



F 1.8 Rates Exemptions for Charitable Purposes

Policy Objective

The purpose of this policy is to identify a process to be followed when an organisation wishes to apply for an exemption of rates pursuant to Section 6.26(2)(g) of the *Local Government Act 1995* (the Act), where it is claimed the land is used exclusively for charitable purposes.

This Policy provides an equitable basis and administrative framework to assess applications for rates exemptions that is compliant with legislation and guided by best practice.

Policy Scope

This policy applies to charitable and not-for-profit organisations that own land within the Shire of York and are liable for payment of rates.

Policy Statement

Introduction

Section 6.26(2) of the Act identifies a number of situations where land is not rateable. Most are clearly defined and straightforward to apply. However, Section 6.26(2)(g) is open to some interpretation and therefore, this policy seeks to clearly define under what basis, this section of the Act is to be applied by Council.

Council is committed to adhering to the Act and providing support and guidance to applicants who provide assistance to members of the public and as such, a benefit to the community. Claimants are required to evidence their right to an exemption, and demonstrate the land is used exclusively for charitable purposes.

The Act does not define what a charitable purpose is therefore, the definition under Commonwealth Law must be applied. Under Section 12(1) of the Charities Act 2013, a charitable purpose means any of the following:

- (a) *the purpose of advancing health;*
- (b) *the purpose of advancing education;*
- (c) *the purpose of advancing social or public welfare;*
- (d) *the purpose of advancing religion;*
- (e) *the purpose of advancing culture;*
- (f) *the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;*
- (g) *the purpose of promoting or protecting human rights;*
- (h) *the purpose of advancing the security or safety of Australia or the Australian public;*
- (i) *the purpose of preventing or relieving the suffering of animals;*
- (j) *the purpose of advancing the natural environment;*
- (k) *any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);*
- (l) *the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:*
 - (i) *in the case of promoting a change—the change is in furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or*
 - (ii) *in the case of opposing a change—the change is in opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.*

It must not be a disqualifying purpose under Section 11 of the *Charities Act 2013*.

The key considerations when assessing an application for exemption pursuant to Section 6.26(2)(g) of the Act are:

- The use of the land, not the purpose of the applicant.
- The use must come under the provisions of the *Charities Act 2013*.
- The land must be used exclusively for a charitable purpose.
- The land use must be for a public benefit, where the benefit is available to members of the public generally or a particular section of the public.

When considering Australian case law, 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.

Principles

Rates exemptions are applied in a clear, transparent and equitable way to all eligible claimants, with relevant consideration given to the impact on other ratepayers and the sustainability of the Shire's public finances.

Provisions

1. Application for a rates exemption under Section 6.26(2)(g) of the Act

- 1.1. All applications must be made in writing by completing an Application for Rates Exemption Form (Appendix A) and provide any supporting documentation according to the checklist on the application form.
- 1.2. If any information has not been provided or is unclear, the applicant may be required to provide the additional information before the application will be assessed.
- 1.3. If the property is leased, a copy of the lease is required with the application to ascertain if the lessee is liable for payment of the rates in the terms of the lease.
- 1.4. Rates and charges must be paid on time until a determination is made. A refund may be made if the application is successful.
- 1.5. Applicants need to provide clear and concise information regarding the nature of their activities to illustrate eligibility for the exemption to facilitate Council's decision making.

2. Making a Determination

- 2.1. An application will be assessed by the Finance Officer and if it meets the criteria to be considered for an exemption, a report will be presented to Council with an officer recommendation to either approve or decline the request.
- 2.2. The applicant must be a registered charity with Australian Charities and Not-for-profits Commission (ACNC) or an incorporated Not-for-Profit organisation.
- 2.3. The applicant must own the property on which rates are levied or be a tenant liable for payment of the rates under a lease.
- 2.4. The land must be used exclusively for charitable purposes, as defined in the *Charities Act 2013*.

- 2.5. The applicant must not conduct any commercial operation from the property.
- 2.6. The applicant must not hold a liquor licence for the provision of alcohol for sale to the public for profit.
- 2.7. Council may request additional information from an organisation making application if it considers it necessary to do so.
- 2.8. Information requested under clause 2.6 may include but, is not limited to copies of the Constitution of the organisation, recent financial statements of the organisation and information demonstrating precisely how any land that is subject of the application is used.

