



New South Wales

Fire and Emergency Services Levy Act 2017 No 9

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New South Wales

Fire and Emergency Services Levy Act 2017 No 9

Act No 9, 2017

An Act to provide for the charging and collection of a fire and emergency services levy; to abolish the emergency services insurance contribution scheme; and to make related amendments to other legislation. [Assented to 4 April 2017]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Fire and Emergency Services Levy Act 2017*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Definitions

(1) In this Act:

ad valorem component of levy— see section 17.

ad valorem rate formula—see section 28.

area means an area within the meaning of the *Local Government Act 1993*.

Note. Lord Howe Island is taken to be an area under this Act.

assessed levy—see section 97.

assessed rate or charge—see section 96.

Chief Commissioner means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.

collection instalment means a collection instalment payable under section 99.

commercial land means land classified as commercial land under this Act.

compliance certificate means a compliance certificate issued by the Valuer-General under section 133 or by the Chief Commissioner under section 136.

compliance issue—see sections 133 and 136.

council means a council within the meaning of the *Local Government Act 1993*.

Court means the Land and Environment Court.

Crown means the Crown in right of New South Wales and includes any NSW Government agency and any statutory body representing the Crown in right of New South Wales.

eligible pensioner in relation to a levy on leviable land means a person who is an eligible pensioner in relation to land under Chapter 15 of the *Local Government Act 1993*.

farmland means land classified as farmland under this Act.

FESL revenue target means the FESL revenue target determined by the Treasurer under section 36.

financial year means a period of 12 months commencing on 1 July in each year.

fixed component of levy—see section 16.

function includes a power, authority or duty, and *exercise* a function includes perform a duty.

government land means land classified as government land under this Act.

hardship guidelines—see section 84.

industrial land means land classified as industrial land under this Act.

land includes a stratum within the meaning of the *Valuation of Land Act 1916*.

land value—see section 18 (6).

lease has the same meaning as it has in the *Local Government Act 1993*.

lease for value means a lease for more than nominal rent.

leviable land has the meaning given by section 6.

levy (or *FESL*) means the fire and emergency services levy payable under this Act.

levy estimate information—see section 34.

levy notice means the notice by which a levy is charged (see section 78).

levy recovery arrangement—see section 91.

levy valuation—see section 21.

liable person, in relation to land, means a person who is liable for a levy for that land or who would be liable for a levy for the land if the land were leviable land.

liable State owned corporation means a State owned corporation that is declared to be a liable State owned corporation by a regulation under section 42.

Lord Howe Island means the Island under the *Lord Howe Island Act 1953*.

Monitor means the Emergency Services Levy Insurance Monitor appointed under the *Emergency Services Levy Insurance Monitor Act 2016*.

owner has the same meaning as it has in the *Local Government Act 1993*.

parcel of land includes a parcel that comprises a stratum within the meaning of the *Valuation of Land Act 1916*.

Note. See also section 10 for the circumstances in which land is a separate parcel of land under this Act.

payment order—see section 86.

pensioner discount amount—see section 25.

property sector—see section 40.

public benefit land means land classified as public benefit land under this Act.

published ad valorem rate—see section 27.

quarterly instalment period—see section 82.

relevant payment—see section 95.

relevant proportion—see section 30.

residential land means land classified as residential land under this Act.

State owned corporation means a State owned corporation (within the meaning of the *State Owned Corporations Act 1989*) or a subsidiary of a State owned corporation.

unvalued land—see section 19.

vacant land means land sub-classified as vacant land under this Act.

vacant land discount—see section 23.

Note. The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.
- (3) In this Act, a reference to a financial year, when immediately preceded by a reference to particular years (in the format of [year]/[year]), is a reference to the financial year that commences and ends in those years (respectively).

Note. For example, a reference to the 2017/2018 financial year is a reference to the financial year commencing in 2017 and ending in 2018.

4 Application of Act to Lord Howe Island

The levy payable under this Act extends to land situated on Lord Howe Island and, for that purpose:

- (a) Lord Howe Island is taken to be an area under this Act, and
- (b) the Lord Howe Island Board is taken to be the council for that area and has all the functions of a council in relation to that area under this Act.

Part 2 Fire and emergency services levy

5 Fire and emergency services levy

A fire and emergency services levy is payable on all leviable land.

6 Land on which levy is charged

- (1) For the purposes of this Act, *leviable land* is any land situated in the area of a council that is within one of the following property sectors:
 - (a) public benefit land,
 - (b) farmland,
 - (c) residential land,
 - (d) industrial land,
 - (e) commercial land.
- (2) Land is within a property sector if the land is classified to be within that property sector under this Act.

7 Who is liable to pay levy

- (1) The owner for the time being of leviable land is liable to pay the levy, except as provided by this section.
- (2) If leviable land owned by the Crown or a State owned corporation (other than a liable State owned corporation) is the subject of a lease for value and the dominant use of the land is for the purposes of the lease, the lessee under the lease is liable to pay the levy.
- (3) If there are 2 or more owners, or 2 or more lessees, who are liable to pay the levy in respect of the same land, they are jointly and severally liable to pay the levy.

Note. Government land is exempt from the levy. Land owned by the Crown or a State owned corporation is to be classified as government land under this Act unless the land is the subject of a lease for value and the dominant use of the land is for the purposes of the lease. There are some exceptions to that classification requirement.

8 Levy is payable for each financial year

The levy is payable for each financial year.

Note. The levy can be paid as a single instalment or as quarterly instalments (see Part 6).

9 Amount of levy

The amount of the levy payable is provided for by Part 3.

10 Levy payable on each separate parcel of land

- (1) A separate levy is payable for each separate parcel of land.
- (2) Land is taken to be a separate parcel of land for the purposes of this Act:
 - (a) if the land is separately valued under the *Valuation of Land Act 1916*, or
 - (b) if the land is the subject of one valuation under that Act, or
 - (c) in any other circumstances provided for by or under this Act.
- (3) Subsection (2) does not affect the application of this Act to land that is not valued under the *Valuation of Land Act 1916*.
- (4) This section is subject to Parts 5 and 8 and any regulations under this section.

Note. Part 5 (Division 7) and Part 8 provide for further circumstances in which land is treated as a separate parcel of land for levy purposes.

- (5) The regulations may make further provision for the circumstances in which something is, or is not, taken to be a separate parcel of land under this Act.

11 Levy payable to council

The levy is payable to the council for the area in which the leviable land is situated.

12 Council must charge and collect levy on behalf of State

- (1) A council is responsible for charging the levy on land situated in the council's area and for collecting the levy.
- (2) A council charges and collects the levy on behalf of the State.
- (3) The council must account for amounts collected by paying collection instalments to the Chief Commissioner in accordance with this Act.

13 Levy to be apportioned over whole year

- (1) A levy is proportionate to the portion of the year for which land is leviable land.
- (2) A levy for land that is within a particular property sector is proportionate to the portion of the year for which the land is within that property sector.

14 No levy for government land

There is no levy payable in respect of government land.

Note. Land that is not within a council area is also excluded because it is not leviable land.

Part 3 Amount of levy

Division 1 Fundamentals

15 Components of levy: fixed and ad valorem

- (1) The levy payable is the total of the following:
 - (a) the fixed component of the levy,
 - (b) the ad valorem component of the levy.
- (2) The components of the levy are based on the property sector that the land is within.
Note. Part 5 sets out how land is classified into different property sectors.

16 Fixed component of levy

- (1) The fixed component of the levy is the base rate for the property sector that the land is within.
- (2) The **base rate** is as follows:
 - (a) \$100 for public benefit land,
 - (b) \$100 for residential land,
 - (c) \$200 for farmland,
 - (d) \$200 for industrial land,
 - (e) \$200 for commercial land.
- (3) The regulations may prescribe a different base rate for any property sector. If they do, the base rate for that property sector is the prescribed rate.
- (4) The regulations may provide for adjustments to the base rate for any property sector to account for movements in the consumer price index. If they do, the fixed component of the levy is the adjusted base rate (as provided for by the regulations) for the property sector that the land is within for the financial year for which the levy is charged.

17 Ad valorem component of levy

- (1) The ad valorem component of the levy is calculated by applying the relevant ad valorem rate to the land value of the parcel of land on which the levy is charged.
- (2) The relevant ad valorem rate is the published ad valorem rate for the property sector that the land is within for the financial year for which the levy is charged.
- (3) The council that charges the levy is to calculate the ad valorem component of the levy.

18 Land value of land

- (1) The land value of land is the land value (within the meaning of the *Local Government Act 1993*) used by the council for the purpose of levying rates under Chapter 15 of the *Local Government Act 1993*, subject to this section.
- (2) For any period in which the rates payable in respect of land are postponed under Division 2 of Part 8 of Chapter 15 of the *Local Government Act 1993*, the levy is to be charged as if the land value of the land were the non-attributable value of the land (despite section 61 of the *Valuation of Land Act 1916*).
- (3) The **non-attributable value** of land is the land value of the land for the purpose of levying rates under Chapter 15 of the *Local Government Act 1993* minus the

attributable part of the land value (within the meaning of Division 2 of Part 8 of Chapter 15 of the *Local Government Act 1993*).

- (4) If the council does not levy rates on the land, the land value of the land is the land value of the land determined in accordance with the *Valuation of Land Act 1916*.
- (5) However, if the land is unvalued land, the land value of the land is the land value of the land determined in accordance with Division 2.
- (6) A reference in this Act to the land value of land, for levy purposes, is a reference to the land value of land determined as provided for by this section and Division 2.

Note. Section 61 of the *Valuation of Land Act 1916* provides that land value must be ascertained by reference to the valuation list, and any supplementary lists, provided by the Valuer-General under Part 5 of the *Valuation of Land Act 1916*.

Section 62 of the *Valuation of Land Act 1916* provides that the most recent valuation list is to be used to determine land value.

Division 2 Unvalued land

19 Unvalued land—meaning

- (1) The following land is *unvalued land*:
 - (a) land on Lord Howe Island,
 - (b) any other land declared by the regulations to be unvalued land.
- (2) Land is not unvalued land if it is required to be valued for the purposes of another tax.
- (3) Land is required to be valued for the purposes of another tax if the Valuer-General is required, under the *Valuation of Land Act 1916*, to provide a valuation of the land which is used for the purposes of a rate or charge that is payable under the *Local Government Act 1993*, land tax or any other rate or tax (other than the levy).

20 Regulations may specify land value of unvalued land

- (1) The regulations may specify the land value of unvalued land, or the method by which the land value of unvalued land is to be calculated, for the purposes of this Act.
- (2) The land value of unvalued land, or the method by which the land value is calculated, may be specified by reference to the owner of the land, the liable person in relation to the land, the use of the land, the location of the land or in any other way.
- (3) The regulations may specify a zero land value for unvalued land. In that case, the land value of the land is zero and no levy is payable on the land (including no fixed component).
- (4) The regulations have effect despite anything to the contrary in the *Valuation of Land Act 1916*.

21 Valuer-General to ascertain land value of unvalued land

- (1) The Valuer-General is to ascertain the land value of each parcel of land that is unvalued land in accordance with the regulations.
- (2) The land value of unvalued land is the land value as ascertained by the Valuer-General under this section.
- (3) A valuation made by the Valuer-General under this section is a *levy valuation*.
- (4) This section does not apply if the regulations specify a zero land value for the unvalued land.

22 Application of Valuation of Land Act 1916

- (1) Levy valuations are to be entered in the Register of Land Values kept under the *Valuation of Land Act 1916*.
- (2) Information entered in the Register of Land Values about levy valuations is to be included in any valuation list or supplementary lists compiled by the Valuer-General and furnished to a rating or taxing authority under the *Valuation of Land Act 1916*.
- (3) Subject to this Division, the *Valuation of Land Act 1916* and the regulations under that Act apply, with any necessary modifications, to levy valuations and to the information about levy valuations entered in the Register of Land Values in the same way as they apply to general valuations and to the information about general valuations entered in the Register of Land Valuers under that Act.
Note. Parts 3 and 4 of the *Valuation of Land Act 1916* permit objections to, and appeals against, valuations made by the Valuer-General.
Part 5 of the *Valuation of Land Act 1916*, among other things, requires councils to use the valuation list as the basis for charging rates or taxes.
- (4) For the purpose of applying the *Valuation of Land Act 1916* to levy valuations of unvalued land on Lord Howe Island:
 - (a) Lord Howe Island is taken to be an area, and
 - (b) the Lord Howe Island Board is taken to be a rating or taxing authority, and a council, for that area.
- (5) The regulations under the *Valuation of Land Act 1916* may modify the application of, or disapply, any provision of the *Valuation of Land Act 1916* or the regulations under that Act in relation to unvalued land and levy valuations.

Division 3 Discounts

23 Discount for vacant land

- (1) A liable person is eligible for a vacant land discount in respect of the levy payable on leviable land if the land is vacant land.
- (2) The levy payable for a financial year is to be reduced by the vacant land discount (expressed as a percentage) for the financial year for which the levy is charged.
- (3) The *vacant land discount* is 0.5 or, if another rate is prescribed by the regulations, that rate.
- (4) The discount applies to the fixed and ad valorem components only and not to any interest that accrues on overdue payments of the levy.
- (5) The discount applies only to the proportion of the levy that is payable for the number of quarterly instalment periods during the financial year in which the land is vacant land.

24 Discount for eligible pensioners

- (1) A liable person is eligible for a pensioner discount in respect of the levy payable on leviable land if the liable person is an eligible pensioner.
- (2) The levy payable for a financial year is to be reduced by the pensioner discount amount.
- (3) The pensioner discount amount is proportionate to the number of quarterly instalment periods during the financial year in which the liable person is an eligible pensioner.

- (4) Only one pensioner discount can be claimed in respect of a parcel of land, even if more than one eligible pensioner is a liable person in respect of the land.
- (5) If the pensioner discount amount is more than the levy that (but for the discount) would be payable, the levy payable is zero.

25 Pensioner discount amount

- (1) The *pensioner discount amount* is:
 - (a) \$50 in the 2017/2018 financial year, and
 - (b) the indexed amount in any subsequent financial year.
- (2) The indexed amount is the amount determined by multiplying \$50 by A/B , where:
 A is the Sydney CPI number for December in the financial year before the financial year for which the indexed amount is being determined, and
 B is the Sydney CPI number for December 2016, and
 A/B is calculated to the nearest 3 decimal places (and a fourth decimal place of 5 is to be rounded up).
- (3) If the indexed amount is not a multiple of 10 cents, the amount is to be rounded to the nearest 10 cent multiple (and an amount of 5 cents is to be rounded up).
- (4) The Treasurer is to publish a notice on the NSW legislation website by 30 April before the commencement of each financial year (starting with the 2018/2019 financial year) specifying the indexed amount for that financial year, calculated in accordance with this section.
- (5) In this section:
Sydney CPI number means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician or, if the Australian Statistician fails or ceases to issue that number, another number or index prescribed by the regulations.

26 Change of circumstances

- (1) If circumstances occur during a financial year that cause an entitlement to a pensioner discount on the levy to arise, the entitlement is taken to arise at the beginning of the first day of the quarterly instalment period that starts immediately after the quarterly instalment period during which those circumstances occurred.
- (2) If circumstances occur during a financial year that cause an entitlement to a pensioner discount on the levy to cease, the entitlement is taken to cease at the end of the last day of the quarterly instalment period during which those circumstances occurred.
- (3) If, at the time the entitlement is taken to arise or cease, the levy for the whole year has been paid in full, the portion of the payment that is proportionate to the number of quarterly instalment periods remaining after that time is to be credited to the levy payable in respect of the remaining part of the year.

Part 4 Method for calculating ad valorem rate

Division 1 Treasurer to calculate ad valorem rate

27 Published ad valorem rate

- (1) The Treasurer must, before the commencement of each financial year, determine an ad valorem rate of the levy for the next financial year.
- (2) The determination must specify an ad valorem rate of the levy for each property sector (other than government land).
- (3) The determination is to be made by order published on the NSW legislation website.
- (4) The order is to be published on the NSW legislation website by the date of 30 April that occurs immediately before the commencement of the financial year.
- (5) An ad valorem rate specified in the order for a property sector is the **published ad valorem rate** for that property sector for the financial year for which it is specified.
- (6) If an order specifying the ad valorem rate of the levy for a financial year is not published on the NSW legislation website by the date of 30 April that occurs immediately before the commencement of that financial year, the published ad valorem rate for a property sector is taken to be the published ad valorem rate for the financial year that immediately precedes the financial year.
- (7) Subsection (6) does not apply to the ad valorem rate for the 2017/2018 financial year.
Note. Schedule 3 permits things required to be done by 30 April 2017 to be done later, if this Act has not commenced by 23 April.

28 Ad valorem rate formula

- (1) The Treasurer is to determine the ad valorem rate of the levy for a property sector using the ad valorem rate formula.
- (2) The **ad valorem rate formula** is the following formula:

$$A = \frac{R - (F \times (N_{nv} + (D \times N_v))) + (C \times P)}{(V_{nv} + (D \times V_v))}$$

where:

A is the ad valorem rate of the levy for the property sector for the financial year for which the determination is being made.

R is the revenue target for the property sector for the financial year.

F is the fixed component of the levy for the property sector for the financial year.

N_{nv} is the estimated number of non-vacant properties in the property sector for the financial year.

D is 1 minus the vacant land discount for the financial year.

N_v is the estimated number of vacant properties in the property sector for the financial year.

C is the pensioner discount amount for the financial year.

P is the estimated number of pensioner discount properties in the property sector for the financial year.

V_{nv} is the estimated value of non-vacant properties in the property sector for the financial year.

V_v is the estimated value of vacant properties in the property sector for the financial year.

- (3) For the public benefit land and farmland property sectors, N_v and V_v are taken to be zero.
- (4) Expressions used in the ad valorem rate formula have the meanings given by this Division.

29 Revenue target for property sector

The **revenue target** for a property sector for a financial year is the amount determined by applying the relevant proportion for the property sector to the FESL revenue target for that financial year.

Note. Division 2 sets out how the Treasurer determines the FESL revenue target.

30 Relevant proportion

- (1) The **relevant proportion** for each property sector is as follows:
 - (a) for public benefit land—0.33%,
 - (b) for farmland—4.56%,
 - (c) for residential land—58.07%,
 - (d) for industrial land—10.38%,
 - (e) for commercial land—26.66%.
- (2) The regulations may specify a different relevant proportion for any property sector and, if they do, the relevant proportion for the property sector is the proportion specified in the regulations.
- (3) The regulations may specify different proportions for different financial years.

31 Estimate of non-vacant properties

- (1) The **estimated number of non-vacant properties** in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the number of non-vacant parcels of land in that property sector in that financial year.
- (2) The **estimated value of non-vacant properties** in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the total land value, for levy purposes, of all non-vacant parcels of land in that property sector in that financial year.
- (3) A parcel of land is non-vacant if it is not sub-classified as vacant land.
- (4) The Valuer-General is to prepare and adopt an estimated number of non-vacant properties and an estimated value of non-vacant properties, for each property sector, and give each estimate to the Treasurer by 15 March in the year in which the financial year for which the estimate is made commences or by a later date approved by the Treasurer.
- (5) An estimate of value is to be rounded to the nearest multiple of \$100,000 (with an amount of \$50,000 rounded up).
- (6) Estimates are not required for the government land property sector.
- (7) In this section, a reference to a parcel of land is a reference to a parcel of land that is a separate parcel of land under this Act.

32 Estimate of vacant properties

- (1) The **estimated number of vacant properties** in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the number of vacant parcels of land in that property sector in that financial year.

