

Properties exempt from Local Government rates are not exempt from ESL (Emergency Services Levy). Regulation 5 of the Fire and Emergency Services Regulations 1998 specifies land that is exempt for the ESL.

Process the rates adjustment to reflect the non-rateable status. In some cases where payment of rates has already been made for the year, a refund to the claimant will be required. Ensure all documentation is properly recorded in your Local Government record keeping system.

Landgate Valuation Services need to be notified of any rates exemptions that are approved or no longer applicable. Landgate will remove the property from Roll 1 and place them onto Roll 2 when an exemption is approved and vice versa when an exemption is no longer applicable. This is required so Landgate's records are accurate and Council will not be charged for valuations that are not required. Send the notification to your local valuer at Landgate.

3. STATE ADMINISTRATIVE TRIBUNAL DETERMINATIONS

Part 6, Division 6 of the Local Government Act provides for objections and review of a Local Government decision to rate land, and may result in application to the State Administrative Tribunal (SAT).

Council will be advised of the action taken to challenge a decision and a mediation meeting between the two parties is normally the first phase. If the matter cannot be settled via mediation, it will proceed to a hearing with the SAT. Councils usually engage legal representation for advice and to act on their behalf for the SAT proceedings.

The following summaries of SAT determinations is provided to give context to decisions that may have a bearing in your Local Government's future consideration of a 'charitable land use' rate exemption application:

1. Uniting Church Homes (Inc) and City of Stirling [2005] WASAT 191

Facts

Application was made by Uniting Church Homes to the City of Stirling for a rate exemption under s. 6.26(2)(g) on the basis that the land was used exclusively for a charitable purpose for relief of the aged. The land comprised aged housing, independent living units, and lease-for-life. The minimum age for entry was 55 years. The average age of residents was significantly older than 55 years. There was an entry and on-going payments required by residents. Entry payment was determined by market value.

Findings

The SAT determined that the application for review of the decisions of the City of Stirling by Uniting Church Homes be upheld.

Rate notices given by the City of Stirling to Uniting Church Homes (Inc) and to Churches of Christ Homes and Community Services (Inc) were set aside insofar as they require the payment of "residential and other rates" specified in the notices.

Matters of note

The fact that residents were required to purchase the right to occupy their unit, at market value, and pay maintenance did not alter the charitable characterisation of the use as a matter of law.

2. Retirees WA (Inc) and City of Belmont [2010] WASAT 56

Facts

Retirees WA is an incorporated, not-for-profit association that manages and administers a retirement village in Rivervale. The retirement village was established and managed pursuant to a joint venture agreement between Retirees WA and the Housing Authority (formerly the State Housing Commission).

The City of Belmont assessed the land, deemed it liable for council rates and issued rates notices. Retirees WA objected to the assessment on the basis that the land was not rateable land under s 6.26(2)(g) of the Act because it was used for a charitable purpose. The City of Belmont disallowed the objection. Retirees WA sought a review of that decision by the Tribunal.

Findings

The Tribunal concluded that use, for the purposes of s 6.26 of the *Local Government Act 1995 (WA)*, should be determined by looking objectively at the actual use of the land.

The Tribunal formed an overall judgment that the land was used for a scheme for the relief of the needs of the aged. However, in order to fall within the category of land used exclusively for charitable purposes it was also necessary for Retirees WA to demonstrate that the use of the land was for a public benefit.

The Tribunal determined that the land was not used exclusively for charitable purposes because accommodation at the retirement village was provided only to members of Retirees WA (Inc), and members of Retirees WA (Inc) are not a sufficient segment of the community to amount to the public for the use of the land to be for a public benefit and hence, relevantly, charitable.

Matters of note

It is not enough that land is used for the relief of the aged, it must also satisfy the requirement that it is used for a public benefit.

3. *Retirees WA (Inc) and City of Belmont [2012] WASAT 190*

Facts

Retirees WA (Inc) sought review by the Tribunal of the decision of the City of Belmont to disallow its objection to the rate record for the 2011/2012 financial year. Retirees WA (Inc) argued the land was not rateable land, under s 6.26 of the *Local Government Act 1995 (WA)*, because it was used exclusively for charitable purposes, namely, the relief of the aged.