3. Grant of a Rates Exemption

- 3.1. An exemption shall only be granted if the applicant has demonstrated they are eligible under the relevant legislation, by completing the appropriate application form and providing supporting documentation.
- 3.2. The Council decision will be actioned by the officers and a note will be made against the property assessment.
- 3.3. Applicants will be notified in writing of Council's determination, with correspondence to include details of:
 - the date the exemption applies from,
 - the relevant section of the Act,
 - the review period (i.e. 2 years); and,
 - the amount of general rates reversed.
- 3.4. An exemption is only applicable to the rates component of the annual rates and charges. Where exemption from rates is approved, the property will still be subject to the Emergency Services Levy and any other charges.
- 3.5. If the property has been used for the stated purpose as at 1 July of the relevant financial year, the exemption can be applied from that date and a refund given if rates have been paid prior to the determination.
- 3.6. Where the land use has changed during a financial year, any exemption granted is only applicable from the date of the change.
- 3.7. A partial exemption can be applied where only part of a defined lot is used for a charitable purpose.
- 3.8. The granting of an exemption in any year does not guarantee an ongoing exemption.
- 3.9. All exemptions are to be reviewed at least every two years as part of the annual budgeting process. Where the application is based on a lease that is due to expire, it may need to be reviewed annually.

4. Rejected Applications

- 4.1. Where an application is declined, the applicant has options to challenge the determination.
 - 4.1.1. The applicant may object under Section 6.76 of the Act, on the basis that the land or part of the land was not rateable land.
 - 4.1.2. The applicant has the right to appeal a decision made under Section 6.76 to the State Administrative Tribunal (SAT).

SHIRE OF YORK: POLICY MANUAL

4.1.3. Apply for a concession under Section 6.47 of the Act. Such applications would be considered on a case by case basis and determined by Council.

4.2. Where all appeals are not successful, the final option available to the applicant is to apply to the Minister for Local Government, to make a final determination, under Section 6.26(4) of the Act.

Roles and Responsibilities

The Executive Manager of Corporate and Community Services shall be responsible for referring matters to Council in regards to this policy.

The Finance Manager shall be responsible for ensuring compliance with this policy.

The Finance Officer (Rates and Sundry Debts) shall be responsible for the day to day operations of the policy.

Key Terms/Definitions

Charitable Purpose – As defined in the *Charities Act 2013*

Policy Administration

Responsible Directorate/Division:	Finance Department
Author/Contact Officer Position:	Finance Officer
Relevant Delegation:	Not Applicable
Relevant Legislation:	<i>Local Government Act 1995</i> <i>Charities Act 2013 (Commonwealth)</i>
Relevant Documents:	Application for Rate Exemption Form Strategic Community Plan 2018-2028 Rates and Charitable Land Use Exemption Applications – Best Practise Guidelines – WALGA and WA Rates Association Rating Policy – Rateable Land (s.6.26) - DLGC
Date Adopted:	TBC
Reviews/Amendments	TBC



APPLICATION FOR RATES EXEMPTION

Section 6.26, Local Government Act 1995

Privacy

The personal information collected on this form will only be used by the Shire of York for the sole purpose of providing requested and related services. Information will be stored securely by us and will not be disclosed to any third parties without your express written consent.

This application form is to be used by organisations seeking exemption from rates, pursuant to the provisions of Section 6.26 of the *Local Government Act 1995* (see attached excerpt from the Act). It is important that as much relevant information as possible is provided in order for the Shire of York to make a reasonable assessment of the application.

Please note that where an exemption from rates is approved, the property will still be subject to the Emergency Services Levy and any other charges, if applicable, such as rubbish collection charges. All properties granted an exemption from rates will be subject to periodic reviews to ensure continued approval.

Property Details		Assess. No.	A
Address			
What is the current use of the property? (include frequency of use, portions of land used etc)			
Property Ownership			
Property Owner			
Postal Address			
Telephone		Mobile	
Email			

Applicant			
Organisation		ABN	
Contact Person			
Position/Title			
Postal Address			
Telephone		Mobile	
Email			

Organisation Information	
Is the organisation an incorporated body as per the <i>Associations Incorporated Act 1987</i> ? <i>If yes, provide a Certificate of Incorporation</i>	YES / NO
Is the organisation considered 'not for profit', registered under the Australian Charities and Not for Profit Commission (ACNC) or a Public Benevolent Institution? <i>If yes, provide evidence</i>	YES / NO
Is the organisation membership based? <i>If yes, please provide details of the number of members and criteria for membership.</i>	YES / NO
Does the organisation have a charity tax exemption from the Australian Tax Office (ATO)? <i>If yes, provide a certificate of tax exemption from the ATO.</i>	YES / NO
Is the organisation leasing the property? <i>If yes, please provide a copy of the lease and confirm if the lessee is responsible for payment of the rates.</i>	YES / NO
Does the organisation have planning approval for the land use of the property? <i>A site inspection may be required before the application is processed.</i>	YES / NO
Is the organisation aware of any similar properties that are exempt from rates? <i>If yes, please provide details.</i>	YES / NO
What category of Section 6.26(2) of the Act does this application come under? (<i>refer to attached information</i>)	(a) (b) (c) (d) (e) (f) (g) (h) (i) (j) (k) (none)