- (2) The *estimated value of vacant properties* in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the total land value, for levy purposes, of all vacant parcels of land in that property sector in that financial year.
- (3) The Valuer-General is to prepare and adopt an estimated number of vacant properties and an estimated value of vacant properties, for each property sector, and give each estimate to the Treasurer by 15 March in the year in which the financial year for which the estimate is made commences or by a later date approved by the Treasurer.
- (4) An estimate of value is to be rounded to the nearest multiple of \$100,000 (with an amount of \$50,000 rounded up).
- (5) Estimates are not required for the government land, public benefit land or farmland property sectors.
- (6) In this section, a reference to a parcel of land is a reference to a parcel of land that is a separate parcel of land under this Act.

33 Estimate of pensioner discount properties

- (1) The *estimated number of pensioner discount properties* in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the number of parcels of land in that property sector that will be eligible for a pensioner discount in that financial year.
- (2) The Valuer-General is to prepare and adopt an estimated number of pensioner discount properties, for each property sector, and give each estimate to the Treasurer by 15 March in the year in which the financial year for which the estimate is made commences or by a later date approved by the Treasurer.
- (3) An estimate is not required for the government land property sector.
- (4) In this section, a reference to a parcel of land is a reference to a parcel of land that is a separate parcel of land under this Act.

34 Councils to provide levy estimate information to Valuer-General

- (1) Each council is to provide to the Valuer-General, by 15 February in each year or by a later date prescribed by the regulations, a return in a form approved by the Valuer-General that contains the levy estimate information for the council's area.
- (2) The *levy estimate information* means the following:
 - (a) information about the classification and sub-classification of land in the council's area,
 - (b) information about the number of parcels of land in the council's area that are eligible for a pensioner discount under this Act,
 - (c) any other information that the Valuer-General reasonably requires for the purpose of exercising his or her functions under this Division.
- (3) The levy estimate information must be up to date as of 31 December in the year before the return is required to be provided.
- (4) In this section, a reference to a parcel of land is a reference to a parcel of land that is a separate parcel of land under this Act.

35 Information to be used by Valuer-General to provide estimates

- (1) The Valuer-General is to make the estimates required to be made by the Valuer-General under this Division on the basis of the levy estimate information provided to the Valuer-General by councils in accordance with this Act and any other information that the Valuer-General considers relevant.

- (2) If a council fails to provide any levy estimate information for the council's area by the date it is required to provide that information under this Act, the Valuer-General may make the estimate on the basis of any other information available to the Valuer-General.
- (3) The Valuer-General may, in adopting an estimate under this Division, make any adjustments or allowances that the Valuer-General considers it appropriate to make.

Division 2 FESL revenue target for ad valorem calculation

36 FESL revenue target

- (1) The Treasurer is to determine the **FESL revenue target** for a financial year using the following formula:

$$ER_t = (FT_t \times 0.81) + CC_t + (ER_{t-2} - AR_{t-2}) - OC_t$$

where:

ER_t is the FESL revenue target for the financial year (represented by "t").

FT_t is the funding target for the financial year.

CC_t is the collection cost for the levy in the financial year.

ER_{t-2} is the FESL revenue target for the financial year that commenced 2 years before the period "t" (represented as "t-2").

AR_{t-2} is the actual FESL revenue for the financial year that commenced 2 years before the period "t" (represented as "t-2"), as certified by the Treasurer.

OC_t is the recovered over-collection amount for the financial year.

- (2) To avoid doubt, if $ER_{t-2} - AR_{t-2}$ is a negative amount, that amount is subtracted from the total.
- (3) When calculating the FESL revenue target for the 2017/2018 financial year and the 2018/2019 financial year, $ER_{t-2} - AR_{t-2}$ is taken to be zero.
- (4) The FESL revenue target is to include any additions made under Part 2 of Schedule 3. **Note.** Under Schedule 3, the Monitor budget and start-up costs for the levy can be added to the FESL revenue target during the initial period of the scheme.
- (5) Expressions used in the FESL revenue target formula have the meanings given by this Division.

37 Funding target

The **funding target** for a financial year is the total of the following funding targets for the financial year:

- (a) the SES funding target (within the meaning of Part 5A of the *State Emergency Service Act 1989*),
- (b) the fire brigades funding target (within the meaning of Part 5 of the *Fire Brigades Act 1989*),
- (c) the rural fire brigade funding target (within the meaning of Part 5 of the *Rural Fires Act 1997*).

38 Collection cost

- (1) The **collection cost** for the levy in a financial year is the amount calculated by the Treasurer in accordance with this section.

- (2) The Treasurer is to calculate the collection cost for a financial year using the following formula:

$$CC_t = EC_t + (AC_{t-2} - EC_{t-2})$$

where:

CC_t is the collection cost for the financial year (represented by “t”).

EC_t is the estimated collection cost for the financial year.

AC_{t-2} is the actual collection cost for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

EC_{t-2} is the estimated collection cost for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

- (3) The Treasurer must, before 30 April in each year, prepare and adopt an estimate of the collection cost for the next financial year (which is the **estimated collection cost** for that financial year).
- (4) The estimated collection cost for a financial year is the Treasurer’s estimate of the total of the following:
- (a) the collection payments that will be made to councils during the financial year,
 - (b) the costs that will be incurred by or on behalf of the Crown in exercising functions under this Act during the financial year.
- (5) The **actual collection cost** for a financial year is the amount certified by the Treasurer to be the total of the following:
- (a) all collection payments that were made to councils during the financial year,
 - (b) all costs that were incurred by or on behalf of the Crown in exercising functions under this Act during the financial year.
- (6) For the 2017/2018 financial year and the 2018/2019 financial year, $AC_{t-2} - EC_{t-2}$ is taken to be zero.

39 Recovered over-collection amount

- (1) The **recovered over-collection amount** for a financial year is the sum of all over-collection amounts paid to or recovered by the Chief Commissioner under Part 3A of the *Emergency Services Levy Insurance Monitor Act 2016* in the period of 12 months ending on the date of 31 March occurring before the commencement of the financial year, as determined by the Chief Commissioner.
- (2) The Chief Commissioner is to advise the Treasurer of the recovered over-collection amount by the date of 15 April that occurs before the commencement of the financial year or by a later date approved by the Treasurer.

Part 5 Classification of land for levy

Division 1 Councils required to classify land

40 Land to be classified into property sectors

- (1) For the purpose of charging the levy, a council must classify each parcel of land in its area to be within one of the following categories (each of which is a *property sector* for the purposes of this Act):
 - (a) government land,
 - (b) public benefit land,
 - (c) farmland,
 - (d) residential land,
 - (e) industrial land,
 - (f) commercial land.
- (2) Each parcel of land that is a separate parcel of land for the purposes of this Act must be separately classified.
- (3) The land must be classified in accordance with this Part.
- (4) For the purposes of this Act, land is within a property sector if it is classified to be within that property sector under this Part.

41 Steps for classification

- (1) When classifying land, a council must first consider whether the land is government land.
- (2) The council is to classify the land as government land if the land meets the requirements for classification as government land.
- (3) If the land does not meet the requirements for classification as government land, the council must:
 - (a) consider whether the land is public benefit land, and
 - (b) if the land meets the requirements for classification as public benefit land, classify the land as public benefit land.
- (4) If the land does not meet the requirements for classification as either government land or public benefit land, the council must:
 - (a) consider whether the land should be classified as farmland or residential land, and
 - (b) if the land meets the requirements for classification as farmland or residential land, classify the land as farmland or residential land, respectively.
- (5) If the land does not meet the requirements for classification as government land, public benefit land, farmland or residential land, the council must:
 - (a) consider whether the land should be classified as industrial land, and
 - (b) if the land meets the requirements for classification as industrial land, classify the land as industrial land.
- (6) If the land does not meet the requirements for classification as government land, public benefit land, farmland, residential land or industrial land, the council is to classify the land as commercial land.

Note. Commercial land is the default classification for leviable land. If land cannot be classified into one of the other categories, it is to be classified as commercial land.

42 Requirements for classification as government land

- (1) Land meets the requirements for classification as **government land**, subject to the regulations, if:
 - (a) the land is owned by the Crown, unless:
 - (i) the regulations declare that the land is not government land, or
 - (ii) the land is leased and subsection (2) applies to the land, or
 - (b) the land is owned by a State owned corporation, unless:
 - (i) the regulations declare that the corporation is a liable State owned corporation, or
 - (ii) the land is leased and subsection (2) applies to the land, or
 - (c) the land is owned by the Commonwealth, or
 - (d) the land is owned by a council, unless:
 - (i) the regulations declare that the land is not government land, or
 - (ii) the land is leased and subsection (2) applies to the land, or
 - (e) the land is situated within any part of the Western Division (within the meaning of the *Crown Lands Act 1989*) that is not constituted as an area under the *Local Government Act 1993*, or
 - (f) the land is the premises of a mission to which the *Diplomatic Privileges and Immunities Act 1967* of the Commonwealth applies, or
 - (g) the land is declared by the regulations to be government land.
- (2) Land that is owned by the Crown, a State owned corporation or a council does not meet the requirements for classification as government land if the land is the subject of a lease for value and the dominant use of the land is for the purposes of the lease.
- (3) However, subsection (2) does not apply if:
 - (a) the land is owned by the New South Wales Land and Housing Corporation, or by the Aboriginal Housing Office, and the dominant use of the land under the lease is for residential accommodation, or
 - (b) the land is owned by the Crown and leased to an individual who is employed in the service of the Crown, in his or her capacity as an employee, and the dominant use of the land under the lease is for residential accommodation, or
 - (c) the land is owned by a State owned corporation and leased to an individual who is employed by the State owned corporation, in his or her capacity as an employee, and the dominant use of the land under the lease is for residential accommodation, or
 - (d) the land is owned by a council and leased to an individual who is employed by the council, in his or her capacity as an employee, and the dominant use of the land under the lease is for residential accommodation, or
 - (e) a regulation under subsection (1) (g) declares the land to be government land (unless otherwise provided by the regulations).
- (4) Residential accommodation means the type of residential accommodation that permits rateable land to be categorised as residential under section 516 of the *Local Government Act 1993*.
- (5) A provision of a regulation that is made under this section may specify the date on and from which the provision takes effect for classification purposes. The date may occur before, on or after the date of publication of the regulation on the NSW legislation website but not before the commencement of the financial year in which publication occurs.

- (6) If no date is specified, any change in the requirements for classification of land made by the regulation is taken to have effect at the beginning of the first date of the next quarterly instalment period after the regulation takes effect.

43 Requirements for classification as public benefit land

- (1) Land meets the requirements for classification as *public benefit land* if:
 - (a) the land is not-for-profit land, and
 - (b) the liable person is using the land for a purpose referred to in Schedule 1, and
 - (c) that purpose is the dominant use of the land.
- (2) Land is *not-for-profit land* if:
 - (a) the land is not used for any profit-making purpose, or
 - (b) the dominant use of the land is for a purpose that is not a profit-making purpose.
- (3) Land may be used for a profit-making purpose even if no profit is made.
- (4) The regulations may declare any use of land to be, or not to be, for a profit-making purpose.
- (5) The regulations may amend Schedule 1.
- (6) A provision of a regulation that is made under this section may specify the date on and from which the provision takes effect for classification purposes. The date may occur on or after the date of publication of the regulation on the NSW legislation website.
- (7) If no date is specified, any change in the requirements for classification of land made by the regulation is taken to have effect at the beginning of the first date of the next quarterly instalment period after the regulation takes effect.

44 Requirements for classification as farmland

Land meets the requirements for classification as *farmland* if it is categorised as farmland by the council for ratings purposes under the *Local Government Act 1993* or would be so categorised if it were rateable land under that Act.

45 Requirements for classification as residential land

Land meets the requirements for classification as *residential land* if it is categorised as residential by the council for ratings purposes under the *Local Government Act 1993* or would be so categorised if it were rateable land under that Act.

46 Requirements for classification as industrial land

- (1) Land meets the requirements for classification as *industrial land* if the dominant use of the land is for a purpose referred to in Schedule 2.
- (2) The regulations may amend Schedule 2.
- (3) A provision of a regulation that is made under this section may specify the date on and from which the provision takes effect for classification purposes. The date may occur on or after the date of publication of the regulation on the NSW legislation website.
- (4) If no date is specified, any change in the requirements for classification of land made by the regulation is taken to have effect at the beginning of the first date of the next quarterly instalment period after the regulation takes effect.

47 Classification of land not yet being used

Section 519 of the *Local Government Act 1993* applies to the classification of land as public benefit land or industrial land under this Act in the same way as it applies to the categorisation of land as farmland or residential under that Act.

Division 2 Classification process

48 Declaration of property sector

- (1) A council classifies land to be within a particular property sector by declaring the land to be within that property sector.
- (2) A council may change the classification of a parcel of land at any time by making another declaration.
- (3) A classification of a parcel of land ceases to have effect when a subsequent classification of the land takes effect.
- (4) A council must change the classification of land that is in a property sector if the requirements for classification in that property sector change and, as a result, the land ceases to meet the requirements for classification in that property sector.
- (5) A council may classify or change the classification of land on its own initiative or on the application of a liable person.

49 Effective date for classification

- (1) A classification of land takes effect from the date specified for the purpose in the declaration of the council (this is the *effective date* for the classification).
- (2) The effective date for the classification must be a date of 1 July, 1 October, 1 January or 1 April.
Note. These dates are the beginning of each quarterly instalment period for the levy.
- (3) The effective date for the classification may be a date that is before the date the declaration is made.
Note. See also sections 72 and 73.

50 Notice of classification

- (1) A council must give notice to a liable person of the classification declared for any parcel of land for which the person is a liable person, and the effective date for the classification, within 30 days after it is made.
- (2) The notice must, if the council classified the land on its own initiative:
 - (a) state that the person has the right to apply to the council for a review of the classification of the land, or of the effective date for the classification, or both, and
 - (b) state that the person has the right to appeal to the Land and Environment Court if dissatisfied with the council's review.
- (3) Notice is not required to be given if the land is classified as government land.

51 Application for classification or review of classification

- (1) A liable person may apply to the council at any time:
 - (a) to have the person's land classified as being within a particular property sector for the purposes of this Act, or
 - (b) for a review of a classification by the council of the person's land or the effective date for the classification (or both).

- (2) An application:
 - (a) must be in a form approved by the council, and
 - (b) must include a description of the land, and
 - (c) must nominate the property sector that the applicant considers the land should be within (if a different classification is sought), and
 - (d) must set out the reasons why the applicant considers the land should be within that property sector, and
 - (e) must nominate the effective date for the classification that is sought by the applicant, and
 - (f) must be accompanied by the fee (if any) charged by the council for the application.
- (3) If the council has reasonable grounds for believing that the land does not meet the requirements for classification for the nominated property sector, or that the effective date for classification nominated is not appropriate, it may notify the applicant of any further information it requires in order to decide the application.
- (4) The regulations may prescribe a maximum fee that may be charged by a council for making an application under this section.

52 Council to decide application

- (1) After considering an application for classification or review of classification, and any further information provided at the request of the council, the council must declare the property sector for the land and specify the effective date for the classification.
- (2) The council must declare the land to be within the property sector nominated in the application unless it has reasonable grounds for believing that the land does not meet the requirements for classification within that property sector.
- (3) The council must notify the applicant of its decision.
- (4) If the council declares the land to be within a property sector that is not the property sector nominated by the applicant or declares an effective date for the classification that is not the date nominated by the applicant, the council must include in the notice:
 - (a) the reasons for the decision, and
 - (b) information about appeals to the Land and Environment Court (including the time limit for making an appeal).
- (5) If the council has not notified the applicant of its decision within 40 days after the application is made to it, the council is taken, at the end of the 40-day period, to have declared the land to be within its existing property sector with the same effective date as it previously specified.
- (6) The fee (if any) for making an application for classification or review of classification is to be refunded:
 - (a) if the council declares the land to be within the property sector nominated by the applicant, or
 - (b) if the council fails to notify the applicant of a decision within 40 days after the application is made to it.

Division 3 Sub-classification of land as vacant land

53 Sub-classification of land as vacant land

- (1) A council may sub-classify a parcel of land as vacant land if the land meets the requirements for sub-classification as vacant land.

- (2) Land may be sub-classified as vacant land only if a liable person for the land applies to the council for that sub-classification, in accordance with this Part.
- (3) A council sub-classifies land as vacant land by declaring the land to be vacant land.

54 Criteria for sub-classification

Land meets the requirements for sub-classification as vacant land if:

- (a) the land is residential land, industrial land or commercial land, and
- (b) there are no buildings or structures on the land that are being used or that could be used for a residential, industrial or commercial purpose, and
- (c) the land is not being used for storage or treatment of goods, materials or any other thing, and
- (d) the land and any use of the land meets any other requirements for sub-classification as vacant land specified in the regulations.

55 Application for sub-classification

- (1) A liable person for land may apply to the relevant council at any time to have the person's land declared to be vacant land.
- (2) An application:
 - (a) must be in a form approved by the council, and
 - (b) must include a description of the land concerned, and
 - (c) must include the reasons why the applicant considers the land to be vacant land, and
 - (d) must nominate the date from which the applicant considers the land should be sub-classified as vacant land, and
 - (e) must be accompanied by the fee (if any) charged by the council for the application.
- (3) If the council has reasonable grounds for believing that the land does not meet the requirements for sub-classification as vacant land, it may notify the applicant of any further information it requires in order to be satisfied that the land is within that sub-category.
- (4) The regulations may prescribe a maximum fee that may be charged by a council for making an application under this section.

56 Council to decide application

- (1) After considering an application for land to be declared to be vacant land, and any further information provided by the applicant, the council must either:
 - (a) declare the land to be vacant land, or
 - (b) refuse the application.
- (2) The council must declare the land to be vacant land if the council is satisfied that the land satisfies the requirements for sub-classification as vacant land.
- (3) The council must notify the applicant of its decision. The council must include the reasons for its decision if it refuses the application.
- (4) If the council refuses the application, the council must include in the notice:
 - (a) the reasons for the decision, and
 - (b) information about appeals to the Land and Environment Court (including the time limit for making an appeal).

- (5) If the council has not notified the applicant of its decision within 40 days after the application is made to it, the council is taken, at the end of the 40-day period, to have refused the application.
- (6) The fee (if any) for making an application that land be declared to be vacant land is to be refunded:
 - (a) if the council declares the land to be vacant land, or
 - (b) if the council fails to notify the applicant of a decision within 40 days after the application is made to it.

57 Effective date for sub-classification

- (1) A declaration that a parcel of land is vacant land takes effect from a date specified for the purpose in the declaration (this is the *effective date* for the sub-classification).
- (2) The effective date for the sub-classification must be a date of 1 July, 1 October, 1 January or 1 April.

Note. These dates are the beginning of each quarterly instalment period for the levy.
- (3) The effective date for the sub-classification may be a date that is before the date the declaration is made.
- (4) However, the earliest effective date for the sub-classification is the date of 1 July in the financial year in which the application is received by the council. The effective date for the sub-classification cannot be in a previous financial year (despite any other provision of this Act).

Note. See also sections 72 and 73.

58 Sub-classifications to be reviewed

- (1) A council must ensure that it reviews the sub-classification of any land as vacant land at least once every 4 years.
- (2) A council is to give written confirmation to the Valuer-General that it has complied with this section if requested to do so by the Valuer-General.

Division 4 Revocation of sub-classification of land

59 Revocation of sub-classification

- (1) A sub-classification of land as vacant land ceases to have effect when it is revoked by the council.
- (2) A council may revoke the sub-classification of land as vacant land at any time by making a declaration to that effect.
- (3) A council must revoke the sub-classification of land as vacant land if it ceases to meet the requirements for sub-classification as vacant land.
- (4) A council must consider whether the sub-classification of land as vacant land should be revoked if information comes to its attention that the land is not vacant land.
- (5) Sub-classification of land as vacant land is taken to cease to have effect if the classification of the land changes and the new classification is government land, public benefit land or farmland.