In the interceding years from the original SAT decision, Retirees WA (Inc) had amended its Constitution and the terms of residents' contracts to enable any 'Eligible Person', to lease units in retirement villages owned and/or managed by it and to enable tenants who cease to be members of Retirees WA (Inc) to remain in occupation of their unit.

Findings

As accommodation of units was open to any Eligible Person, irrespective of whether he or she was a member of Retirees WA (Inc), and because a tenant could cease to be a member of Retirees WA (Inc) and still remain in occupation of their unit, the residents were deemed a sufficient section of the community to amount to the public. As the provision of accommodation at the retirement village met the element of the public benefit, the Tribunal determined that the land was used exclusively for charitable purposes and was therefore not rateable land under s 6.26.

4. *Shire of Derby-West Kimberley v Yunnggora Association [2007] WASCA 233*

Facts

The Shire successfully appealed an SAT determination to the WA Supreme Court.

Finding

- What constitutes a charitable purpose?

The case provided the sector with the requirements for a charitable purpose. In order for land to be used exclusively for charitable purposes it must be found that the purpose in question is:

1. within the spirit and intent of the preamble to the Charitable Uses Act 1601; and
2. is a purpose beneficial to the public.

- A benefit to the public?

The condition that to be charitable a purpose must tend to benefit the public is satisfied if the purpose tends to the benefit of the public at large or a class or section of the public. The fact that only a limited number of people can benefit does not mean that the purpose is not a public one. A purpose does not lose its public character simply because it is limited by reference to locality, to conditions of people, to their disabilities, defects or misfortunes and by reference to many other attributes of men and thing.

But a purpose will not be a public one if it is merely for the benefit of particular private individuals. The Court stated that land used for the purpose of improving the economic position, social condition and traditional ties of an Aboriginal community will generally be a charitable use of the land.

- The Land Use

The focus of the exemption under the Act is upon the use of the land in question. In determining the purpose for which land is used, the focus must be on what is done on the land.

It is not enough that the primary or main object of the use of the land is for charitable purposes, unless the land is used exclusively for those purposes. If the use of the land for a charitable purpose produces a profitable by-product incidental to that use, the exclusiveness of the charitable purpose is not destroyed.

In this case, the Court found that it was not enough that the pastoral enterprise provided funds or other resources which the Association used for charitable purposes or that any profits which were ultimately derived from the business would be used by the Association for charitable purposes.

The Court found that any charitable purposes for which the Land was used was not the main purpose of the activities conducted on the Land which was for the distinct purpose of carrying on a pastoral business.

5. Curtin University of Technology and Town of Victoria Park [2010] WASAT 175

Facts

Curtin University granted a total of five leases to telecommunications companies to erect mobile phone towers on the University's campus. Three of those leases related to small portions of land and two others to parts of the University's buildings.

The Town of Victoria Park issued rate notices to the University in respect of the property the subject of the lease. The University lodged an objection with the Town on the basis that the Campus was exempt from rates and taxes. The Town dismissed the objection and the University appealed to the SAT for a review.

Finding

The Tribunal upheld the application on the basis that the University was not the owner of the property for the purposes of the Local Government Act 1995 (WA). The rate notice needed to be issued to the owner of the property pursuant to the Local Government Act 1995. The local government, it is assumed, served the rate notice to the owner and therefore remedied the issue.

6. Technology Assisting Disability WA Inc and Town of Bassendean [2011] WASAT 154

Facts

The applicant was an association established to improve quality of life of people with disabilities, the frail, and those caring for them through the application of technology and the skills of volunteers.

The Town of Bassendean issued rate notices. The association objected to the assessment on the basis that the land was used exclusively for charitable purposes. The Town rejected the objection and the association sought a review.

Finding

The Tribunal found that the land was used exclusively for charitable purposes. Incidental uses of the land for the disposal of surplus items did not destroy the exclusiveness of the use of the land for charitable purposes. The fact that items or services are charged for does not of itself mean that the use of the land is not charitable.

7. Motor Industry Training Association of Western Australia (Inc) and City of Joondalup [2013] WASAT 14

Facts

The Motor Industry Training Association of Western Australia sought review of a decision of the City of Joondalup to refuse an exemption for rating purposes in relation to land on which MITA carried out its training program for apprentices. MITA argued that its use of the land was for a recognised charitable purpose, namely the advancement of education.

