



Rate Exemptions

Local Aboriginal Land Councils can be exempt from the payment of rates and charges to local government and water supply authorities on certain types of lands.

How is land declared exempt from the payment of rates and charges?

Under the *Aboriginal Land Rights Act 1983*, if land owned by an Aboriginal Land Council falls within a certain category, it is **automatically** exempt from rates and charges that may be levied by a Local Government Area or Water Authority. The *Aboriginal Land Rights Regulation 2014* that accompanies the Act states that Aboriginal Land Council land may be exempt where land is:

1. Not being used for a commercial or residential purpose.
2. Not being used for a residential purpose and is of spiritual or cultural significance.

1. Land not being used for a commercial or residential purpose

What constitutes a 'commercial' or 'residential' land use purpose is not always clear and needs to be determined on a case by case basis. Decisions made by previous Ministers for Aboriginal Affairs can provide some guidance. However they should only be used as a guide because the definition of 'residential' and 'commercial' land uses depends on the individual circumstances and may need to be negotiated between the Aboriginal Land Council and the relevant authority.

Meaning of Commercial Lands

“Commercial” land has been determined by previous Minister/s for Aboriginal Affairs as land that was being used for a commercial purpose if it *was being used to make money on a regular, seasonal or routine basis*. Thus, if money was made off a piece of land once or twice rather than on an *ongoing* basis, then it could still be declared rate-free on the basis that it wasn't being used for a commercial purpose.

The following are examples of land uses that the Minister for Aboriginal Affairs (of various governments) has previously considered not to be commercial purpose:

- Land that is used to agist stock infrequently. However, if agistment occurs on a continuous and repetitive basis for profit, this may constitute a commercial land use purpose.
- Land in respect of which payment is received but the payment only covers the cost of maintaining the land.

- Land that has a building on it which was previously used but has fallen into disrepair and money would have to be invested to reuse the building for a commercial purpose.

Meaning of Residential Lands

"Residential" land has been determined by previous Minister/s for Aboriginal Affairs as land that *was being lived on, or had a house on it or a caravan or some other accommodation that was in a suitable condition to be lived in.* However, land which has a building on it that was used previously, but has fallen into disrepair and requires investment of funds to enable it to be re-used for a residential purpose, has previously been determined to **not** be a residential purpose.

Note: The definitions above are meant to provide a guide only. It is the responsibility of Aboriginal Land Councils, Local Government Authorities and Water Authorities to agree upon and establish a workable system of land classification. Aboriginal Affairs and the Registrar of the Act may be able to assist if conflicts or confusion arise as to the status of land.

3. Land of spiritual or cultural significance to Aboriginal people

An Aboriginal Land Council can pass a resolution declaring land that is not being used for a residential purpose to be of spiritual or cultural significance to Aboriginal people.

The Minister for Aboriginal Affairs will then consider whether to approve the resolution or not. The Minister must approve a resolution from the Aboriginal Land Council declaring the land to be of spiritual or cultural significance before it is deemed exempt from the payment of rates and charges.

What are the deciding factors?

In deciding an application for a rate exemption based on cultural or spiritual significance to Aboriginal people the Minister for Aboriginal Affairs will consider whether:

1. The land is eligible for rate exemption
2. The resolution is valid.

In relation to eligibility, the land has to be vested in an Aboriginal Land Council and must not be being used for a residential purpose. Land uses considered to be residential use and purposes are described above.

In relation to the validity of the resolution passed by an Aboriginal Land Council, the resolution must state that the land is not being used for residential purposes and must contain an undertaking that the Aboriginal Land Council will inform the Minister should the land later become used for residential purposes.

The validity of the resolution needs to comply with the provisions of the *Aboriginal Land Rights Act 1983*, specifically that a duly constituted Aboriginal Land Council meeting was called for the purpose and appropriate resolutions and minutes of the decision were recorded. The resolution must declare the land to be of spiritual or

cultural significance. The Minister for Aboriginal Affairs will usually formally refer the resolution to the relevant Local Government Area for their comment. Any comment received will be considered by the Minister but only as far as the comments are relevant to the resolution itself. That is the use of the land and the validity of the resolution. Information about the financial impact of the rate exemption is not relevant to the Minister's considerations.