60 Effective date for revocation of sub-classification

- (1) A revocation of sub-classification takes effect on a date specified by the council in its declaration that the sub-classification is revoked (this is the *effective date* for the revocation).

- (2) The effective date for the revocation must be a date of 1 July, 1 October, 1 January or 1 April.
Note. These dates are the beginning of each quarterly instalment period for the levy.
- (3) The effective date for the revocation may be a date that is before the date the declaration is made.

61 Notice of revocation

- (1) A council must give notice to a liable person of the revocation of a sub-classification of land as vacant land, for any parcel of land for which the person is a liable person, and the effective date for the classification, within 30 days after it is made.
- (2) The notice must:
 - (a) state that the person has the right to apply to the council for a review of the revocation, or of the effective date for the revocation, or both, and
 - (b) state that the person has the right to appeal to the Land and Environment Court if dissatisfied with the council's review.

62 Application for review of revocation

- (1) A liable person may apply to the council at any time for a review of any of the following decisions of a council:
 - (a) a decision to revoke the sub-classification of the person's land as vacant land,
 - (b) a decision to specify the effective date for the revocation.
- (2) An application:
 - (a) must be in a form approved by the council, and
 - (b) must include a description of the land, and
 - (c) must set out the reasons why the applicant considers the land should continue to be sub-classified as vacant land (if sub-classification is sought), and
 - (d) must nominate the effective date for the revocation of sub-classification of the land as vacant land (if sub-classification is no longer sought), and
 - (e) must be accompanied by the fee (if any) charged by the council for the application.
- (3) The regulations may prescribe a maximum fee that may be charged by a council for an application under this section.

63 Council to decide application

- (1) After considering an application for review of a council decision under this Division, and any further information provided at the request of the council, the council must:
 - (a) affirm its decision, or
 - (b) set aside its decision.
- (2) If the council sets aside its decision, it may substitute a new decision.
- (3) The council must notify the applicant of its decision.
- (4) If the council affirms its original decision, the council must include in the notice:
 - (a) the reasons for the decision, and
 - (b) information about appeals to the Land and Environment Court (including the time limit for making an appeal).
- (5) If the council has not notified the applicant of its decision within 40 days after the application is made to it, the council is taken, at the end of the 40-day period, to have

affirmed its decision to revoke sub-classification with the same effective date as it previously specified.

- (6) The fee (if any) for making an application that land be declared to be vacant land is to be refunded:
 - (a) if the council sets aside its original decision, or
 - (b) if the council fails to notify the applicant of a decision within 40 days after the application is made to it.

Division 5 Appeals

64 Appeals to Land and Environment Court

- (1) A liable person who is dissatisfied with a relevant decision may appeal to the Land and Environment Court against the decision.
- (2) In this Division, a *relevant decision* means:
 - (a) a decision that the council makes on an application by the person for the classification of the person's land, or
 - (b) a decision that the council makes on an application for a review of the classification of the person's land, or the effective date for the classification, or both, or
 - (c) a decision that the council makes on an application by the person for the sub-classification of the person's land as vacant land, or
 - (d) a decision that the council makes on an application for a review of the revocation of the sub-classification of the person's land as vacant land, or the effective date for the revocation, or both.
- (3) An appeal must be made no later than 30 days after notice of the relevant decision is given to the person.

65 Council to give Valuer-General notice of appeal

- (1) A council is to give the Valuer-General notice of any appeal against a relevant decision of the council that is made to the Land and Environment Court.
- (2) The notice must be given to the Valuer-General within 7 days after the council is given notice of the appeal.

66 Powers of Land and Environment Court on appeal

The Land and Environment Court may do any of the following on an appeal against a relevant decision:

- (a) affirm or vary the decision of the council,
- (b) set aside the decision of the council and make a new decision in substitution for that decision,
- (c) order the council to refund the fee paid for making the application for classification, sub-classification or review (as the case requires).

Division 6 Provision of information to Valuer-General

67 Councils to provide annual return to Valuer-General

- (1) Each council is to provide to the Valuer-General, by 15 February in each year, a return for the year ending on the preceding 31 December relating to the decisions made by the council under this Part.

- (2) The return is to contain the following information about the year ending on the preceding 31 December:
 - (a) information about the decisions made by the council under this Part, including any information specified in the regulations,
 - (b) any other information that the Valuer-General reasonably requires for the purpose of exercising his or her functions under this Act.
- (3) The return is to be in a form approved by the Valuer-General.
- (4) The information provided must be up to date as of 31 December in the year before the return is required to be provided.
- (5) The regulations may make further provision for returns under this section.
- (6) Without limiting subsection (5), the regulations may require the general manager or the public officer of a council to certify the accuracy and completeness of information contained in the return.

68 Valuer-General may require further information

- (1) The Valuer-General may, at any time, by notice to a council, require the council to provide the following to the Valuer-General:
 - (a) information about decisions made by the council under this Part (including reasons for decisions),
 - (b) any other information the Valuer-General reasonably requires for the purpose of exercising his or her functions under this Act.
- (2) A council must not fail to comply with any such requirement.
- (3) The Valuer-General may require the general manager or the public officer of a council to certify the accuracy and completeness of any information that the council provides under this section.

Division 7 Miscellaneous

69 Rules about classification and sub-classification

- (1) The Treasurer may, by order published on the NSW legislation website, issue rules about the circumstances in which land is or is not to be treated as having met any requirements for classification or sub-classification under this Part.
- (2) Without limiting subsection (1), the rules may provide for the circumstances in which a use of land for a specified purpose is, or is not, to be treated as the dominant use of the land.
- (3) A council must comply with the rules when exercising its functions under this Part.

70 Zoning and use changes

A council must review its classification of a parcel of land and its sub-classification (if any) if:

- (a) the zoning or designated use for the land under an environmental planning instrument changes, or
- (b) a change in use for the land is approved by the council.

71 Adjustment of levy following change in classification or sub-classification

- (1) A council must make an appropriate adjustment of any levy paid or payable, and to any instalments payable, by a liable person following a change in classification or sub-classification of land or a revocation of sub-classification.

- (2) If, at the effective date for a new classification or sub-classification, or a revocation of sub-classification, the levy for the whole year has been paid in full, the portion of the payment that is proportionate to the number of quarterly instalment periods remaining in the year is to be credited to the levy payable in respect of the remaining part of the year.

72 Changes deemed to take effect at end of quarterly instalment period

- (1) If circumstances occur during a financial year that justify a new classification, the sub-classification or the revocation of sub-classification of a person's land, those circumstances are to be treated by a council, for the purpose of setting an effective date for the new classification, sub-classification or revocation, as having occurred on the date that is the first date of the next quarterly instalment period after the quarterly instalment period during which the change actually occurred.
- (2) This section does not apply to a new classification that is made because of the making of a regulation that changes the requirements for classification of land.
Note. A regulation that changes classification requirements may specify when it takes effect for classification purposes.

73 Notice of change of circumstances is required

- (1) A liable person must give notice to the council within 30 days of any change in circumstances that justifies:
 - (a) a new classification of the person's land, or
 - (b) the sub-classification of the person's land, or
 - (c) the revocation of sub-classification of the person's land.
- (2) If a liable person fails to give notice of a change in circumstances that would justify a new classification of the land in respect of which a lower levy would be payable, or the sub-classification of the land, within the period required by this section, the council may set an effective date for the classification or sub-classification that is the first day of the next quarterly instalment period after notification (regardless of when the change in circumstances occurred).
- (3) The next quarterly instalment period after notification is the next quarterly instalment period to occur after the quarterly instalment period during which the change in circumstances is notified to the council in accordance with this section.
- (4) A notice under this section must be given in a form and manner approved by the council.
- (5) A council may require the notice to be given in the form of an application for classification or sub-classification of the land.

74 Classification of mixed development land

- (1) If a valuation is furnished under the *Valuation of Land Act 1916* for mixed development land, a council may:
 - (a) classify the part of the land that is non-residential land as industrial land, commercial land or public benefit land, as the case requires (the **first classification**), and
 - (b) classify the remaining part of the land as residential land (the **second classification**).
- (2) In that case, the levy payable is the sum of the following amounts:
 - (a) the amount obtained by applying the apportionment factor to the levy that would be payable for the land if it were wholly within the first classification,

- (b) the amount obtained by applying the remainder factor to the levy that would be payable for the land if it were wholly within the second classification.
- (3) The apportionment factor is the apportionment factor for the parcel ascertained under section 14X of the *Valuation of Land Act 1916*.
- (4) The remainder factor is the factor obtained by deducting the apportionment factor from 100%.
- (5) In this section, *mixed development land* and *non-residential land* have the same meanings as in Division 5 of Part 1B of the *Valuation of Land Act 1916*.

75 Parcel of land in 2 or more areas

- (1) If different parts of the same parcel of land are situated in different areas, each part of the parcel that is situated in a separate area is taken, for the purposes of this Act, to be a separate parcel of land.
 - (2) Accordingly, a council must:
 - (a) classify, and sub-classify (if necessary), the part of the parcel of land that is situated in the council's area, as if that land were a separate parcel of land, and
 - (b) charge a levy in respect of the part of the parcel of land that is within the council's area, as if that land were a separate parcel of land.
- Note.** Section 28 of the *Valuation of Land Act 1916* provides for the apportionment of a land valuation between parcels of land that are situated in more than one district.
- (3) However, a council may, on application by a liable person, waive or refund part of the fixed component of the levy charged by the council in respect of a parcel of land if satisfied that the parcel of land is situated in more than one area and that, accordingly, more than one levy is payable in respect of the parcel.
 - (4) The maximum amount that can be waived or refunded under this section is the amount obtained when the appropriate proportion is deducted from the fixed component of the levy.
 - (5) The *appropriate proportion* is the amount that is obtained by dividing the fixed component of the levy that would be payable if the land were situated wholly in the council's area by the number of areas in which the parcel of land is situated.
 - (6) This section is in addition to, and does not limit, the functions of a council under Part 8.

76 Powers of entry and inspection

To avoid doubt, Part 2 of Chapter 8 of the *Local Government Act 1993* applies to a council's functions under this Act.

Note. Part 2 of Chapter 8 of the *Local Government Act 1993* enables council employees to enter premises and conduct inspections for the purpose of enabling a council to exercise its functions. These powers could be exercised in connection with the council's classification functions under this Part or other functions under this Act.

Part 6 Charging and collection of levy by council

Division 1 Charging of levy

77 Council must charge levy

A council must charge a levy for each financial year on all leviable land in its area.

78 Levy to be charged by notice

- (1) A council is to charge a levy by serving notice of the levy on the liable person.
- (2) The levy notice is to contain the following information:
 - (a) the land on which the levy is charged,
 - (b) the classification of the land,
 - (c) the sub-classification of the land (if any),
 - (d) the amount of the levy payable,
 - (e) the land value, for levy purposes, of the land to which it relates,
 - (f) the date of 1 July by reference to which the land is valued (unless the land is unvalued land),
 - (g) any other information specified in the regulations.
- (3) The levy is to be described as the “NSW Government Fire and Emergency Services Levy” or as the “NSW Govt FESL”. The description may include a reference to the property sector that the land is within.
- (4) It is not necessary to specify the name of the liable person or the person liable to pay the charge in the notice if the council does not know the person’s name.
- (5) If rates and charges are payable in respect of the land under the *Local Government Act 1993*, the levy notice is to be combined with the notice of the rates or charges that is served under that Act, subject to any exceptions provided for by the regulations.
- (6) Subject to the regulations, the levy notice may be combined with the following:
 - (a) notice of classification of the land under this Act,
 - (b) notice of categorisation of the land under the *Local Government Act 1993*.
- (7) The regulations may make provision for the form of the levy notice and the manner in which information is to be set out in the levy notice.

79 Timing for service of levy notice

- (1) A levy notice may be served at any time after 1 July in the year for which the levy is charged or in a subsequent year.
- (2) A levy notice that is required to effect an adjustment of levy may be served in the year for which the levy is charged or in a subsequent year.

80 Time for payment of levy

- (1) The levy may be paid in a single instalment or by quarterly instalments, as provided for by this Part.
- (2) If a rate or charge under Chapter 15 of the *Local Government Act 1993* payable for the same period as the levy is paid by single instalment, the levy must be paid by single instalment.

- (3) If a rate or charge under Chapter 15 of the *Local Government Act 1993* payable for the same period as the levy is paid by quarterly instalments, the levy must be paid by quarterly instalments.

81 Payment by single instalment

- (1) If a levy is paid by single instalment, the instalment is payable by 31 August.
- (2) However, if the levy notice is not served by 1 August, the single instalment is payable by 30 November, or the day that is 30 days after service of the notice, whichever is the later.

82 Payment by quarterly instalments

- (1) If the levy is paid by quarterly instalments, a quarterly instalment is payable for each of the following periods (each of which is a *quarterly instalment period*):
 - (a) the period starting on 1 July and ending on the next 30 September,
 - (b) the period starting on 1 October and ending on the next 31 December,
 - (c) the period starting on 1 January and ending on the next 31 March,
 - (d) the period starting on 1 April and ending on the next 30 June.
- (2) The start dates and end dates of a quarterly instalment period are inclusive.
- (3) A quarterly instalment is payable by the date of 31 August, 30 November, 28 February or 31 May that falls within the quarterly instalment period for which the instalment is payable.
- (4) However, if the levy notice is not served by 1 August, the first 2 quarterly instalments are payable by 30 November, or by the day that is 30 days after service of the notice, whichever is the later.
- (5) Section 562 (2) of the *Local Government Act 1993* applies in relation to the calculation of quarterly instalments of the levy in the same way as it applies in relation to the calculation of quarterly instalments of a rate or charge under that Act.
- (6) On or before 31 October, 31 January and 30 April, a council must send reminder notices to each person whose levy is being paid by quarterly instalments.
- (7) The reminder notice may be sent in conjunction with a reminder notice relating to rates and charges under the *Local Government Act 1993* but must be sent separately from a levy notice.

83 Accrual of interest on overdue levies

- (1) Interest accrues on any levy or part of a levy that remains unpaid after it becomes due and payable.
- (2) Interest accrues on a daily basis.
- (3) The rate of interest is that set by the council but must not exceed the rate specified for overdue rates and charges by the Minister administering the *Local Government Act 1993* under section 566 of that Act.
- (4) If the council charges interest on overdue rates and charges under the *Local Government Act 1993*, the rate of interest set by the council must be the same as the rate of interest charged on overdue rates and charges.
- (5) Accrued interest is, for the purpose of its recovery, taken to be part of the levy that is due and payable.

- (6) Interest continues to accrue on an unpaid levy or part of a levy even though judgment for payment of the levy may have been obtained in a court. Interest is not payable on the amount of the judgment (exclusive of any order for costs), despite any other Act.

Division 2 Waiver or reduction of levy

84 Hardship guidelines

- (1) The Treasurer may, by order published in the Gazette, approve guidelines relating to the waiver or reduction of the levy because of hardship.
- (2) The guidelines published under this section are *hardship guidelines*.

85 Chief Commissioner may waive or reduce levy

- (1) The Chief Commissioner may waive or reduce the levy payable by any person in accordance with the hardship guidelines.
- (2) If the Chief Commissioner decides to waive or reduce the levy payable by a person, the Chief Commissioner must give notice of that decision to the council responsible for recovering the levy.
- (3) The council is required to give effect to that decision by:
 - (a) waiving or reducing the levy payable, as the case requires, and
 - (b) writing off the amount that is waived or the amount of the reduction.
- (4) A council may not take proceedings to recover an amount written off under this section.
- (5) If a levy that is waived or reduced is subject to a levy recovery arrangement, subsections (3) and (4) apply to the Chief Commissioner in the same way as they apply to the council.
- (6) This section does not limit the power of a council to waive or reduce the levy payable by a person under the provisions of the *Local Government Act 1993* that apply to the levy under Part 8.

86 Liable person required to make full and true disclosure

- (1) A liable person who makes a claim for a waiver or reduction of a levy by the Chief Commissioner must fully and truly disclose to the Chief Commissioner all the facts and circumstances relating to that claim.
Maximum penalty: 100 penalty units.
- (2) The Chief Commissioner may, by order in writing served on a person (a *payment order*), require a person to pay to the Chief Commissioner a specified amount if:
 - (a) the Chief Commissioner waived or reduced the levy payable by the person, and
 - (b) the Chief Commissioner is satisfied that the person contravened subsection (1) in relation to the person's claim for a waiver or reduction of the levy.
- (3) A payment order may require the person to pay the whole or part of a waived amount to the Chief Commissioner by a date specified in the order (being not less than 30 days after the date of service of the order).
- (4) A *waived amount* is the amount of the levy that was waived or, if the levy was reduced, the amount of the reduction.
- (5) A payment order may require the person to pay interest in respect of the waived amount, calculated as provided for by this Division.

- (6) A payment order may be made whether or not the person against whom it is made has been prosecuted for, or found guilty of, an offence under subsection (1).
- (7) A payment order cannot be made more than 3 years after the contravention of subsection (1) is alleged to have occurred.
- (8) In this section:
Chief Commissioner includes a delegate of the Chief Commissioner and any other person engaged in the administration of this Act.

87 Application of Taxation Administration Act 1996

- (1) The applied provisions of the *Taxation Administration Act 1996* apply in relation to a payment order as if this Act were a taxation law and the amount payable under the order were a tax payable by the person to the Chief Commissioner.
- (2) The **applied provisions** of the *Taxation Administration Act 1996* are the following provisions of that Act:
 - (a) Division 1 (Interest) of Part 5,
 - (b) Division 1 of Part 7,
 - (c) sections 50 and 55 (which prohibit the giving of false and misleading information),
 - (d) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,
 - (e) sections 114, 115, 116, 118 and 120,
 - (f) any provisions that are relevant to the interpretation of the above provisions.
- (3) For the purposes of the applied provisions, a tax default is taken to have occurred on the date the Chief Commissioner waived or reduced the levy, unless the Chief Commissioner decides that a later date should be treated as the tax default date.
- (4) If the Chief Commissioner decides that a later date should be treated as the tax default date, a tax default does not occur until that later date.
- (5) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a payment order or to the exercise of any of the Chief Commissioner's functions under this Division (including under the applied provisions of the *Taxation Administration Act 1996*).

88 References to levy include interest on levy

- (1) Any accrued interest on the levy may be waived or reduced under this Division in the same way as the levy.
- (2) Accordingly, a reference in this Division to the levy includes a reference to accrued interest on the levy.

Division 3 Recovery of levy

89 Recovery of levy as debt

- (1) A levy payable to a council under this Act may be recovered by the council as a debt in a court of competent jurisdiction.
- (2) The levy has the same priority as rates or charges that are owed to the council under the *Local Government Act 1993*.
Note. Part 8 gives the council the same remedies for the recovery of the levy as the council has for rates and charges.

90 Levies paid to be kept in council's consolidated fund

- (1) Money received by a council in payment of the levy is to be held in, and forms part of, the council's consolidated fund.
- (2) A council may retain any proceeds of investment of the levy money.
- (3) This section does not affect the requirement that the council pay collection instalments under this Act.