The City argued that although vocational training may amount to a charitable purpose, the educational services offered by MITA were too limited in their scope and offered to too narrow a group of the public to satisfy the requirement of public benefit necessary to make the use of the land charitable.

Finding

The Tribunal found that the use of the land satisfied the requirements of public benefit and amounted to a use for the advancement of education. The decision to refuse exemption was overturned and a declaration made that the land was exempt from local government rates.

Matter of note

It is not necessary that in order to be considered a charitable purpose by way of providing for the advancement of education that the education be offered to persons in need or that those who benefit from the availability of the person educated are in need.

8. Australian Flying Corps and Royal Australian Air Force Association (WA Division) Inc and City of Mandurah [2013] WASAT 89

Facts

The applicant owned and operated a retirement village within the City of Mandurah. The applicant sought an exemption from rates on the ground that the property was used exclusively for charitable purposes. The exemption was refused on the basis that the residents of the village occupied their units at full cost.

Finding

The Tribunal concluded that the charging of occupancy costs at or around commercial rates did not affect the charitable status of the village. No profits were retained by a private owner. The Tribunal noted that the outcome might have been different if the rates charged were so high that only a small group of the community could afford to take up a place at the village.

Matter of note

It is not a requirement that the relief of the aged be given at no cost or at a cost less than the value of the relief being provided. If the residents were required to pay the costs of the accommodation and other services for the relief of the aged, and if the amount paid resulted in a surplus of income over expense, it would not preclude a conclusion that the land was used exclusively for a charitable purpose. Subject to proviso – any such surplus should not be for the private profit of the provider; and the costs of the accommodation and services should not be so great as to exclude the element of public benefit.

9. **Shire of Ashburton v Bindibindi Community Aboriginal Corporation [1999] WASC 108**

Facts

The Shire of Ashburton sought to recover rates levied on land vested in the defendant. The defendant was an incorporated Aboriginal association pursuant to the *Aboriginal Councils and Associations Act 1976 (Cth)*.

The defendant argued that it was not liable to pay rates in respect of the Land because:

1. it was not the "owner" of the Land for the purposes of s 1.4; or
2. the Land was not rateable since it was used exclusively for charitable purposes; or
3. the Land was not rateable as it was the property of the Crown and was used or held for a public purpose.

Finding

The case explored the issue of whether the advancement of Aboriginal people was deemed a charitable purpose. The case found in favour of the defendant.

4. EXEMPTION REGISTERS AND PERIODIC REVIEW PROCESS

Exemption Register

Council's software systems must indicate on its rate records if a property has non rateable status and a register should be maintained. A sample of the information and format of a register is provided on page 23.

The rate record should indicate which section of 6.26 that it applies to and the date it was applied.

The register should explain what the land use is and how it applies to the particular section of 6.26, the date it was applied by Council, the next scheduled review date that is required and the amount of rates revenue loss. The revenue loss will provide Council with an accurate figure of the loss it is incurring due to non-rateable properties.

This information should be known by Councils and be included in Long Term Financial Plans. Depending on your software capabilities, a register could be maintained with your software system with the ability to produce a report for non-rateable properties or if it does not cater for this functionality, it is recommended that a separate register, such as an Excel spreadsheet, be developed.

Periodic Exemption Review

It is recommended that reviews are conducted annually, biannually or triennially. No more than 3 years should pass without a review being conducted as the circumstances of the land use may change and Council may be providing a non rateable status incorrectly in that circumstance.

Consideration needs to be given to the review period when assessing an application. If it is likely that circumstances may change within a year (i.e. a lease expiry), the review should be conducted annually.

5. PARTIAL RATE EXEMPTIONS

There may be instances where only a portion of the land used would be classified as non-rateable.

Example:

A land parcel contains a church with a separate hall. The hall is leased by the church to a private organisation to run a dance school. The church would be classified as non rateable under S6.26(2)(d), however the dance school is a commercial business. In this scenario, only the portion of land that occupies the dance school is rateable.

Separate valuations (sub values) can be obtained from Landgate Valuation Services upon request. This will enable partial rating of the land on a rating system. This will result in having two separate valuations for one property, one that will be rateable and one that will be non rateable.