The Minister will also consider resolutions where the land is being used for a commercial purpose and is of a cultural or spiritual significance. The commercial purpose must be consistent with the land being declared of spiritual or cultural significance which could include the operation of an Aboriginal cultural or education centre.

What rates and charges apply when exemption is granted?

If certain lands are exempt, and providing that the procedural requirements have been appropriately followed and approved (as outlined above), the rates and charges Aboriginal Land Councils will be exempt from paying include:

1. Rates and charges payable under the *Local Government Act 1993*:
 - water supply services; **AND**
 - sewerage services; **AND**
 - drainage services; **AND**
 - waste management services.

2. Rates, levies and charges payable under the *Hunter Water Act 1991*:
 - Water supply; **AND**
 - Sewerage services; **AND**
 - Environmental levies; **AND**
 - Drainage areas.

3. Service charges payable under the *Sydney Water Act 1994 and the Water Management Act 2000*:
 - water services; **AND**
 - sewerage services; **AND**
 - drainage services; **AND**
 - loan services; **AND**
 - developmental works services; **AND**
 - flood mitigation services; **AND**
 - river management services; **AND**
 - special industry services.

The Minister's role in the process of exempting land from rates and charges is limited. The onus is on Aboriginal Land Councils to determine whether any of its lands are exempt prior to seeking an exemption from the Minister.

Aboriginal Land Councils should assess their land holdings and consider whether any lands fall within an exempt category.

Where the Aboriginal Land Council believes that the land is of spiritual or cultural significance and it is not being used for a residential purpose, an Aboriginal Land Council members meeting should be called to pass a resolution in relation to that land and the Minister be advised accordingly. Resolutions declaring land to be of spiritual or cultural significance must be referred to the Minister for approval (as outlined above).

When and if the Minister approves exemptions from the payment of rates and charges the Aboriginal Land Council should formally notify the relevant authorities.

What are the Implications for Local Government and other authorities?

Local Government and the other water authorities must consult directly with Aboriginal Land Councils. The Minister for Aboriginal Affairs only receives applications to approve resolutions declaring land not being used for a residential purpose or to be spiritual or cultural significance, where the Minister has received such an application. The Minister will provide local governments and water authorities the opportunity to comment.

The local government and water authorities must continue to provide services to non-rateable land. What services are to be provided will depend on the land use (if any) and any other circumstances. The provision of services to rate exempt lands should not be reduced or declined because of a granted exemption.

Disputes

Where disputes arise the matter may be referred to the Registrar of the *Aboriginal Land Rights Act 1983* or by commencing legal proceedings. However, it is important to note that taking legal action is an expensive and lengthy exercise and is best avoided.

The Registrar has the power to resolve disputes that arise between Aboriginal Land Councils, local government and water authorities. The Registrar can provide mediation, conciliation and arbitration services. Some of the benefits of using the Registrar's services are:

- Dispute resolution services are provided free of charge
- Meetings between the parties are on 'neutral' ground and within an informal environment where opposing views can be shared openly
- Negotiating your dispute instead of taking legal action can serve to strengthen relationships between all parties
- Avoids cost and lengthy legal action

Other Resources

Local Government NSW

GPO Box 7003
Sydney NSW 2001

Telephone: (02) 9242 4000

<http://lgsw.org.au/>

Office of the Registrar, *Aboriginal Land Rights Act 1983*

PO Box 5068

PARRAMATTA NSW 2124

Telephone: (02) 8633 1266

<http://www.oralra.nsw.gov.au/>

NSW Aboriginal Land Council

PO Box 1125

Parramatta NSW 2124

Telephone: 02 9689 4444

<http://www.alc.org.au>

Office of Local Government

Locked Bag 3015

NOWRA NSW 2541

Telephone: 02 4428 4100

<http://www.olg.nsw.gov.au/>

Special Note: The information provided above is for information only in order to assist Aboriginal Land Councils, Local government and water authorities to comply with current legislation. Please consult the *Aboriginal Land Rights Act 1983* and the *Aboriginal Land Rights Regulation 2014* when considering specific matters in relation to rate exemptions.