91 Transfer of levy recovery to Chief Commissioner

- (1) A council may enter into an arrangement (a *levy recovery arrangement*) with the Chief Commissioner that enables the council to refer to the Chief Commissioner, for recovery by the Chief Commissioner, any levy, part of a levy or class of levies, that is payable to the council in respect of land that is not subject to a rate or charge under the *Local Government Act 1993*.
- (2) If a levy, part of a levy or class of levies (a *referred levy*) is referred to the Chief Commissioner under a levy recovery arrangement, on the transfer date:
 - (a) the referred levy (and any interest that accrued before the transfer date) becomes an amount payable to the Chief Commissioner (not to the council), and
 - (b) the referred levy ceases to be an assessed levy of the council, and
 - (c) the applied provisions of the *Taxation Administration Act 1996* apply to the referred levy as if it were a tax under a taxation law payable by the person liable for the levy.
- (3) A failure to pay a referred levy is a tax default for the purposes of the applied provisions of the *Taxation Administration Act 1996* and, on and from the transfer date, interest on any overdue amount accrues in accordance with that Act (and not at the rate set by the council).
- (4) If the referred levy became overdue before the transfer date, a tax default is taken to occur, for the purposes of the applied provisions, on the transfer date.
- (5) The *applied provisions* of the *Taxation Administration Act 1996* are the following provisions of that Act:
 - (a) Division 1 (Interest) of Part 5,
 - (b) Division 1 of Part 7,
 - (c) sections 50 and 55 (which prohibit the giving of false and misleading information),
 - (d) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,
 - (e) sections 114, 115, 116, 118 and 120,
 - (f) any provisions that are relevant to the interpretation of the above provisions.
- (6) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a referred levy or to the exercise of any of the Chief Commissioner's functions under a levy recovery arrangement (including under the applied provisions of the *Taxation Administration Act 1996*).
- (7) Any amount recovered by the Chief Commissioner under a debt recovery arrangement:
 - (a) is payable to the Consolidated Fund (not to the council), and
 - (b) is not to be included in the council's relevant payments under Part 7.

- (8) Section 571 of the *Local Government Act 1993*, as it applies to the levy under Part 8, continues to apply in respect of a referred levy as if a reference in that section to the council were a reference to the Chief Commissioner.
- (9) The regulations may make further provision for the application of the *Local Government Act 1993* in respect of a referred levy, including by modifying the application of any provision of that Act that applies to a levy that is payable to the council.
- (10) In this section:
transfer date means the date agreed in writing between a council and the Chief Commissioner as the date on which a referred levy is referred to the Chief Commissioner for recovery.

92 Record of levies

- (1) A council is required to keep a record of the following:
 - (a) each levy charged by it,
 - (b) the land value, for levy purposes, of each parcel of land on which the levy is charged,
 - (c) the classification and any sub-classification of the land,
 - (d) the liable person for each parcel of land (if known).
- (2) The council may amend the record at any time.

93 Collection payments

- (1) The Treasurer is to make payments to councils to reimburse the reasonable costs incurred by councils that are associated with any of the following:
 - (a) collecting and recovering the levy on behalf of the State,
 - (b) responding to, or defending, appeals in the Land and Environment Court against decisions made by the council under this Act,
 - (c) otherwise implementing or administering this Act.
- (2) Payments are to be made from the Consolidated Fund out of money provided by Parliament.
- (3) A payment made by the Treasurer under this section is a ***collection payment***.

Part 7 Payment of levy to State

Division 1 Preliminary

94 Council required to apportion relevant payments

A council is to:

- (a) apply all relevant payments made to the council in accordance with this Part, and
- (b) pay a proportion of those payments to the Chief Commissioner in accordance with this Part.

95 Relevant payment—meaning

- (1) A **relevant payment** means a payment made to a council in or towards payment of any or all of the following:
 - (a) an assessed rate or charge,
 - (b) an assessed levy.
- (2) A payment is made to a council when it is received, recovered or accepted by the council.
- (3) A payment includes the value of any capital contribution received by the council under section 565 of the *Local Government Act 1993* in payment of an assessed rate or charge.

96 Assessed rate or charge—meaning

- (1) An **assessed rate or charge** is a rate or charge that has been levied by the council under Chapter 15 of the *Local Government Act 1993*.
- (2) An assessed rate or charge includes any amount payable as accrued interest on an assessed rate or charge.
- (3) An assessed rate or charge does not include:
 - (a) any amount payable for the out-of-pocket expenses incurred by the council in tracing persons that may be recovered as a rate or charge under the *Local Government Act 1993*, or
 - (b) a rate or charge, or a part of a rate or charge, that has been written off or the payment of which has been waived by the council.
- (4) If a rate or charge is reduced by a council, the reduction is not to be included in an assessed rate or charge.
- (5) If the payment of any part of a rate is postponed under Division 2 of Part 8 of Chapter 15 of the *Local Government Act 1993*:
 - (a) the postponed rate is not an assessed rate or charge, during the period in which payment is postponed, and
 - (b) any interest on the postponed rate, that accrues under section 592 of that Act, is taken to be an assessed rate or charge.
- (6) The regulations may make further provision for the calculation of an assessed rate or charge, including by modifying the application of any provision of this section.
- (7) The Minister is not to recommend the making of a regulation under this section unless the Minister certifies that the regulation is made with the concurrence of the Minister administering the *Local Government Act 1993*.

97 Assessed levy—meaning

- (1) An *assessed levy* is a levy that has been charged by the council under this Act.
- (2) An assessed levy includes any amount payable as accrued interest on an assessed levy.
- (3) An assessed levy does not include a levy, or a part of a levy, that has been written off or the payment of which has been waived by the council.
- (4) If a levy is reduced by a council, the reduction is not to be included in an assessed levy.
- (5) The regulations may make further provision for the calculation of an assessed levy, including by modifying the application of any provision of this section.
- (6) The Minister is not to recommend the making of a regulation under this section unless the Minister certifies that the regulation is made with the concurrence of the Minister administering the *Local Government Act 1993*.

Division 2 Payment of collection instalments to State

98 Relevant payments to be applied towards old debt first

- (1) A council is to apply relevant payments towards the payment of the assessed rates or charges and assessed levies in respect of which the payment was made in the order in which they became due.
- (2) For the purposes of this Part, a council applies a relevant payment (or a part of a relevant payment) *towards a financial year* if the council applies the relevant payment (or part):
 - (a) towards payment of an assessed rate or charge, or an assessed levy, that became due in that financial year, or
 - (b) towards payment of accrued interest on an assessed rate or charge, or an assessed levy, and the assessed rate or charge or assessed levy became due in that financial year.

99 Collection instalments to be paid to Chief Commissioner

- (1) A council is to pay collection instalments to the Chief Commissioner.
- (2) The collection instalments are payable for any relevant payments that are applied by a council towards the 2017/2018 financial year or a subsequent financial year.
- (3) A collection instalment is payable in respect of each reconciliation period.

100 Reconciliation periods

- (1) Each of the following periods is a *reconciliation period*:
 - (a) the first quarter reconciliation period—which is the period starting on 1 June and ending on 31 August in the same year,
 - (b) the second quarter reconciliation period—which is the period starting on 1 September and ending on 30 November in the same year,
 - (c) the third quarter reconciliation period—which is the period starting on 1 December and ending on 28 February in the next year (or 29 February in a leap year),
 - (d) the fourth quarter reconciliation period—which is the period starting on 1 March and ending on 31 May in the same year.
- (2) The start dates and end dates of a reconciliation period are inclusive.

- (3) For the 2017/2018 financial year, the first quarter reconciliation period is taken to start on 1 July 2017.

101 Amount of collection instalment

- (1) The amount of the collection instalment payable is the total of the following:
- (a) the levy proportion of any relevant payments made to the council during the reconciliation period that were applied towards the financial year in which the reconciliation period ends,
 - (b) the levy proportion of any relevant payments made to the council during the reconciliation period that were applied towards a previous financial year.

Note. Councils may recover overdue amounts of rates and charges, or levies, over time. Accordingly, this provision ensures that they are still required to account to the Treasurer for the levy component of amounts recovered even when they are recovered after the financial year in which they are due.

- (2) The levy proportion of any relevant payments that are applied towards a financial year that commences before the 2017/2018 financial year is taken to be zero.

102 Calculation of levy proportion

- (1) The *levy proportion* of any relevant payments made to a council that are applied towards a financial year is to be calculated as follows:

$$L = C \times \frac{B}{(A + B)}$$

where:

L is the levy proportion of the relevant payments.

C is the total of all relevant payments made to the council during the reconciliation period that were applied by the council towards the financial year for which the calculation is being made.

B is the total of all assessed levies charged by the council for the financial year towards which the relevant payments are applied.

A is the total of all assessed rates or charges levied by the council for the financial year towards which the relevant payments are applied.

- (2) The levy proportion is to be rounded to the nearest cent (with an amount of half a cent rounded up).

103 Payment dates for reconciliation periods

- (1) A council must pay a collection instalment to the Chief Commissioner on or before the payment date for the reconciliation period for which the instalment is payable.
- (2) The payment dates are as follows:
- (a) for the first quarter reconciliation period—30 September,
 - (b) for the second quarter reconciliation period—31 December,
 - (c) for the third quarter reconciliation period—31 March,
 - (d) for the fourth quarter reconciliation period—30 June.

104 Council to keep a record of relevant payments

- (1) A council is to keep a record of all relevant payments that are made to the council and the financial year towards which those relevant payments are applied.
- (2) The record is to contain any other information required by the regulations.

Division 3 Functions of Chief Commissioner

105 Chief Commissioner may recover collection instalment from council

If the whole or part of a collection instalment payable by a council is not paid to the Chief Commissioner as required, the unpaid amount is recoverable by the Chief Commissioner from the council as a debt in a court of competent jurisdiction.

106 Application of certain provisions of Taxation Administration Act 1996

- (1) The applied provisions of the *Taxation Administration Act 1996* apply in relation to the collection instalments payable by a council under this Act as if this Act were a taxation law and the collection instalments were a tax payable by a council under a taxation law.
- (2) A tax default occurs if the whole or part of a collection instalment is not paid by the due date.
- (3) The *applied provisions* of the *Taxation Administration Act 1996* are the following provisions of that Act:
 - (a) Part 3 (Assessment of tax liability),
 - (b) Division 1 (Interest) of Part 5,
 - (c) Division 1 of Part 6 (Returns),
 - (d) sections 50 and 55 (which prohibit the giving of false and misleading information),
 - (e) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,
 - (f) sections 114, 115, 116, 118, 119 and 120,
 - (g) any provisions that are relevant to the interpretation of the above provisions.
- (4) A council is liable to pay collection instalments to the Chief Commissioner whether or not the Chief Commissioner has issued an assessment for the amount payable.
- (5) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a collection instalment or to the exercise of any of the Chief Commissioner's functions under this Division (including under the applied provisions of the *Taxation Administration Act 1996*).

107 Councils to provide annual return to Chief Commissioner

- (1) Each council is to provide to the Chief Commissioner, on or before 31 July in each year, a return for the financial year ending on 30 June that year relating to the council's liability for collection instalments under this Part.
- (2) The return is to contain the following information about the financial year for which it is made:
 - (a) information about the council's liability for collection instalments under this Part, including any information specified in the regulations,
 - (b) any other information that the Chief Commissioner reasonably requires for the purpose of exercising his or her functions under this Act.
- (3) The return is to be in a form approved by the Chief Commissioner.
- (4) The regulations may make further provision for returns under this section.
- (5) Without limiting subsection (4), the regulations may require the general manager or the public officer of a council to certify the accuracy and completeness of information contained in the return.

108 Provision of other information to Chief Commissioner

- (1) The regulations may require councils to provide further information or returns to the Chief Commissioner for the purposes of this Act.
- (2) This section does not limit the functions of the Chief Commissioner under Division 2 of Part 9 of the *Taxation Administration Act 1996* as it applies to the collection instalments payable by a council.

Part 8 Harmonisation with council rates and charges

109 Strata lots and company titles treated as separate parcels

- (1) Section 495A of the *Local Government Act 1993* applies in respect of the charging of a levy under this Act in the same way as it applies in respect of the levying of an annual charge under that Act.
- (2) Anything that is taken, under that section, to be a separate parcel of rateable land is taken to be a separate parcel of land under this Act.
- (3) Section 518A of the *Local Government Act 1993* applies to the classification and sub-classification of land under this Act in the same way as it applies to the categorisation of land under Part 3 of Chapter 15 of that Act.
- (4) Anything that is taken, under that section, to be a separate parcel of land for the purposes of categorisation is taken to be a separate parcel of land for the purposes of classification or sub-classification under this Act.

110 Application of Act to company title

- (1) Section 547 of the *Local Government Act 1993* applies for the purposes of this Act in the same way as it applies for the purposes of that Act.
- (2) For that purpose, a reference in that section to a rate or charge includes a reference to the levy.

111 Aggregation of parcels

- (1) If a council aggregates the land values of parcels under section 548A of the *Local Government Act 1993* for the purpose of charging a rate, the council must also aggregate the land values of the parcels for the purposes of charging the levy, subject to this section.
- (2) The parcels as aggregated are taken to be a separate parcel for the purposes of this Act and the levy is to be charged on the aggregated land values of those parcels.
- (3) The land values of parcels may be aggregated under this section for the purpose of charging the levy only if the parcels (disregarding the aggregation) have the same classification or sub-classification (if any) under this Act.

112 Levy is a charge on land

- (1) Section 550 of the *Local Government Act 1993* applies to the levy in the same way as it applies to a rate or charge levied under that Act.
- (2) A reference in that section to interest on a rate or charge includes a reference to interest on the levy accrued under this Act.

113 Writing off levy and accrued interest

- (1) Section 567 of the *Local Government Act 1993*, and any regulations under section 607 of that Act, apply to the levy in the same way as they apply to rates and charges under that Act.
- (2) However, a council is not to write off any levy or any accrued interest on a levy payable by a person unless it writes off rates or charges or accrued interest on rates or charges payable by the person in the same proportion.

114 Collection of levy from occupier

Section 569 of the *Local Government Act 1993* applies in respect of the levy in the same way as it applies in respect of a rate or charge under that Act.

115 Transfer of land to pay levy

- (1) Section 570 of the *Local Government Act 1993* applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.
- (2) If a council accepts land in payment of any rates or charges, or levies, or accrued interest, the council is taken to have received the full amount of any assessed rates or charges, or assessed levies, payable in respect of that land.

116 Transfer of land

Section 571 of the *Local Government Act 1993* applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.

117 Subdivision of land

Section 573 of the *Local Government Act 1993* applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.

118 Definition of “eligible pensioner”

Sections 577–579 of the *Local Government Act 1993* apply for the purposes of this Act in the same way as they apply for the purposes of Division 1 of Part 8 of Chapter 15 of that Act.

119 Waiving payment of levy

- (1) Section 582 of the *Local Government Act 1993* applies to the levy in the same way as it applies to rates or charges under that Act.
- (2) However, a council is not to waive or reduce the levy payable by a person under that section, as it applies to the levy, unless it waives or reduces the rates or charges payable by the person for the same period in the same proportion.
- (3) Section 583 of the *Local Government Act 1993* applies to amounts of the levy that are waived or reduced under this section in the same way as it applies to rates or charges under that Act.
- (4) In this section:
levy includes any interest payable on a levy.
rates or charges includes any interest payable on any rates or charges.

120 Certificate as to levy

A reference in section 603 of the *Local Government Act 1993* to rates, charges or other amounts includes a reference to the levy.

121 Notice of transfer of land

- (1) Section 604 of the *Local Government Act 1993* applies to leviable land in the same way as it applies to rateable land.
- (2) A person who gives notice as required by section 604 of that Act in relation to rateable land that is also leviable land is taken to have complied with section 604 as it applies to leviable land.

122 Notices

- (1) Sections 699 and 708–711 of the *Local Government Act 1993* apply to notices served by a council under this Act in the same way as they apply to the notices served by a council under that Act.
- (2) In this section, *serve* includes give or send.

123 Proof of ownership

Section 700 of the *Local Government Act 1993* applies to the levy, and to proceedings under this Act, in the same way as it applies to rates and charges, and to proceedings under that Act.

124 Recovery of levy

- (1) Section 712 of the *Local Government Act 1993* applies to the levy in the same way as it applies to rates and charges under that Act.
- (2) For that purpose:
 - (a) a reference in that section to a rate or charge includes a reference to the levy, and
 - (b) a reference in that section to a rates and charges notice includes a reference to a levy notice.

125 Sale of land to recover levy

- (1) Division 5 of Part 2 of Chapter 17 of the *Local Government Act 1993* applies to the levy in the same way as it applies to a rate or charge.
- (2) To avoid doubt, a reference to vacant land in those provisions is a reference to vacant land within the meaning of that Act.

126 Regulations relating to rates and charges

- (1) Any provision of a regulation under the *Local Government Act 1993* applies to the levy in the same way as it applies to a rate or charge if the regulation is made under, or ancillary to, a provision of that Act that applies to the levy.
- (2) This section is subject to the regulations under this Act.

127 Application of strata provisions

- (1) Section 192 of the *Strata Schemes Development Act 2015* applies to the charging of the levy under this Act in the same way as it applies to the levying of a rate under the *Local Government Act 1993*.
- (2) For the purposes of the levy, a reference in section 192 of the *Strata Schemes Development Act 2015*:
 - (a) to a lot that is rateable is a reference to a lot for which the levy is payable, and
 - (b) to a rateable parcel or a rateable part of a parcel is a reference to a parcel or part of a parcel in respect of which the levy is payable or would be payable but for any exemption or discount applicable to any portion of that parcel or part.

128 Power to modify and apply further legislative provisions

- (1) The regulations may modify the application of, or disapply, any provision of the *Local Government Act 1993*, a regulation under that Act or the *Strata Schemes Development Act 2015* that applies in relation to the levy under this Act.
- (2) The regulations may apply, with or without modification, to or in respect of the levy any other provisions of the *Local Government Act 1993*, the regulations under that Act or the *Strata Schemes Development Act 2015* that relate to rates or charges under the *Local Government Act 1993*.

129 References to council extend to Lord Howe Island Board

- (1) To avoid doubt, a reference to a council in a provision of the *Local Government Act 1993*, or the regulations under that Act, that applies to the levy under this Act is taken to include a reference to the Lord Howe Island Board.
- (2) This section is subject to the regulations under this Act.

Part 9 Compliance and enforcement

Division 1 Preliminary

130 Definitions

- (1) In this Part:
 - breach of this Act* means:
 - (a) a contravention of or failure to comply with this Act, or
 - (b) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act.
 - classification obligation* means any function conferred or imposed on a council by Part 4 or 5.
 - financial obligation* means any of the following functions of the council:
 - (a) a function conferred or imposed by Part 3, 6 or 7,
 - (b) a function under Part 8 that relates to the charging and collection of the levy.
- (2) In this Part, to comply with an obligation includes to properly exercise a function.
- (3) In this Part, a reference to this Act or to a part of this Act includes a reference to any regulations, rules or other instruments made under this Act or part, as the case requires.

Division 2 Monitoring role of Valuer-General

131 Monitoring of council compliance with classification obligations

The Valuer-General is to monitor whether councils are complying with their classification obligations.

132 Reviews by Valuer-General

- (1) The Valuer-General may, at the Valuer-General's expense, conduct a review of any of the following:
 - (a) the compliance by a council with its classification obligations,
 - (b) the accuracy and completeness of information provided by a council to the Valuer-General under this Act.
- (2) A council must co-operate with a review under this section, including by providing the Valuer-General, or a person authorised by the Valuer-General, with access to council facilities and records during regular business hours.

133 Valuer-General may issue compliance certificate

- (1) The Valuer-General may, at the request of the Treasurer or on his or her own initiative, give to the Treasurer a certificate, in writing, about the Valuer-General's assessment of a council's compliance with any of its classification obligations (a *compliance certificate*).
- (2) The Valuer-General may, in a compliance certificate, give an opinion as to whether or not the council is complying with any of its classification obligations.
- (3) If the Valuer-General considers that he or she does not have sufficient information or evidence to be satisfied that the council is complying with any of its classification obligations, the Valuer-General may state in the certificate that he or she is unable to give an opinion on the matter, for that reason.