Required Documentation	
Please provide a copy of the following:	
<input type="checkbox"/>	Organisation's Constitution
<input type="checkbox"/>	Certificate of Title for the property
<input type="checkbox"/>	Written statement outlining the nature of the Organisation's operations. It should include the following details: <ul style="list-style-type: none"> • Use and occupancy of the property, including the date this commenced • Type of service provided (e.g. food, accommodation etc) • Frequency of service provision (e.g. full-time, daily, weekly etc) • Whether payment is received for the service • Whether there are commercial activities conducted on the land, providing details.
<input type="checkbox"/>	A plan of the property, showing all buildings and outbuildings OR a floor plan of the leased property area, if only part of the property is the subject of this application
<input type="checkbox"/>	A copy of the current year's audited financial statements for the organisation <i>(If this exemption applies to only a portion of land owned by this Organisation, provide the relevant statements for the land this application applies to)</i>

Authorisation	
I hereby certify that the information provided is true and correct to the best of my knowledge.	
Name:	
Position:	
Organisation:	
Signature of Applicant:	Date:

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.*
- (3) *If Co-operative Bulk Handling Limited and the relevant local government cannot reach an agreement under subsection (2)(i) either that co-operative or the local government may refer the matter to the Minister for determination of the terms of the agreement and the decision of the Minister is final.*
- (4) *The Minister may from time to time, under subsection (2)(k), declare that any land or part of any land is exempt from rates and by subsequent declaration cancel or vary the declaration.*
- (5) *Notice of any declaration made under subsection (4) is to be published in the Gazette.*
- (6) *Land does not cease to be used exclusively for a purpose mentioned in subsection (2) merely because it is used occasionally for another purpose which is of a charitable, benevolent, religious or public nature.*

WESTERN AUSTRALIA

OATHS, AFFIDAVITS AND STATUTORY DECLARATIONS ACT 2005

STATUTORY DECLARATION

**APPLICATION FOR RATES EXEMPTION UNDER
SECTION 6.26 OF THE LOCAL GOVERNMENT ACT 1995.**

STATEMENT OF PROPERTY USE FOR THE YEAR ENDING 30 JUNE 20

(1) Christian name or names and surname of declarant in full (1) I

(2) Address (2) of
In the State of Western Australia

3) Occupation (3) _____

Sincerely declare as follows:-

The property located at
is used by
for the purposes of
Description of the activities the property is used for
for the period _____ to _____ or from _____ to _____ .

The applicant agrees to advise the Local Government's Rating Services Section as soon as there is **ANY** change to the purpose/s as stated above.

This declaration is made under the *Oaths, Affidavits and Statutory Declarations Act 2005*

Declared at _____
this _____ day of _____ 200____
In the presence of _____
(Signature of authorised witness)

(Name of authorised witness and qualification as such a witness)

(4) Signature of person making the declaration

(4)

***Important** This Declaration must be made before any of the following persons:-

Academic {post-secondary institution}
Accountant
Architect
Australian Consular Officer
Australian Diplomatic Officer
Bailliff
Bank Manager
Chartered secretary
Chemist
Chiropractor
Company auditor or liquidator
Court officer {Judge, magistrate, registrar or clerk}
Defence Force officer {Commissioned, Warrant or NCO {with 5 years continuous service}}
Dentist
Doctor
Electorate Officer {State – WA only}
Engineer
Industrial organisation secretary
Insurance broker
Justice of the Peace {any State}
Lawyer
Local government CEO or deputy CEO
Local government councillor
Loss adjuster
Marriage Celebrant
Member of Parliament {State or Commonwealth}
Minister of religion
Nurse
Optometrist
Patent Attorney
Physiotherapist
Podiatrist
Police officer
Post Officer manager
Psychologist
Public Notary,
Public Servant {State or Commonwealth}
Real Estate agent
Settlement agent
Sheriff or deputy Sheriff
Surveyor
Teacher
Tribunal officer
Veterinary surgeon

Or,

Any person before whom, under the *Statutory Declarations Act 1959* of the Commonwealth, a Statutory Declaration may be made.

FOR INFORMATION: Any authorised witness for the State of Western Australia may also witness a Commonwealth Statutory Declaration, as long as they are in Western Australia at the time of witnessing {Schedule 2, item 231 of the Commonwealth Statutory Declarations Regulations 1993}.

IMPORTANT INFORMATION:

AS OF 1 JANUARY 2006 THERE IS NO PROVISION FOR COMMISSIONERS FOR DECLARATIONS IN THE STATE OF WESTERN AUSTRALIA