6. ALTERNATIVES TO DETERMINING NON RATEABLE STATUS

In the instance where a local government may refuse a rates exemption application, the applicant can make an application to the Minister for Local Government for consideration that the property be rates exempt. If Ministerial approval is subsequently granted, the Council must apply a non rateable status for that property, to the extent of the decision.

Under Section 6.47 of the Local Government Act 1995 a Council may apply a Concession. This is generally applied when a property does not fall into any category of Section 6.26 but the Council may wish to offer a concession because of the nature of the undertaking of the organisation. This would be a case by case decision and for each individual Council to determine.

APPENDIX 1

Extract of Section 6.26 of the Local Government Act 1995

6.26. Rateable land

- (1) Except as provided in this section all land within a district is rateable land.
- (2) The following land is not rateable land —
 - (a) land which is the property of the Crown and —
 - (i) is being used or held for a public purpose; or
 - (ii) is unoccupied, except —
 - (I) where any person is, under paragraph (e) of the definition of *owner* in section 1.4, the owner of the land other than by reason of that person being the holder of a prospecting licence held under the *Mining Act 1978* in respect of land the area of which does not exceed 10 ha or a miscellaneous licence held under that Act; or
 - (II) where and to the extent and manner in which a person mentioned in paragraph (f) of the definition of *owner* in section 1.4 occupies or makes use of the land;
 - and
 - (b) land in the district of a local government while it is owned by the local government and is used for the purposes of that local government other than for purposes of a trading undertaking (as that term is defined in and for the purpose of section 3.59) of the local government; and
 - (c) land in a district while it is owned by a regional local government and is used for the purposes of that regional local government other than for the purposes of a trading undertaking (as that term is defined in and for the

purpose of section 3.59) of the regional local government; and

- (d) land used or held exclusively by a religious body as a place of public worship or in relation to that worship, a place of residence of a minister of religion, a convent, nunnery or monastery, or occupied exclusively by a religious brotherhood or sisterhood; and
- (e) land used exclusively by a religious body as a school for the religious instruction of children; and
- (f) land used exclusively as a non-government school within the meaning of the *School Education Act 1999*; and
- (g) land used exclusively for charitable purposes; and
- (h) land vested in trustees for agricultural or horticultural show purposes; and
- (i) land owned by Co-operative Bulk Handling Limited or leased from the Crown or a statutory authority (within the meaning of that term in the *Financial Management Act 2006*) by that co-operative and used solely for the storage of grain where that co-operative has agreed in writing to make a contribution to the local government; and
- (j) land which is exempt from rates under any other written law; and
- (k) land which is declared by the Minister to be exempt from rates.

APPENDIX 2

Extract of Section 6.76 of the Local Government Act 1995

6.76. Grounds of objection

(1) A person may, in accordance with this section, object to the rate record of a local government on the ground —

(a) that there is an error in the rate record —

(i) with respect to the identity of the owner or occupier of any land; or

(ii) on the basis that the land or part of the land is not rateable land; or

(b) if the local government imposes a differential general rate, that the characteristics of the land recorded in the rate record as the basis for imposing that rate should be deleted and other characteristics substituted.

(2) An objection under subsection (1) is to —

(a) be made to the local government in writing within 42 days of the service of a rate notice under section 6.41; and

(b) identify the relevant land; and

(c) set out fully and in detail the grounds of objection.

(3) An objection under subsection (1) may be made by the person named in the rate record as the owner of land or by the agent or attorney of that person.

(4) The local government may, on application by a person proposing to make an objection, extend the time for making the objection for such period as it thinks fit.

(5) The local government is to promptly consider any objection and may either disallow it or allow it, wholly or in part.

(6) After making a decision on the objection the local government is to promptly serve upon the person by whom the objection was made written notice of its decision on the objection and a statement of its reason for that decision.

APPENDIX 3

Extract of Section 6.53 of the Local Government Act 1995

6.53. Land becoming or ceasing to be rateable land

Where during a financial year —

- (a) land that was not rateable becomes rateable land; or
- (b) rateable land becomes land that is not liable to rates, the owner of that land —
- (c) is liable for rates proportionate to the portion of the year during which the land is rateable land; or
- (d) is entitled to a refund of an amount proportionate to the portion of the year during which the land is not rateable land, as the case requires.