- (4) The compliance certificate is to specify any compliance issues identified by the Valuer-General.
- (5) A compliance issue is any fact or circumstance that:
 - (a) forms the basis of the Valuer-General's opinion that the council is not complying with any of its classification obligations, or
 - (b) because of which, the Valuer-General considers that he or she does not have sufficient information or evidence to be satisfied that the council is complying with any of its classification obligations.
- (6) Before issuing a compliance certificate that specifies compliance issues, the Valuer-General must:
 - (a) give the council an opportunity to make submissions in relation to the compliance issues within a period (of not less than 30 days) specified by the Valuer-General, and
 - (b) take into consideration any submissions made by the council during that period.
- (7) The Valuer-General is to provide a copy of a compliance certificate issued by the Valuer-General to the council to which it relates.
- (8) A compliance certificate is admissible in any legal proceedings and is evidence of any compliance issues specified in the certificate.

Division 3 Monitoring role of Chief Commissioner

134 Monitoring of council compliance with financial obligations

The Chief Commissioner is to monitor whether councils are complying with their financial obligations.

135 Audits by Chief Commissioner

- (1) The Chief Commissioner may, at the Chief Commissioner's expense, carry out an audit of any of the following:
 - (a) the compliance by a council with its financial obligations,
 - (b) the accuracy and completeness of information provided by a council to the Chief Commissioner under this Act.
- (2) A council must co-operate with an audit under this section, including by providing the Chief Commissioner, or a person authorised by the Chief Commissioner, with access to council facilities and records during regular business hours.

136 Chief Commissioner may issue compliance certificate

- (1) The Chief Commissioner may, at the request of the Treasurer or on his or her own initiative, give to the Treasurer a certificate, in writing, about the Chief Commissioner's assessment of a council's compliance with any of its financial obligations (a *compliance certificate*).
- (2) The Chief Commissioner may, in a compliance certificate, give an opinion as to whether or not the council is complying with any of its financial obligations.
- (3) If the Chief Commissioner considers that he or she does not have sufficient information or evidence to be satisfied that the council is complying with any of its financial obligations, the Chief Commissioner may state in the certificate that he or she is unable to give an opinion on the matter, for that reason.

- (4) The compliance certificate is to specify any compliance issues identified by the Chief Commissioner.
- (5) A compliance issue is any fact or circumstance that:
 - (a) forms the basis of the Chief Commissioner's opinion that the council is not complying with any of its financial obligations, or
 - (b) because of which, the Chief Commissioner considers that he or she does not have sufficient information or evidence to be satisfied that the council is complying with any of its financial obligations.
- (6) Before issuing a compliance certificate that specifies compliance issues, the Chief Commissioner must:
 - (a) give the council an opportunity to make submissions in relation to the compliance issues within a period (of not less than 30 days) specified by the Chief Commissioner, and
 - (b) take into consideration any submissions made by the council during that period.
- (7) The Chief Commissioner is to provide a copy of a compliance certificate issued by the Chief Commissioner to the council to which it relates.
- (8) A compliance certificate is admissible in any legal proceedings and is evidence of any compliance issues specified in the certificate.

Division 4 Treasurer's enforcement powers

137 Order by Treasurer

- (1) The Treasurer may, by order in writing served on a council, require the council to take any action that, in the opinion of the Treasurer, is necessary to remedy or restrain a breach of this Act by the council.
- (2) An action includes refraining from doing something.
- (3) Without limiting subsection (1), the Treasurer may make an order under this section if the Treasurer receives a compliance certificate about the council and the certificate specifies compliance issues.
- (4) A compliance certificate is sufficient evidence to justify making an order under this section in relation to any compliance issues specified in the certificate.
- (5) The Treasurer may, but is not required to, give the council prior notice of the Treasurer's intention to make an order under this section.
- (6) A council must not fail to comply with an order under this section.
- (7) The Treasurer is to advise the Minister administering the *Local Government Act 1993* of any order that the Treasurer makes under this section.

Note. The Minister administering the *Local Government Act 1993* has power under Part 6 of Chapter 13 of that Act to take various actions to redress a failure by a council to meet its legislative responsibilities.

138 Withholding collection payments

- (1) The Treasurer may withhold any collection payment that would otherwise be paid or payable to a council if the Treasurer is satisfied that a breach of this Act has been or will be committed by the council.
- (2) Payments may be withheld until the breach is remedied or restrained to the satisfaction of the Treasurer.

- (3) Without limiting subsection (1), the Treasurer may withhold payments under this section if the Treasurer receives a compliance certificate about the council and the certificate specifies compliance issues.
- (4) A compliance certificate that specifies compliance issues is sufficient evidence to justify withholding payments under this section.
- (5) The Treasurer may, but is not required to, give the council prior notice of the Treasurer's intention to withhold payments under this section.

Part 10 Miscellaneous

139 Notice relating to fire and emergency services levy

- (1) The Treasurer may, by order published in the Gazette, require a council to give an approved notice to liable persons for land in the council's area.
- (2) An **approved notice** is a notice in a form approved by the Treasurer.
- (3) An approved notice may contain such information as the Treasurer considers appropriate to inform the public about the levy and the operation of this Act.
- (4) The order may specify the way in which councils are to give the approved notice to liable persons.
- (5) Without limiting subsection (4), the order may specify that the approved notice is to be included in:
 - (a) a notice of classification or sub-classification of land given by the council, or
 - (b) a levy notice, or
 - (c) a notice that levies a rate or charge under Chapter 15 of the *Local Government Act 1993*.
- (6) A council must not fail to comply with a requirement made under this section.

140 Sharing of information between councils and agencies

- (1) A council may disclose to the Valuer-General or the Chief Commissioner information held by the council:
 - (a) in accordance with a requirement imposed on the council by or under this Act, or
 - (b) otherwise for the purposes of the administration or execution of this Act.
- (2) The Valuer-General may disclose to the Chief Commissioner or a council information held by the Valuer-General for the purposes of the administration or execution of this Act.
- (3) The Chief Commissioner may disclose to the Valuer-General information held by the Chief Commissioner for the purposes of the administration or execution of this Act.
- (4) The Chief Commissioner may disclose to a council information obtained by the Chief Commissioner in the exercise of functions under this Act for the purposes of the administration or execution of this Act.
- (5) The Valuer-General may collect information held by a council or the Chief Commissioner, and use that information, for the purposes of the administration or execution of this Act.
- (6) The Chief Commissioner may collect information held by a council or the Valuer-General, and use that information, for the purposes of the administration or execution of this Act.
- (7) This section applies despite section 11 of the *Valuation of Land Act 1916*.
- (8) This section does not limit section 82 of the *Taxation Administration Act 1996*.
- (9) In this section:
Chief Commissioner includes a person authorised by the Chief Commissioner.
council includes a person authorised by a council.
information includes personal information within the meaning of the *Privacy and Personal Information Protection Act 1998*.

Valuer-General includes a person authorised by the Valuer-General.

141 Disclosure of information to Treasurer

- (1) The Valuer-General may disclose to the Treasurer any information held by the Valuer-General for the purposes of the administration or execution of this Act.
- (2) This section applies despite section 11 of the *Valuation of Land Act 1916*.
- (3) This section does not authorise the disclosure of personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*).
- (4) In this section:
Treasurer includes a person authorised by the Treasurer.
Valuer-General includes a person authorised by the Valuer-General.

142 Notices to be in writing

A notice under this Act must be by instrument in writing, except where this Act or the regulations expressly authorises another means of giving the notice.

143 Act binds the Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Legislature of New South Wales exists, the Crown in all its other capacities.

144 Delegation of functions

- (1) The Treasurer may delegate to the Secretary of the Treasury or any person employed in the Public Service any function of the Treasurer under this Act, other than a function under Part 4 or this power of delegation.
- (2) A delegate may sub-delegate any function delegated by the Treasurer to any person employed in the Public Service, if authorised in writing to do so by the Treasurer.
- (3) The Chief Commissioner may delegate to any person employed in the Public Service any function of the Chief Commissioner under this Act, other than this power of delegation.

145 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
 - (a) in the case of an individual—by personal delivery to the person,
 - (b) by post to the address specified by the person for the service of documents of that kind,
 - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
 - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
 - (e) by email to an email address specified by the person for the service of documents of that kind,
 - (f) by any other method authorised by the regulations for the service of documents of that kind.

- (2) Nothing in this section affects the operation of any provision of any other Act or law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, *serve* includes give or send.

146 Application of Recovery of Imposts Act 1963

- (1) The *Recovery of Imposts Act 1963* applies to the levy as if it were a tax payable to the Crown.
- (2) Section 2 of that Act extends to proceedings for the recovery of the levy from a council.
- (3) For the purposes of that Act, the validity or invalidity of taxation legislation includes the validity or invalidity of a decision of the Treasurer under Part 4.

147 General tax exemption for council does not apply

This Act has effect despite section 741 of the *Local Government Act 1993*.

Note. Land owned by a council is exempt from the levy only if it is government land.

148 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

149 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.
- (3) Section 5 of the *Subordinate Legislation Act 1989* does not apply to the first principal statutory rule that is made under this Act.

150 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Public benefit land

(Section 43)

- 1 Animal shelter, being premises used by a community group for the treatment or adoption of animals.
- 2 Approved education and care service (within the meaning of the *Children (Education and Care Services) National Law (NSW)*) or a State regulated education and care service (within the meaning of the *Children (Education and Care Services) Supplementary Provisions Act 2011*).
- 3 Boat shed, ramp or jetty.
- 4 Cemetery or crematorium, but only if the land is included on the Cemeteries and Crematoria Register under the *Cemeteries and Crematoria Act 2013*.
- 5 Community centre, being a facility used for the physical, social, cultural or intellectual development or welfare of the community.
- 6 Cultural site, being an aquarium, art gallery, botanic garden, concert hall, library or archive, monument, memorial, museum, observatory, theatre or zoo.
- 7 Emergency services, being any of the following:
 - (a) a fire station, an ambulance station or a police station,
 - (b) land used by an emergency service for training purposes,
 - (c) land used by the State Emergency Service (within the meaning of the *State Emergency Service Act 1989*).
- 8 Higher education provider (within the meaning of Division 16 of Part 2-1 of the *Higher Education Support Act 2003* of the Commonwealth).
- 9 Hospital (within the meaning of the *Public Health Act 2010*) or rehabilitation clinic.
- 10 Nature, being any of the following:
 - (a) a bicycle track, park, or walking trail,
 - (b) a flora reserve or State forest (within the meaning of the *Forestry Act 2012*),
 - (c) a marine park (within the meaning of the *Marine Estate Management Act 2014*),
 - (d) a conservation area or state conservation area (within the meaning of the *National Parks and Wildlife Act 1974*),
 - (e) land that is the subject of a conservation agreement under the *Biodiversity Conservation Act 2016*,
 - (f) a wilderness area (within the meaning of the *Wilderness Act 1987*),
 - (g) a World Heritage site.
- 11 A non-government school (within the meaning of the *Education Act 1990*).
- 12 Place of worship.
- 13 Public toilet or amenities block.
- 14 Sporting complex, including sports club facilities.

- 15** TAFE establishment (within the meaning of the *Technical and Further Education Commission Act 1990*).

Schedule 2 Industrial land

(Section 46)

- 1 Manufacturing, including:
 - (a) a general purpose factory, being a building or place used for manufacturing, assembly or repairs (for example, a factory, motor vehicle repair facility, or workshop), and
 - (b) a food processing factory, being a purpose-built food processing facility (for example, a cannery, milk production plant, dairy or processing plant), and
 - (c) a major industrial complex with special purpose improvements for large-scale industrial use (for example, a car plant or paper mill).
- 2 Warehousing, distribution or storage, including:
 - (a) a general purpose warehouse used for the storage of goods, and
 - (b) open-area storage, with extensive hardstand area used for the storage of goods and equipment (for example, a wrecking yard, concrete batching yard, or container storage).
- 3 Bulk grain storage, a silo or other structure used for the storage of grain, or bunkers used for the storage of grain.
- 4 Bulk liquid storage fuel depot, being a building or place with tanks for the storage and distribution of bulk liquids (for example, a fuel depot or oil terminal) but excluding retail fuel outlets and service stations.
- 5 Coolstore or coldstore, being a purpose-built structure used for the cold storage of perishable products.
- 6 Works depot, being a building or place used as a works depot in conjunction with infrastructure maintenance (for example, a municipal depot).
- 7 Tannery or skins drying depot, being a building or place used for the tanning of skins and hides.
- 8 Abattoir, being a purpose-built structure used for the holding and slaughter of stock and the preparation of meat for the wholesale market.
- 9 Stock sales yard, being a purpose-built structure used for the yarding and selling of stock.
- 10 Rendering plant, being a purpose-built structure used for the extraction of lard, tallow and oil from animal parts.
- 11 Oil refinery, being a purpose-built structure used in the refinement and storage of petroleum products.
- 12 Petro-chemical manufacturing, being a purpose-built structure used in the production of chemical-based products from petroleum.
- 13 Sawmill, being a purpose-built structure used for the milling and curing of timber.
- 14 Mining, being land that is classified as mining for the purposes of the *Local Government Act 1993*.
- 15 Other extractive industries, including the extraction of sand, gravel, stone, clay, limestone, dolomite, gypsum, soil, precious metals, uranium, bauxite, gold, other

- metals, precious stones, and other minerals and ore, and the extraction of non-metals by a licensed operator, from deep underground, by way of an inclined or vertical passageway or shaft equipped with lifting machinery.
- 16** Tailings dump, being the storage or treatment of minerals or non-minerals in tailing dumps or dams.
- 17** Oil well or bore.
- 18** Water well, being a narrow hole drilled or dug into the earth for the production of water, including mineral water, water for stock or domestic purposes, and water for use in irrigation.
- 19** Evaporative salt pan.
- 20** Salt extraction basin, being the extraction of salt from a lake or man-made evaporative basin.
- 21** Dredging operations, being activities involving dredging for the extraction, treatment and restoration of submerged materials.
- 22** Gas or fuel well, being specialist infrastructure used as a gas or fuel well.
- 23** Gas or fuel refinery.
- 24** Gas or fuel storage excluding retail fuel outlets and service stations.
- 25** Electricity power generators, including thermal power plants, hydroelectric generators, wind farms, and solar electric generation.
- 26** Refuse incinerator.
- 27** Refuse transfer station.
- 28** Sanitary landfill, being the disposal of household, commercial, industrial and public waste.
- 29** Refuse recycling.
- 30** Hazardous materials or toxic storage centre.
- 31** Toxic by-product storage or decontamination site for the storage of mining waste.
- 32** Sewerage or stormwater treatment plant.
- 33** Sewerage or stormwater pump station.
- 34** Water treatment plant, including a desalination plant.
- 35** Water storage tank, pressure control tower or pumping station.
- 36** Weighbridge.
- 37** Railway switching and marshalling yards.
- 38** Railway maintenance facility.
- 39** Railway passenger terminal, including a station.
- 40** Railway freight terminal facility.

- 41 Tramway maintenance and terminal facility.
- 42 Tram stop, including a shelter or a platform.
- 43 Airport hangar.
- 44 Heliport.
- 45 Port dock or berth, including the seabed adjoining a wharf with infrastructure used for the berthing of ships.
- 46 Cargo port wharf or pier and apron, being specialist infrastructure to facilitate the movement of containers and cargo to and from ships.
- 47 Wharf storage sheds, being enclosed storage facilities within a wharf.
- 48 Piers, storages and slipways used for maintenance and launching of boats.
- 49 Lighthouse and navigation aids, being specialist infrastructure used to assist in sea navigation.
- 50 Postal exchange and mail and package sorting centre.
- 51 Telecommunications buildings and maintenance depots.
- 52 Telecommunications towers and aerials.
- 53 Printing works and printing press, being specialist infrastructure used for printing works (for example, newspaper print and magazines).
- 54 Purpose-built telephone exchange.

Schedule 3 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) A regulation made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate savings and transitional provisions.

Part 2 Provisions consequent on enactment of this Act

Division 1 Preliminary

2 Definition

In this Part:

initial land classification means a first classification of land under this Act.

Division 2 Introduction of levy

3 First levy

The first levy is payable for the financial year commencing on 1 July 2017.

4 Validation of things done in anticipation of commencement

Anything done by a council, or by a person who has functions under this Act, in anticipation of the enactment and commencement of this Act, that would have been validly done under this Act if this Act had been in force at the time that it was done, is taken to have been validly done under this Act.

5 References to 30 April

If this Act, or an amendment to another Act that is made by this Act, requires something to be done by 30 April and this Act commences on or after 23 April 2017, the thing is taken to be validly done by 30 April 2017 if it is done by the date that is 7 days after the commencement of this Act or by a later date prescribed by the regulations.

6 Matters that may be dealt with by regulation

- (1) This clause has effect pending the making of regulations under this Act, and ceases to have effect when there is a regulation in force under this Act.
- (2) Land that is exempt from all rates under section 555 (1) (g) or (h) of the *Local Government Act 1993* is taken to be unvalued land under section 19.
- (3) The land referred to in subclause (2) is taken to have a land value of zero (as if a zero land value were specified by the regulations under this Act).
- (4) The land value of land on Lord Howe Island is to be calculated at a rate of \$70 per square metre or part of a square metre (as if that rate were specified by the regulations under this Act).
- (5) For the purposes of section 42 (1) (b) (i) of this Act, each of the following State owned corporations, and any subsidiary of those corporations, is taken to have been declared by the regulations to be a liable State owned corporation (accordingly, land owned by the State owned corporation or subsidiary is not government land):
 - (a) Essential Energy,
 - (b) Ausgrid,
 - (c) Endeavour Energy.
- (6) For the purposes of section 42 (1) (g) of this Act, the following land is taken to have been declared by the regulations to be government land:
 - (a) land owned by WCX M4 Pty Limited (ACN 602 963 806),
 - (b) land owned by the Crown or by a council that is the subject of a lease to the Crown (within the meaning of this Act) or a council, if the dominant use of the land is for the purposes of the lease,
 - (c) land that is the subject of a lease and is used for the purpose of a government school (within the meaning of the *Education Act 1990*), if that use is the dominant use of the land,
 - (d) Schedule 14 lands, or ALR Act lands, within the meaning of Part 4A of the *National Parks and Wildlife Act 1974*, that are leased to the Minister under that Part.

7 Classification deadline

- (1) For the purpose of enabling the levy to be charged on and from 1 July 2017, a council must classify all parcels of land within its area by the date that is 7 days after the commencement of this Act or by a later date prescribed by the regulations.
- (2) A failure by a council to classify any land in its area by that date does not affect the validity of any classification (whether done before or after that date).
- (3) A council may sub-classify land as vacant land as part of an initial land classification, but is not required to do so.

8 Notice of initial land classification

- (1) A council is not required to give notice to a liable person of an initial land classification within 30 days of the classification if the classification is done before 1 April 2017, or the date that is 7 days after the commencement of this Act, whichever is later.
- (2) However, a council must, by 30 April 2017, give notice to a liable person of an initial land classification and the effective date for the classification, in accordance with Part 5 of this Act.

- (3) If notice is given by post, a requirement to give notice by a particular date is satisfied if the notice is posted by that date.

9 Extended time for initial appeals and reviews

- (1) Despite anything to the contrary in Part 5 of this Act, an application for a review of a classification of land under this Act may be made to a council on or before 31 August 2017, even if that date occurs later than 30 days after notice of the classification is given to the liable person.
- (2) An appeal may be made on or before 31 August 2017 to the Land and Environment Court against the following, even if that date occurs later than the date by which, but for this clause, it is required to be made under Part 5 of this Act:
 - (a) an initial land classification,
 - (b) the effective date for an initial land classification,
 - (c) a refusal by a council to sub-classify land as vacant land,
 - (d) the effective date for a sub-classification of land as vacant land.
- (3) This clause does not limit the period during which an application for review of appeal may be made under Part 5 of this Act.

10 Estimates under Part 4—adjustments for 2017

- (1) The first year in which the Valuer-General is required to provide estimates under sections 31–33 is 2017.
- (2) In 2017, the estimates must be given to the Treasurer in accordance with sections 31–33 by a date approved by the Treasurer (the reference to 15 March is to be disregarded).
- (3) The first year in which a council is required to provide the levy estimate information under section 34 is 2017.
- (4) In 2017, the levy estimate information must be provided to the Valuer-General in accordance with section 34 by the date prescribed by the regulations or, if no date is prescribed, by the date that is 7 days after the commencement of this Act (the reference to 15 February is to be disregarded).
- (5) For 2017 only, section 34 applies as if a reference to 31 December in the year before the return is required to be provided were a reference to a date prescribed by the regulations or, if no date is prescribed, the date the information is provided to the Valuer-General.
- (6) The Valuer-General may treat any information provided by a council in anticipation of the enactment and commencement of this Act as levy estimate information and, accordingly, may use that information to make the estimates required to be made in 2017 under Part 4 of this Act (even if a return has not been provided by a council under section 34 at the time that the estimate is made).

11 Allowance for Monitor budget in first 2 years

- (1) In the 2017/2018 financial year and the 2018/2019 financial year, the Monitor budget is to be added into the calculation of the FESL revenue target under Division 2 of Part 4 of this Act (so that the FESL revenue target includes the Monitor budget for the financial year).
- (2) The Treasurer must, before the date of 30 April that occurs before the commencement of the 2017/2018 financial year and the 2018/2019 financial year, prepare and adopt an estimate of the total of the expenditure that will be incurred in

the exercise of the Monitor's functions for that financial year. That estimate is the **Monitor budget** for the financial year for which it is made.

12 Allowance for start-up costs in initial period

- (1) The Treasurer may add into the calculation of the FESL revenue target under Division 2 of Part 4 of this Act for a financial year any amount that the Treasurer certifies is a start-up cost for the levy (so that the FESL revenue target includes the certified start-up cost or costs).
- (2) Each of the following is a **start-up cost** for the levy:
 - (a) any amount paid by the Treasurer to a council to reimburse the costs of the initial implementation of the levy,
 - (b) any cost incurred by or on behalf of the Crown in the initial implementation of the levy.
- (3) The Treasurer is not to certify an amount as a start-up cost for the levy if the amount has already been included in the calculation of the collection cost for the levy under Division 2 of Part 4 of this Act.
- (4) To avoid doubt, this clause extends to start-up costs incurred before the commencement of this Act.
- (5) The fact that the Treasurer does not include a start-up cost, or part of a start-up cost, in the calculation of the FESL revenue target for the financial year after which it is incurred does not prevent the Treasurer from including that start-up cost, or part, in the calculation of the FESL revenue target for a subsequent financial year.

Note. This subclause permits initial start-up costs to be spread over the first 5 years of the scheme.
- (6) However, the Treasurer may add a start-up cost, or part of a start-up cost, to the FESL revenue target in a financial year only if the amount has not been included in the calculation of the FESL revenue target for a previous financial year.
- (7) This clause permits a start-up cost to be added to the FESL revenue target for a financial year only in the financial years from the 2017/2018 financial year to 2022/2023 financial year inclusive.

13 Returns under section 107

The first return that is required under section 107 is a return for the 2017/2018 financial year.

Schedule 4 Amendment of other legislation

4.1 Emergency Services Levy Insurance Monitor Act 2016 No 23

[1] Section 3 Definitions

Insert in alphabetical order:

Chief Commissioner means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.

emergency services contribution means a contribution by an insurance company under the emergency services funding scheme.

emergency services levy winding up arrangements means the arrangements relating to emergency services levy reform, including the matters provided for by or under:

- (a) the *Fire and Emergency Services Levy Act 2017*, or
- (b) Schedule 4 to the *Fire Brigades Act 1989*, or
- (c) Schedule 3 to the *Rural Fires Act 1997*, or
- (d) Schedule 1 to the *State Emergency Service Act 1989*.

[2] Section 3, definition of “emergency services funding scheme”

Omit “means the scheme for funding certain fire and emergency services from contributions required to be paid by insurance companies under”.

Insert instead “or **scheme** means the scheme for funding certain fire and emergency services from contributions required to be paid by insurance companies under the following provisions, as in force before the enactment of the *Fire and Emergency Services Levy Act 2017*”.

[3] Section 3, definition of “emergency services levy reform”

Omit the definition. Insert instead:

emergency services levy reform means:

- (a) the abolition, by the *Fire and Emergency Services Levy Act 2017*, of the emergency services funding scheme, and
- (b) the establishment of a fire and emergency services levy by that Act.

[4] Section 3 (2)

Insert at the end of the section:

- (2) Notes included in this Act do not form part of this Act.

[5] Section 14 Price exploitation

Omit section 14 (1) (b) (ii). Insert instead:

- (ii) the contributions required to be paid by the insurance company under the emergency services funding scheme, and

[6] Section 30 Information relating to emergency services levy reform

Omit section 30 (1). Insert instead:

- (1) The Monitor may, by order published in the Gazette:
 - (a) require any insurance company or class of insurance companies to provide information about emergency services levy reform or the functions of the Monitor under this Act (or both), including about the

- impact of emergency services levy reform on the price payable for the issue of a regulated contract of insurance, and
- (b) specify the way in which the impact of emergency services levy reform is to be calculated, and
 - (c) specify the way in which the information is to be provided (including by requiring it to be contained in an invoice or other statement as to the price payable for the issue of a regulated contract of insurance).

[7] Section 30 (2)

Omit “that the statement includes the information contained in the notice published under subsection (1)”.

Insert instead “that any information required to be provided by an order under subsection (1) is provided in accordance with the requirements of the order”.

[8] Section 30 (3)

Omit “subsection (2)”. Insert instead “this section”.

[9] Part 3A

Insert after Part 3:

Part 3A Investigation of overcharging under scheme

31A Definitions

In this Part:

debt recovery order—see section 31J.

final 2 years of the scheme means the financial years commencing on 1 July 2015 and 1 July 2016.

over-collection amount—see section 31C.

refund undertaking—see section 31H.

relevant policy holder—see section 31B.

31B Monitor to investigate over-collection amounts

- (1) The Monitor must:
 - (a) investigate and assess whether insurance companies are liable for over-collection amounts under the scheme, and
 - (b) endeavour to ensure that any insurance company that is liable for an over-collection amount:
 - (i) refunds the over-collection amount to relevant policy holders of the insurance company, if that is practicable, or
 - (ii) if that is not practicable—pays the over-collection amount to the Chief Commissioner for payment into the Consolidated Fund.
- (2) A policy holder is a *relevant policy holder* of an insurance company if the policy holder was insured under a regulated contract of insurance with the insurance company in the final 2 years of the scheme.

31C Liability for an over-collection amount

- (1) An insurance company is liable for an over-collection amount under the scheme if the total amount collected by the insurance company exceeds the total amount contributed by the insurance company.

- (2) The total amount collected by an insurance company is the total amount that, in the opinion of the Monitor, was collected by the insurance company from relevant policy holders for, or purportedly for, the payment of emergency service contributions in the final 2 years of the scheme.
- (3) If the Monitor has insufficient information to decide exactly the total amount collected by an insurance company, the Monitor may estimate that amount.
- (4) The total amount contributed by an insurance company is the total of the following amounts:
 - (a) the final 2-year assessment of the insurance company given to the Monitor under clause 37 of Schedule 4 to the *Fire Brigades Act 1989*,
 - (b) the final 2-year assessment of the insurance company given to the Monitor under clause 35 of Schedule 3 to the *Rural Fires Act 1997*,
 - (c) the final 2-year assessment of the insurance company given to the Monitor under clause 19 of Schedule 1 to the *State Emergency Service Act 1989*.
- (5) The **over-collection amount** is the amount by which the total amount collected by the insurance company exceeds the total amount contributed by the insurance company.

31D Monitor to assess over-collection amount

- (1) If the Monitor is satisfied that an insurance company is liable for an over-collection amount, the Monitor must issue an assessment for that over-collection amount.
- (2) The Monitor may, at any time, reassess the over-collection amount of an insurance company by issuing a further assessment.
- (3) The Monitor is not required to issue an assessment for an over-collection amount if the Monitor:
 - (a) comes to an agreement with an insurance company about its liability for an over-collection amount, and
 - (b) accepts a refund undertaking from the insurance company for the over-collection amount.

31E Notice of assessment to be given to insurance company

- (1) If the Monitor issues an assessment for an over-collection amount, the Monitor must serve notice of the assessment on the insurance company that is liable for the over-collection amount.
- (2) The notice must specify the over-collection amount.
- (3) The notice must:
 - (a) advise the insurance company that, if the insurance company fails to give a refund undertaking to the Monitor in relation to the over-collection amount, in terms acceptable to the Monitor, the amount can be referred to the Chief Commissioner for debt recovery action, and
 - (b) specify the deadline for giving the refund undertaking to the Monitor.
- (4) The notice must advise the insurance company about how to object to the assessment, unless the assessment is of a kind that is not open to objection by the insurance company.
- (5) The deadline for giving the refund undertaking must not be less than 30 days after the notice is given to the insurance company.

- (6) The Monitor may extend the deadline for giving the refund undertaking.

31F Objections to assessments

- (1) An insurance company may object to an assessment of an over-collection amount within 21 days after notice of the assessment is given to the insurance company or within such further period as the Monitor allows.
- (2) An objection must be made in writing to the Monitor and must specify the grounds of the objection.
- (3) Only one objection can be made by an insurance company to an assessment.
- (4) The insurance company has the onus of establishing the grounds of the objection.
- (5) An objection is not duly made unless it is made in accordance with this section.

31G Monitor to decide objection

- (1) The Monitor must consider an objection to an assessment, if the objection is duly made by the insurance company, and either allow the objection in whole or in part or disallow the objection.
- (2) If the Monitor delegates the functions conferred by this section, the delegate who considers the objection must be a different person from, and not subordinate to, the person who made the decision against which the objection is lodged.
- (3) The Monitor must give notice in writing to the insurance company of its decision on the objection.
- (4) The Monitor may issue a reassessment for the purpose of giving effect to a decision to allow an objection in whole or in part.
- (5) A reassessment is not open to objection by an insurance company if it is made for the purpose of giving effect to a decision to allow an objection in whole or in part.
- (6) If an objection to an assessment is duly made to the Monitor, the Monitor is not to refer the over-collection amount to the Chief Commissioner for debt recovery action:
 - (a) while the objection is pending before the Monitor, or
 - (b) before the period of 7 days has elapsed from the time that notice of the Monitor's decision on the objection is given to the insurance company.

31H Refund undertakings by insurance companies

- (1) If an insurance company is liable for an over-collection amount, the Monitor may accept a refund undertaking from the insurance company in relation to the over-collection amount.
- (2) A *refund undertaking* is an undertaking under Division 2 of Part 4 under which an insurance company that is liable for an over-collection amount agrees to refund the whole or part of the over-collection amount to relevant policy holders or to pay the over-collection amount or part of it to the Chief Commissioner.
- (3) The Monitor is not to accept a refund undertaking that provides for the payment of an over-collection amount or part of an over-collection amount to the Chief Commissioner unless the Monitor is satisfied it is impracticable for

the insurance company to refund the over-collection amount or part to relevant policy holders.

- (4) The Monitor is to advise the Chief Commissioner of any refund undertaking that provides for the payment of an amount to the Chief Commissioner.

Note. A refund undertaking is enforceable by proceedings in the Supreme Court.

31I Referral of amount to Chief Commissioner for debt recovery actions

- (1) The Monitor may refer an over-collection amount to the Chief Commissioner for debt recovery action if the insurance company liable for the over-collection amount fails to give the Monitor a refund undertaking in relation to the amount, in terms that are acceptable to the Monitor, by the deadline for giving the refund undertaking.
- (2) The referral is to be made by notice in writing to the Chief Commissioner in a form approved by the Chief Commissioner.
- (3) The notice must specify the over-collection amount.
- (4) The Monitor is to give the Chief Commissioner:
- (a) a copy of the notice of assessment in relation to the insurance company, and
 - (b) any other information in relation to the referral that the Chief Commissioner reasonably requires to exercise his or her functions under this Part.

31J Issue of debt recovery order by Chief Commissioner

- (1) The Chief Commissioner may make an order (a *debt recovery order*) in relation to any over-collection amount referred to the Chief Commissioner by the Monitor under this Part.
- (2) A debt recovery order is an order for the recovery of the over-collection amount from the insurance company that is liable for the over-collection amount.
- (3) The debt recovery order must specify:
- (a) the over-collection amount payable by the insurance company, and
 - (b) the date for payment.
- (4) A copy of the debt recovery order must be given to the insurance company.
- (5) The date for payment must be not less than 30 days after a copy of the order is given to the insurance company.

31K Insurance company must pay over-collection amount

- (1) An insurance company that is required by a debt recovery order to pay an over-collection amount must pay that amount to the Chief Commissioner by the date for payment specified in the debt recovery order or within any further time allowed by the Chief Commissioner.

- (2) If an insurance company fails to pay the over-collection amount within 30 days of it being payable, the insurance company is guilty of an offence.
Maximum penalty: 50 penalty units.
- (3) The over-collection amount specified in the debt recovery order is recoverable by the Chief Commissioner from the insurance company as a debt in a court of competent jurisdiction and is payable into the Consolidated Fund.
Note. Recovered over-collection amounts are deducted from the FESL revenue target under the *Fire and Emergency Services Levy Act 2017* and, accordingly, reduce the levy payable under that Act.

[10] Section 53 Purposes for which powers under Part may be exercised

Omit “this Act or the regulations” from section 53 (a).

Insert instead “this Act, the regulations or the emergency services levy winding up arrangements”.

[11] Section 53 (b)

Insert “or the emergency services levy winding up arrangements” after “this Act”.

[12] Section 53 (d)

Insert “or the emergency services levy winding up arrangements” after “this Act”.

[13] Section 75 Exchange of information

Omit paragraph (b) of the definition of *relevant agency* in section 75 (6). Insert instead:

- (b) the Chief Commissioner, or
- (b1) the Commissioner of Fire and Rescue NSW, or
- (b2) the Commissioner of the NSW Rural Fire Service, or
- (b3) the Commissioner of the State Emergency Service, or

4.2 Fires Brigades Act 1989 No 192

[1] Section 44 Definitions

Omit the definitions of *assessment notice*, *capital account*, *contributors*, *estimated expenditure*, *fire brigade contribution instalments*, *insurance company*, *recurrent expenditure account* and *relevant insurance*.

Insert in alphabetical order:

assessment notice means an assessment notice given to a local council under section 54.

fire brigade contribution instalment—see section 51A.

fire brigades funding amount—see section 49.

fire brigades funding target—see section 45.

State Revenue Commissioner—means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.

[2] Section 44, definition of “fire brigade contribution”

Omit “contributor”. Insert instead “local council”.

[3] Section 44, definition of “fire brigades expenditure”

Omit “recurrent” wherever occurring.

[4] Section 44, definition of “fire brigades expenditure”

Omit paragraph (b).

[5] Part 5, Divisions 2, 3 and 4

Omit the Divisions. Insert instead:

Division 2 Fire brigades funding target

45 Fire brigades funding target

- (1) Before 31 March in each year or a later date agreed to by the Treasurer, the Minister must:
 - (a) prepare and, subject to the Treasurer’s agreement, adopt a funding target for Fire and Rescue NSW for the next financial year (the *fire brigades funding target*), and
 - (b) prepare and adopt an estimate of the amount of the fire brigades funding target for each fire district for the next financial year.
- (2) The Minister is to calculate the fire brigades funding target for the financial year using the following formula:

$$FT_t = EE_t + (AE_{t-2} - EE_{t-2})$$

where:

FT_t is the fire brigades funding target for the financial year (represented by “t”).

EE_t is the estimated fire brigades expenditure for the financial year.

AE_{t-2} is the actual fire brigades expenditure for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

EE_{t-2} is the estimated fire brigades expenditure for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

- (3) To avoid doubt, if $AE_{t-2} - EE_{t-2}$ is a negative amount, that amount is subtracted from EE_t .
- (4) The estimate of fire brigades expenditure for a financial year is to be reduced, as necessary, by the amount it is estimated will be paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (5) The actual fire brigades expenditure for a financial year is to be reduced, as necessary, by the amount paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (6) Without limiting subsections (4) and (5), the Minister may, with the Treasurer’s agreement, decide that adjustments are not to be made to the fire brigades funding target in respect of:
 - (a) certain money paid into the Fund, or
 - (b) certain amounts it is estimated will be paid to Fire and Rescue NSW for the financial year.
- (7) In determining the amount of the fire brigades funding target for each fire district, the Minister may apportion the total estimated expenditure between fire districts in the way the Minister thinks fit.

46 Commissioner to assist

- (1) To assist the Minister in preparing and adopting the fire brigades funding target for a financial year, the Commissioner must prepare and give to the Minister a written report and recommendations about fire brigades expenditure for the year and the estimated expenditure for each fire district and each local council.
- (2) The Minister must consider the Commissioner's report and recommendations in preparing the estimates.

Division 3 Treasurer to contribute to Fund

47 Treasurer to pay contributions

- (1) The Treasurer is to pay an annual contribution to the Fund for each financial year.
- (2) The annual contribution payable is the fire brigades funding amount.
- (3) The Treasurer may direct the payment of additional contributions to the Fund, subject to any terms and conditions approved by the Treasurer.
- (4) The annual contribution, and any additional contributions, are to be paid out of money provided by Parliament.

48 Contribution payable in instalments

The annual contribution is to be paid by the Treasurer in instalments on or before the following dates:

- (a) 1 August,
- (b) 1 October,
- (c) 1 January,
- (d) 1 April.

49 Fire brigades funding amount

- (1) As soon as practicable after the commencement of each financial year, the Minister must prepare and, subject to the Treasurer's agreement, adopt an update of fire brigades funding for the financial year (the *fire brigades funding amount*).
- (2) The fire brigades funding amount is the estimated fire brigades expenditure for the financial year (that is, EE_t in the fire brigades funding target for the financial year), adjusted and updated in accordance with this section.
- (3) Estimated fire brigades expenditure is to be adjusted for the purposes of the fire brigades funding amount so that the estimate:
 - (a) is reduced or increased, as appropriate, for any difference between the estimate of fire brigades expenditure for the financial year, as adopted in the fire brigades funding target, and an updated estimate of that amount, and
 - (b) is reduced or increased, as appropriate, for any difference between the fire brigades funding amount for the previous financial year and the actual amount of fire brigades expenditure for that financial year.
- (4) Without limiting subsection (3), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the fire brigades funding amount in respect of:

- (a) any surplus in the Fund at the end of the previous financial year, or
 - (b) certain money paid into the Fund, or
 - (c) certain amounts it is estimated will be paid to Fire and Rescue NSW for the financial year.
- (5) An adjustment to the estimated fire brigades expenditure that is made under this section has no effect on, and is not to be used in the calculation of, the fire brigades funding target for a financial year.

Division 4 Councils to pay fire brigade contributions

50 Council to pay fire brigade contribution

A local council is to pay to the State Revenue Commissioner a fire brigade contribution for each financial year.

51 Amount of contribution

- (1) The amount of the fire brigade contribution is the amount determined by the Minister for each local council.
- (2) The Minister is to determine the contribution payable by a local council on the basis of the fire brigades funding target for each fire district.
- (3) The contribution payable by local councils for each fire district is 11.7% of the fire brigades funding target applicable to the fire district.
- (4) The contribution to be paid for a fire district is to be paid by the local council or councils of a local government area the whole or part of which is included in the fire district.
- (5) However, if a fire district comprises a reserved area (within the meaning of section 5) and no other area:
 - (a) a local council of an area within the fire district is not required to pay a fire brigade contribution for the fire district, and
 - (b) the fire brigade contribution for the fire district is to be paid from the National Parks and Wildlife Fund established under the *National Parks and Wildlife Act 1974*.
- (6) If a fire district comprises more than one local government area, the amount of the fire brigade contribution payable by the local council of each local government area in the fire district is to be apportioned according to the current 5-year average of the total land values of all rateable land in the local government area or in the part of it in the fire district.
- (7) A local council or an officer of a local council must, if asked by the Minister, give the Minister any document or information required by the Minister to determine the council's fire brigade contribution.
- (8) In this section:
current 5-year average, in relation to the total land values of land, means the arithmetic mean of the total land values of the land (estimated in accordance with section 67 of the *Valuation of Land Act 1916*) as at 1 July in each of the 5 financial years before the date on which the average is being calculated.

51A Contribution payable in instalments

A fire brigade contribution payable by a local council for a financial year is payable in 4 instalments (each of which is a **fire brigade contribution instalment**).

51B Minister to advise State Revenue Commissioner

The Minister is to advise the State Revenue Commissioner, by the date of 15 April that occurs immediately before the commencement of a financial year, of:

- (a) the amount of the fire brigade contribution payable by each local council for the financial year, and
- (b) the amount of the fire brigade contribution instalments payable by each local council.

[6] Part 5, Division 5, heading

Omit the heading. Insert instead:

Division 5 Payment of contributions by local councils

[7] Section 52

Omit sections 52 and 53. Insert instead:

52 When instalments are to be paid

A local council must, in accordance with an instalment notice given to the council by the State Revenue Commissioner, pay to the State Revenue Commissioner a fire brigade contribution instalment on or before each of the following days in a financial year:

- (a) 30 September,
- (b) 31 December,
- (c) 31 March,
- (d) 30 June.

[8] Sections 54–55A

Omit sections 54 and 55. Insert instead:

54 Annual assessment notice

- (1) The State Revenue Commissioner must give to each local council that is required to pay a fire brigade contribution for a financial year an assessment notice that sets out the amount of the fire brigade contribution payable by the local council for that year.
- (2) The assessment notice must be given to the local council by 30 April in the year before the financial year for which the fire brigade contribution is payable.

55 Instalment notices

The State Revenue Commissioner must give to each local council that is required to pay a fire brigade contribution instalment a written notice (an *instalment notice*) that specifies:

- (a) the amount of the fire brigade contribution instalment payable under the instalment notice, and
- (b) the date by which the fire brigade contribution instalment is payable.

55A Fire brigade contribution is debt payable to State Revenue Commissioner

- (1) If the whole or part of a fire brigade contribution payable by a local council is not paid to the State Revenue Commissioner as required, the unpaid amount is

- recoverable by the State Revenue Commissioner as a debt in a court of competent jurisdiction.
- (2) The applied provisions of the *Taxation Administration Act 1996* apply in relation to the fire brigade contribution payable by a local council under this Act as if Part 5 of this Act were a taxation law and the contribution were a tax payable by a council under a taxation law.
 - (3) The ***applied provisions*** of the *Taxation Administration Act 1996* are the following provisions of that Act:
 - (a) Division 1 (Interest) of Part 5,
 - (b) sections 50 and 55 (which prohibit the giving of false and misleading information),
 - (c) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,
 - (d) sections 114, 115, 116, 118, 119 and 120,
 - (e) any provisions that are relevant to the interpretation of the above provisions.
 - (4) The applied provisions apply to an assessment made by the State Revenue Commissioner under this Act in the same way as they apply to an assessment under that Act.
 - (5) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a fire brigade contribution or to the exercise of any of the State Revenue Commissioner's functions in respect of fire brigade contributions (including under the applied provisions of the *Taxation Administration Act 1996*).

[9] Section 56 How contribution is to be funded

Insert at the end of the section:

- (2) Funds of a local council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards the payment of fire brigade contributions by the local council unless approved by the Minister.

[10] Part 5, Division 6 Contributions by insurance companies

Omit the Division.

[11] Part 5, Division 7, heading

Omit the heading. Insert instead:

Division 7 Miscellaneous

[12] Section 64A New South Wales Fire Brigades Fund

Omit section 64A (2), (3) and (4). Insert instead:

- (2) There is to be paid into the Fund:
 - (a) all contributions payable by the Treasurer under this Part, and
 - (b) any other money appropriated by Parliament for payment into the Fund, and
 - (c) the proceeds of investment of money in the Fund, and
 - (d) any other money required by law to be paid into the Fund.

[13] Section 64A (5)

Omit “recurrent expenditure account”. Insert instead “Fund”.

[14] Section 64A (6)

Omit “capital account”. Insert instead “Fund”.

[15] Section 64B

Omit the section. Insert instead:

64B Certificate evidence

A certificate signed by the Minister that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the fire brigades funding target, as adopted by the Minister under this Part,
- (b) the fire brigades funding target applicable to a fire district, as adopted by the Minister under this Part,
- (c) the amount of the fire brigade contribution determined by the Minister for a specified local council for the financial year.

[16] Part 5, Division 8 Miscellaneous

Omit the Division.

[17] Section 80 Information to policy holders

Omit the section.

[18] Schedule 1 Proportion of premiums subject to contribution

Omit the Schedule.

[19] Schedule 4 Savings and transitional provisions

Insert after Part 9:

Part 10 Provisions relating to the Fire and Emergency Services Levy Act 2017

31 Definitions

In this Part:

amending Act means the *Fire and Emergency Services Levy Act 2017*.

final contribution—see clause 34.

final return—see clause 33.

final year of the scheme means the financial year commencing on 1 July 2016.

insurance company means any body corporate, partnership, association, underwriter or person that or who:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to any property situated in New South Wales, or
- (b) receives premiums in respect of such policies of insurance on behalf of or for transmission to any body corporate, partnership, association, underwriter or person outside New South Wales.

insurer loading—see clause 34.

Monitor means the Emergency Services Levy Insurance Monitor appointed under the *Emergency Services Levy Insurance Monitor Act 2016*.

relevant insurance means insurance against loss of or damage to property in the State under the classes of policies specified in Schedule 1, as in force immediately before its repeal by the *Fire and Emergency Services Levy Act 2017*.

total amount, in relation to premiums, includes any brokerage or commission paid or due to be paid or allowed to be paid on:

- (a) the premiums, or
- (b) bonuses or return premiums allowed in respect of policies of insurance the subject of the premiums, or
- (c) such part of the premiums received by or due to the company as is paid or due to be paid by way of reinsurance by the company to another insurance company in the State,

but does not include duty payable under the *Duties Act 1997* in respect of policies of insurance the subject of the premiums.

32 Amendments do not affect pre-1 July 2017 liability

- (1) The amendments to Part 5 of this Act made by the amending Act apply in respect of the financial year commencing on 1 July 2017 and subsequent financial years.
- (2) Subject to this Part, the amendments do not affect any liability for a fire brigade contribution for a financial year commencing before 1 July 2017 and Part 5, section 80 and Schedule 1, as in force immediately before the amendments made to this Act by the amending Act, continue to apply in respect of any such financial year as if the amendments had not been made.

33 Final returns to be provided by insurance companies

- (1) An insurance company must, by 30 September 2017 or another date specified by the Commissioner by notice published in the Gazette, give to the Commissioner:
 - (a) a return in the form approved by the Commissioner showing the total amount of premiums received by or due to the company for the previous financial year for relevant insurance (a **final return**), and
 - (b) a certificate from an auditor that relates to the return and complies with subclause (2).
- (2) The certificate from the auditor must:
 - (a) be in the form approved by the Commissioner, and
 - (b) be from an auditor who is:
 - (i) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (ii) a person not resident in the State who has qualifications that, in the Commissioner's opinion, are appropriate for the giving of the certificate.
- (3) An insurance company is guilty of an offence if it:
 - (a) fails to give the Commissioner a return and certificate as required by this clause, or

- (b) gives the Commissioner a return that is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

34 Calculation of final contribution

- (1) The Commissioner must, by the end of 30 November 2017, calculate a final contribution for each liable insurance company.
- (2) A **final contribution** is the total fire brigade contribution that would have been payable by the insurance company for the final year of the scheme if the contribution had been calculated on the basis of:
 - (a) the premium total provided by the insurance company in its final return, and
 - (b) the premium totals provided by all insurance companies in their final returns.
- (3) If an insurance company fails to provide a final return to the Commissioner within the time required under clause 33, or any further time (not exceeding 30 days) allowed by the Commissioner:
 - (a) the Commissioner may estimate the premium total for that insurance company using any information available to the Commissioner (including information from previous returns, if any), and
 - (b) that estimate is taken to be the premium total provided by the insurance company in its final return.
- (4) If the Commissioner estimates the premium total for an insurance company under subclause (3), the final contribution payable by that insurance company is that estimate plus an insurer loading of 50% of that estimate.
- (5) In this clause:
 - liable insurance company** means an insurance company liable for a fire brigade contribution in the final year of the scheme.
 - premium total** means the total amount of premiums of an insurance company that are subject to a fire brigade contribution.

35 Final assessment

- (1) The Commissioner must give to each insurance company that made or is required to make a fire brigade contribution for the final year of the scheme a final assessment notice for that year.
- (2) The final assessment notice must state the following:
 - (a) the final contribution payable by the insurance company for the final year of the scheme,
 - (b) the amount of any fire brigade contribution already paid by the insurance company for that financial year including, if paid in instalments, the total of all instalments already paid (the **total contribution already paid**),
 - (c) if the final contribution payable by the insurance company exceeds the total contribution already paid:
 - (i) the difference between those amounts (a **contribution deficit**), and
 - (ii) the date by which the contribution deficit must be paid to the Commissioner (being a date that is no earlier than 30 days after the assessment notice is given to the insurance company),

- (d) if the total contribution already paid exceeds the final contribution payable by the insurance company—the difference between those amounts (a *contribution surplus*).
- (3) If the assessment notice specifies a contribution deficit, the insurance company must pay the contribution deficit to the Commissioner.
- (4) The contribution deficit is payable to the Commissioner by the date for payment specified in the assessment notice or any later date permitted by the Commissioner.
- (5) If an insurance company fails to pay a contribution deficit in full by the date on which it is payable to the Commissioner, the applied provisions of the *Taxation Administration Act 1996* apply to the unpaid amount as if the unpaid amount were a tax and this Act were a taxation law.
- (6) The applied provisions of the *Taxation Administration Act 1996* are the following provisions of that Act:
 - (a) Division 1 (Interest) of Part 5,
 - (b) Division 2 (Penalty tax) of Part 5 (except sections 28–30),
 - (c) any provisions that are relevant to the interpretation of the above provisions.
- (7) For the purpose of the applied provisions of the *Taxation Administration Act 1996*:
 - (a) a tax default is taken to occur if the contribution deficit is not paid in full by the date on which it is payable, and
 - (b) a reference to the Chief Commissioner is to be read as a reference to the Commissioner under this Act.
- (8) If a contribution deficit, or any part of a contribution deficit, is not paid in full by an insurance company to the Commissioner by the date on which it is payable, the unpaid amount and any interest and penalty tax payable on the unpaid amount:
 - (a) constitutes a debt due and payable to the Commissioner, and
 - (b) may be recovered in a court of competent jurisdiction by the Commissioner.
- (9) A contribution deficit is to be paid into the Fund.
- (10) If the assessment notice specifies a contribution surplus, the Commissioner is to refund the amount of the contribution surplus to the insurance company no later than 30 June 2018.
- (11) A refund is to be paid from the Fund.

36 Liability of owner where foreign insurer involved

- (1) The Commissioner may notify a relevant owner that the owner is responsible for an appropriate proportion of any contribution deficit that is required to be paid by a foreign insurance company that holds a risk in respect of the owner's property.
- (2) The appropriate proportion is the proportion that the premiums paid by the relevant owner for the final year of the scheme bears to the premium total provided (or taken under this Part to have been provided) by the insurance company in its final return.

- (3) Any insurer loading is not to be included in the calculation of the contribution deficit under this clause.
- (4) If the relevant owner fails to pay the appropriate proportion of the final contribution within 30 days after it is due, the owner is guilty of an offence.
Maximum penalty: 10 penalty units.
- (5) An amount paid by a person under this clause may be deducted from any premium recoverable in the State by or on behalf of the foreign insurance company on the issue or renewal of an insurance policy on the property or may be recovered from the foreign insurance company as a debt by the person making the payment.
- (6) This clause applies whether the premium concerned was received in or outside the State.
- (7) In this clause:
relevant owner means a person who is the owner of property in respect of which a foreign insurance company has received a premium subject to a fire brigade contribution.

37 Commissioner to make final 2-year assessment

- (1) The Commissioner must make an assessment, in relation to each insurance company that was required to make fire brigade contributions in the final year of the scheme or the previous financial year, of the total amount of fire brigade contributions payable by the insurance company for the final 2 years of the scheme (a *final 2-year assessment*).
- (2) The final 2-year assessment is to consist of the total of the following amounts, as assessed by the Commissioner:
 - (a) the final contribution payable by the insurance company for the final year of the scheme (excluding any insurer loading payable by the insurance company),
 - (b) the total of fire brigade contributions payable by the insurance company for the financial year commencing on 1 July 2015.
- (3) The Commissioner is to give the final 2-year assessment to the Monitor.
- (4) The Commissioner must give to the Monitor a final 2-year assessment in relation to an insurance company within 30 days after making an assessment of the final contribution payable by the insurance company for the final year of the scheme.

38 Certificate evidence

A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the final contribution payable by an insurance company,
- (b) the final 2-year assessment for an insurance company,
- (c) the amount of any contribution deficit,
- (d) the amount of any contribution surplus.

39 Transitional provision for adjusted estimates by Minister

A reference in Part 5 of this Act, as amended by the amending Act, to contributions made to the New South Wales Fire Brigades Fund by the

Treasurer includes a reference to fire brigade contributions made for the financial year commencing on 1 July 2016 or a previous financial year.

4.3 Land and Environment Court Act 1979 No 204

[1] Section 19 Class 3—land tenure, valuation, rating and compensation matters

Insert after section 19 (d):

(d1) appeals under section 64 of the *Fire and Emergency Services Levy Act 2017*,

[2] Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement

Insert in alphabetical order in section 20 (3) (a):

Fire and Emergency Services Levy Act 2017,

4.4 Local Government Act 1993 No 30

[1] Section 377 General power of the council to delegate

Insert “under this or any other Act” after “functions of the council” in section 377 (1).

[2] Section 409 The consolidated fund

Insert after section 409 (8):

(9) This section does not affect the requirements of the *Fire and Emergency Services Levy Act 2017* with respect to the payment of collection instalments to the Treasurer.

[3] Section 511A Catching up of income lost due to reductions in valuation

Omit “on objection under Part 3, or appeal under Part 4, of the *Valuation of Land Act 1916*” from section 511A (1).

Insert instead “(whether because of an objection under the *Valuation of Land Act 1916*, an appeal under that Act or for any other reason)”.

[4] Section 687 Appearance in Local Court

Insert “or any other” after “under this” in section 687 (b).

4.5 Local Government (General) Regulation 2005

Clause 127 Rates and charges notices

Insert at the end of the clause:

(2) If the notice includes particulars of a fire and emergency services levy that is payable, the notice may show the total amount payable for instalments for rates or charges and the fire and emergency services levy (instead of showing separately the instalments payable for rates or charges and the instalments payable for the levy).

(3) In this clause:

fire and emergency services levy means the levy under the *Fire and Emergency Services Levy Act 2017*.

4.6 Rural Fires Act 1997 No 65

[1] Part 5, note

Omit the note.

[2] Section 101 Definitions

Omit the definitions of *assessment notice*, *contributors*, *estimated expenditure*, *insurance company*, *relevant insurance* and *rural fire brigade contribution instalments*.

Insert in alphabetical order:

assessment notice means an assessment notice given to a relevant council under section 112.

rural fire brigade contribution instalment—see section 110A.

rural fire brigade funding amount—see section 108.

rural fire brigade funding target—see section 103.

State Revenue Commissioner—means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.

[3] Section 101, definition of “rural fire brigade contribution”

Omit “contributor”. Insert instead “relevant council”.

[4] Section 101, definition of “rural fire brigade expenditure”

Omit “recurrent” wherever occurring.

[5] Section 101, definition of “rural fire brigade expenditure”

Omit paragraph (c).

[6] Section 102 New South Wales Rural Fire Fighting Fund

Omit “into which are to be paid all contributions and other money received under this Part” from section 102 (1).

[7] Section 102 (1A)

Insert after section 102 (1):

(1A) There is to be paid into the Fund:

- (a) all contributions payable by the Treasurer to the Fund under this Part, and
- (b) any other money appropriated by Parliament for payment into the Fund, and
- (c) the proceeds of investment of money in the Fund, and
- (d) any other money required by law to be paid into the Fund.

[8] Section 103

Omit the section. Insert instead:

103 Rural fire brigade funding target

- (1) Before 31 March in each year or a later date agreed to by the Treasurer, the Minister must:
 - (a) prepare and, subject to the Treasurer’s agreement, adopt a funding target for the NSW Rural Fire Service for the next financial year (the *rural fire brigade funding target*), and

- (b) prepare and adopt an estimate of the amount of the rural fire brigade funding target for each rural fire district for the next financial year.
- (2) The Minister is to calculate the rural fire brigade funding target for the financial year using the following formula:

$$FT_t = EE_t + (AE_{t-2} - EE_{t-2})$$

where:

FT_t is the rural fire brigade funding target for the financial year (represented by “t”).

EE_t is the estimated rural fire brigade expenditure for the financial year.

AE_{t-2} is the actual rural fire brigade expenditure for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

EE_{t-2} is the estimated rural fire brigade expenditure for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

- (3) To avoid doubt, if $AE_{t-2} - EE_{t-2}$ is a negative amount, that amount is subtracted from EE_t .
- (4) The estimate of rural fire brigade expenditure for a financial year is to be reduced, as necessary, by the amount it is estimated will be paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (5) The actual rural fire brigade expenditure for a financial year is to be reduced, as necessary, by the amount paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (6) Without limiting subsections (4) and (5), the Minister may, with the Treasurer’s agreement, decide that adjustments are not to be made to the rural fire brigade funding target in respect of:
- (a) certain money paid into the Fund, or
- (b) certain amounts it is estimated will be paid to the NSW Rural Fire Service for the financial year.
- (7) In determining the amount of the rural fire brigade funding target for each rural fire district, the Minister may apportion the total estimated expenditure between rural fire districts in the way the Minister thinks fit.

[9] Section 104 Relevant councils to give information to Minister

Omit “estimated expenditure”. Insert instead “rural fire brigade funding target”.

[10] Section 105

Omit the section. Insert instead:

105 Commissioner to assist

- (1) To assist the Minister in preparing and adopting the rural fire brigade funding target for a financial year, the Commissioner must prepare and give to the Minister a written report and recommendations about rural fire brigade expenditure for the year and the estimated expenditure for each rural fire district and each relevant council.
- (2) The Minister must consider the Commissioner’s report and recommendations in preparing the estimates.

[11] Part 5, Divisions 4 and 5

Omit the Divisions. Insert instead:

Division 4 Treasurer to contribute to Fund

106 Treasurer to pay contributions

- (1) The Treasurer is to pay an annual contribution to the Fund for each financial year.
- (2) The annual contribution payable is the rural fire brigade funding amount.
- (3) The Treasurer may direct the payment of additional contributions to the Fund, subject to any terms and conditions approved by the Treasurer.
- (4) The annual contribution, and any additional contributions, are to be paid out of money provided by Parliament.

107 Contribution payable in instalments

The annual contribution is to be paid by the Treasurer in instalments on or before the following dates:

- (a) 1 August,
- (b) 1 October,
- (c) 1 January,
- (d) 1 April.

108 Rural fire brigade funding amount

- (1) As soon as practicable after the commencement of each financial year, the Minister must prepare and, subject to the Treasurer's agreement, adopt an update of rural fire brigade funding for the financial year (the *rural fire brigade funding amount*).
- (2) The rural fire brigade funding amount is the estimated rural fire brigade expenditure for the financial year (that is, EE_t in the rural fire brigade funding target for the financial year), adjusted and updated in accordance with this section.
- (3) Estimated rural fire brigade expenditure is to be adjusted for the purposes of the rural fire brigade funding amount so that the estimate:
 - (a) is reduced or increased, as appropriate, for any difference between the estimate of rural fire brigade expenditure for the financial year, as adopted in the rural fire brigade funding target, and an updated estimate of that amount, and
 - (b) is reduced or increased, as appropriate, for any difference between the rural fire brigade funding amount for the previous financial year and the actual amount of rural fire brigade expenditure for that financial year.
- (4) Without limiting subsection (3), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the rural fire brigade funding amount in respect of:
 - (a) any surplus in the Fund at the end of the previous financial year, or
 - (b) certain money paid into the Fund, or
 - (c) certain amounts it is estimated will be paid to the NSW Rural Fire Service for the financial year.

- (5) An adjustment to the estimated rural fire brigade expenditure that is made under this section has no effect on, and is not to be used in the calculation of, the rural fire brigade funding target for a financial year.

Division 5 Councils to pay rural fire brigade contribution

109 Council to pay rural fire brigade contribution

A relevant council is to pay to the State Revenue Commissioner a rural fire brigade contribution for each financial year.

110 Amount of contribution

- (1) The amount of the rural fire brigade contribution is the amount determined by the Minister for each relevant council.
- (2) The Minister is to determine the contribution payable by a relevant council on the basis of the rural fire brigade funding target for each rural fire district.
- (3) The contribution payable by relevant councils for each rural fire district is 11.7% of the rural fire brigade funding target applicable to the rural fire district.
- (4) The contribution to be paid for a rural fire district is to be paid by the relevant council or councils of an area the whole or part of which is included in the rural fire district.
- (5) In determining the contribution payable by a relevant council, the Minister may apportion the rural fire brigade funding target for rural fire districts between councils of an area, the whole or part of which are included in that district, in the way the Minister thinks fit.
- (6) A relevant council or an officer of a relevant council must, if asked by the Minister, give the Minister any document or information required by the Minister to determine the council's rural fire brigade contribution.

110A Contribution payable in instalments

A rural fire brigade contribution payable by a relevant council for a financial year is payable in 4 instalments (each of which is a *rural fire brigade contribution instalment*).

110B Minister to advise State Revenue Commissioner

The Minister is to advise the State Revenue Commissioner, by the date of 15 April that occurs immediately before the commencement of a financial year, of:

- (a) the amount of the rural fire brigade contribution payable by each relevant council for the financial year, and
- (b) the amount of the rural fire brigade contribution instalments payable by each relevant council.

[12] Part 5, Division 6, heading

Omit the heading. Insert instead:

Division 6 Payment of contributions by relevant councils

[13] Section 111

Omit the section. Insert instead:

111 When instalments are to be paid

A relevant council must, in accordance with an instalment notice given to the council by the State Revenue Commissioner, pay to the State Revenue Commissioner a rural fire brigade contribution instalment on or before each of the following days in a financial year:

- (a) 30 September,
- (b) 31 December,
- (c) 31 March,
- (d) 30 June.

[14] Sections 112–113A

Omit sections 112 and 113. Insert instead:

112 Annual assessment notice

- (1) The State Revenue Commissioner must give to each relevant council that is required to pay a rural fire brigade contribution for a financial year an assessment notice that sets out the amount of the rural fire brigade contribution payable by the relevant council for that year.
- (2) The assessment notice must be given to the relevant council by 30 April in the year before the financial year for which the rural fire brigade contribution is payable.

113 Instalment notices

The State Revenue Commissioner must give to each relevant council that is required to pay a rural fire brigade contribution instalment a written notice (an *instalment notice*) that specifies:

- (a) the amount of the rural fire brigade contribution instalment payable under the instalment notice, and
- (b) the date by which the rural fire brigade contribution instalment is payable.

113A Rural fire brigade contribution is debt payable to State Revenue Commissioner

- (1) If the whole or part of a rural fire brigade contribution payable by a relevant council is not paid to the State Revenue Commissioner as required, the unpaid amount is recoverable by the State Revenue Commissioner as a debt in a court of competent jurisdiction.
- (2) The applied provisions of the *Taxation Administration Act 1996* apply in relation to the contribution payable by a relevant council under this Act as if Part 5 of this Act were a taxation law and the contribution were a tax payable by a council under a taxation law.
- (3) The *applied provisions* of the *Taxation Administration Act 1996* are the following provisions of that Act:
 - (a) Division 1 (Interest) of Part 5,
 - (b) sections 50 and 55 (which prohibit the giving of false and misleading information),

- (c) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,
 - (d) sections 114, 115, 116, 118, 119 and 120,
 - (e) any provisions that are relevant to the interpretation of the above provisions.
- (4) The applied provisions apply to an assessment made by the State Revenue Commissioner under this Act in the same way as they apply to an assessment under that Act.
- (5) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a rural fire brigade contribution or to the exercise of any of the State Revenue Commissioner's functions in respect of rural fire brigade contributions (including under the applied provisions of the *Taxation Administration Act 1996*).

[15] Section 114 How contribution is to be funded

Insert at the end of the section:

- (2) Funds of a relevant council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards the payment of rural fire brigade contributions by the relevant council unless approved by the Minister.

[16] Sections 114A and 114B

Insert after section 114:

114A Exemptions

- (1) The Governor may, on the recommendation of the Minister, exempt a relevant council from making a rural fire brigade contribution if the Governor is satisfied the danger from bush fires in the council's area is negligible.
- (2) If a relevant council has been exempted under this section from making rural fire brigade contributions, no payment is to be made in or towards the purpose specified in section 118 for the benefit of the council's area.

114B Certificate evidence

A certificate signed by the Minister that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the rural fire brigade funding target, as adopted by the Minister under this Part,
- (b) the rural fire brigade funding target applicable to a rural fire district, as adopted by the Minister under this Part,
- (c) the amount of the rural fire brigade contribution determined by the Minister for a specified council for the financial year.

[17] Part 5, Division 6A Contributions by insurance companies

Omit the Division.

[18] Section 121 Amendment of Schedule 2

Omit the section.

[19] Schedule 2 Contributions of insurance companies

Omit the Schedule.

[20] Schedule 3, Savings, transitional and other provisions

Insert after Part 7:

Part 8 Provisions consequent on enactment of Fire and Emergency Services Levy Act 2017

29 Definitions

In this Part:

amending Act means the *Fire and Emergency Services Levy Act 2017*.

final contribution—see clause 32.

final return—see clause 31.

final year of the scheme means the financial year commencing on 1 July 2016.

insurance company means any body corporate, partnership, association, underwriter or person that or who:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to any property situated in New South Wales, or
- (b) receives premiums in respect of such policies of insurance on behalf of or for transmission to any body corporate, partnership, association, underwriter or person outside New South Wales.

insurer loading—see clause 32.

Monitor means the Emergency Services Levy Insurance Monitor appointed under the *Emergency Services Levy Insurance Monitor Act 2016*.

relevant insurance means insurance against loss of or damage to property in the State under the classes of policies specified in Schedule 2, as in force immediately before its repeal by the *Fire and Emergency Services Levy Act 2017*.

total amount, in relation to premiums, includes any brokerage or commission paid or due to be paid or allowed to be paid on:

- (a) the premiums, or
- (b) bonuses or return premiums allowed in respect of policies of insurance the subject of the premiums, or
- (c) such part of the premiums received by or due to the company as is paid or due to be paid by way of reinsurance by the company to another insurance company in the State,

but does not include duty payable under the *Duties Act 1997* in respect of policies of insurance the subject of the premiums.

30 Amendments have effect from 1 July 2017

- (1) The amendments to Part 5 of this Act made by the amending Act apply in respect of the financial year commencing on 1 July 2017 and subsequent financial years.
- (2) Subject to this Part, the amendments do not affect any liability for a rural fire brigade contribution for a financial year commencing before 1 July 2017 and Part 5, and Schedule 2, as in force immediately before the amendments made to this Act by the amending Act, continue to apply in respect of any such financial year as if the amendments had not been made.

31 Final returns to be provided by insurance companies

- (1) An insurance company must, by 30 September 2017 or another date specified by the Commissioner by notice published in the Gazette, give to the Commissioner:
 - (a) a return in the form approved by the Commissioner showing the total amount of premiums received by or due to the company for the previous financial year for relevant insurance (a **final return**), and
 - (b) a certificate from an auditor that relates to the return and complies with subclause (2).
- (2) The certificate from the auditor must:
 - (a) be in the form approved by the Commissioner, and
 - (b) be from an auditor who is:
 - (i) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (ii) a person not resident in the State who has qualifications that, in the Commissioner's opinion, are appropriate for the giving of the certificate.
- (3) An insurance company is guilty of an offence if it:
 - (a) fails to give the Commissioner a return and certificate as required by this clause, or
 - (b) gives the Commissioner a return that is false or misleading in a material particular.

Maximum penalty: 20 penalty units.

32 Calculation of final contribution

- (1) The Commissioner must, by the end of 30 November 2017, calculate a final contribution for each liable insurance company.
- (2) A **final contribution** is the total rural fire brigade contribution that would have been payable by the insurance company for the final year of the scheme if the contribution had been calculated on the basis of:
 - (a) the premium total provided by the insurance company in its final return, and
 - (b) the premium totals provided by all insurance companies in their final returns.
- (3) If an insurance company fails to provide a final return to the Commissioner within the time required under clause 31, or any further time (not exceeding 30 days) allowed by the Commissioner:
 - (a) the Commissioner may estimate the premium total for that insurance company using any information available to the Commissioner (including information from previous returns, if any), and
 - (b) that estimate is taken to be the premium total provided by the insurance company in its final return.
- (4) If the Commissioner estimates the premium total for an insurance company under subclause (3), the final contribution payable by that insurance company is that estimate plus an insurer loading of 50% of that estimate.

- (5) In this clause:
liable insurance company means an insurance company liable for a rural fire brigade contribution in the final year of the scheme.
premium total means the total amount of premiums of an insurance company that are subject to a rural fire brigade contribution.

33 Final assessment

- (1) The Commissioner must give to each insurance company that made or is required to make a rural fire brigade contribution for the final year of the scheme a final assessment notice for that year.
- (2) The final assessment notice must state the following:
- (a) the final contribution payable by the insurance company for the final year of the scheme,
 - (b) the amount of any rural fire brigade contribution already paid by the insurance company for that financial year including, if paid in instalments, the total of all instalments already paid (the **total contribution already paid**),
 - (c) if the final contribution payable by the insurance company exceeds the total contribution already paid:
 - (i) the difference between those amounts (a **contribution deficit**), and
 - (ii) the date by which the contribution deficit must be paid to the Commissioner (being a date that is no earlier than 30 days after the assessment notice is given to the insurance company),
 - (d) if the total contribution already paid exceeds the final contribution payable by the insurance company—the difference between those amounts (a **contribution surplus**).
- (3) If the assessment notice specifies a contribution deficit, the insurance company must pay the contribution deficit to the Commissioner.
- (4) The contribution deficit is payable to the Commissioner by the date for payment specified in the assessment notice or any later date permitted by the Commissioner.
- (5) If an insurance company fails to pay a contribution deficit in full by the date on which it is payable to the Commissioner, the applied provisions of the *Taxation Administration Act 1996* apply to the unpaid amount as if the unpaid amount were a tax and this Act were a taxation law.
- (6) The **applied provisions** of the *Taxation Administration Act 1996* are the following provisions of that Act:
- (a) Division 1 (Interest) of Part 5,
 - (b) Division 2 (Penalty tax) of Part 5 (except sections 28–30),
 - (c) any provisions that are relevant to the interpretation of the above provisions.
- (7) For the purpose of the applied provisions of the *Taxation Administration Act 1996*:
- (a) a tax default is taken to occur if the contribution deficit is not paid in full by the date on which it is payable, and
 - (b) a reference to the Chief Commissioner is to be read as a reference to the Commissioner under this Act.

- (8) If a contribution deficit, or any part of a contribution deficit, is not paid in full by an insurance company to the Commissioner by the date on which it is payable, the unpaid amount and any interest and penalty tax payable on the unpaid amount:
 - (a) constitutes a debt due and payable to the Commissioner, and
 - (b) may be recovered in a court of competent jurisdiction by the Commissioner.
- (9) A contribution deficit is to be paid into the Fund.
- (10) If the assessment notice specifies a contribution surplus, the Commissioner is to refund the amount of the contribution surplus to the insurance company no later than 30 June 2018.
- (11) A refund is to be paid from the Fund.

34 Liability of owner where foreign insurer involved

- (1) The Commissioner may notify a relevant owner that the owner is responsible for an appropriate proportion of any contribution deficit that is required to be paid by a foreign insurance company that holds a risk in respect of the owner's property.
- (2) The appropriate proportion is the proportion that the premiums paid by the relevant owner for the final year of the scheme bears to the premium total provided (or taken under this Part to have been provided) by the insurance company in its final return.
- (3) Any insurer loading is not to be included in the calculation of the contribution deficit under this clause.
- (4) If the relevant owner fails to pay the appropriate proportion of the final contribution within 30 days after it is due, the owner is guilty of an offence.
Maximum penalty: 10 penalty units.
- (5) An amount paid by a person under this clause may be deducted from any premium recoverable in the State by or on behalf of the foreign insurance company on the issue or renewal of an insurance policy on the property or may be recovered from the foreign insurance company as a debt by the person making the payment.
- (6) This clause applies whether the premium concerned was received in or outside the State.
- (7) In this clause:
relevant owner means a person who is the owner of property in respect of which a foreign insurance company has received a premium subject to a rural fire brigade contribution.

35 Commissioner to make final 2-year assessment

- (1) The Commissioner must make an assessment, in relation to each insurance company that was required to make rural fire brigade contributions in the final year of the scheme or the previous financial year, of the total amount of rural fire brigade contributions payable by the insurance company for the final 2 years of the scheme (a *final 2-year assessment*).
- (2) The final 2-year assessment is to consist of the total of the following amounts, as assessed by the Commissioner:

- (a) the final contribution payable by the insurance company for the final year of the scheme (excluding any insurer loading payable by the insurance company),
 - (b) the total of rural fire brigade contributions payable by the insurance company for the financial year commencing on 1 July 2015.
- (3) The Commissioner is to give the final 2-year assessment to the Monitor.
- (4) The Commissioner must give to the Monitor a final 2-year assessment in relation to an insurance company within 30 days after making an assessment of the final contribution payable by the insurance company for the final year of the scheme.

36 Certificate evidence

A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the final contribution payable by an insurance company,
- (b) the final 2-year assessment for an insurance company,
- (c) the amount of any contribution deficit,
- (d) the amount of any contribution surplus.

37 Transitional provision for adjusted estimates by Minister

A reference in Part 5 of this Act, as amended by the amending Act, to contributions made to the New South Wales Rural Fire Fighting Fund by the Treasurer includes a reference to rural fire brigade contributions made for the financial year commencing on 1 July 2016 or a previous financial year.

4.7 State Emergency Service Act 1989 No 164

[1] Section 24A Definitions

Omit the definitions of *assessment notice*, *capital account*, *contributors*, *estimated expenditure*, *insurance company*, *recurrent expenditure account*, *relevant insurance* and *SES contribution instalments*.

Insert in alphabetical order:

assessment notice means an assessment notice given to a local council under section 24K.

SES contribution instalment—see section 24IA.

SES funding amount—see section 24G.

SES funding target—see section 24B.

State Revenue Commissioner—means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.

[2] Section 24A, definition of “SES contribution”

Omit “contributor”. Insert instead “local council”.

[3] Section 24A, definition of “SES expenditure”

Omit “recurrent” wherever occurring.

[4] Section 24A, definition of “SES expenditure”

Omit paragraph (b).

[5] **Part 5A, Division 2, heading**

Omit the heading. Insert instead:

Division 2 SES funding target

[6] **Section 24B**

Omit the section. Insert instead:

24B SES funding target

- (1) Before 31 March in each year or a later date agreed to by the Treasurer, the Minister must:
 - (a) prepare and, subject to the Treasurer's agreement, adopt a funding target for the State Emergency Service for the next financial year (the **SES funding target**), and
 - (b) prepare and adopt an estimate of the amount of the SES funding target applicable to the area of each local council for the next financial year.
- (2) The Minister is to calculate the SES funding target for the financial year using the following formula:

$$FT_t = EE_t + (AE_{t-2} - EE_{t-2})$$

where:

FT_t is the SES funding target for the financial year (represented by "t").

EE_t is the estimated SES expenditure for the financial year.

AE_{t-2} is the actual SES expenditure for the financial year that commenced 2 years before the period "t" (represented as "t-2").

EE_{t-2} is the estimated SES expenditure for the financial year that commenced 2 years before the period "t" (represented as "t-2").

- (3) To avoid doubt, if $AE_{t-2} - EE_{t-2}$ is a negative amount, that amount is subtracted from EE_t .
- (4) The estimate of SES expenditure for a financial year is to be reduced, as necessary, by the amount it is estimated will be paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (5) The actual SES expenditure for a financial year is to be reduced, as necessary, by the amount paid to the Fund for the financial year (other than from contributions made by the Treasurer).
- (6) Without limiting subsections (4) and (5), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the SES funding target in respect of:
 - (a) certain money paid into the Fund, or
 - (b) certain amounts it is estimated will be paid to the State Emergency Service for the financial year.
- (7) In determining the amount of the SES funding target for each local council area, the Minister may apportion the total estimated expenditure between local council areas in the way the Minister thinks fit.

[7] **Section 24C Local councils to give information to Commissioner**

Omit "estimated expenditure". Insert instead "SES funding target".

[8] Section 24D

Omit the section. Insert instead:

24D Commissioner to assist

- (1) To assist the Minister in preparing and adopting the SES funding target for a financial year, the Commissioner must prepare and give to the Minister a written report and recommendations about SES expenditure for the year.
- (2) The Minister must consider the Commissioner's report and recommendations in preparing the estimates.

[9] Part 5A, Divisions 3 and 4

Omit the Divisions. Insert instead:

Division 3 Treasurer to contribute to Fund

24E Treasurer to pay contributions

- (1) The Treasurer is to pay an annual contribution to the Fund for each financial year.
- (2) The annual contribution payable is the SES funding amount.
- (3) The Treasurer may direct the payment of additional contributions to the Fund, subject to any terms and conditions approved by the Treasurer.
- (4) The annual contribution, and any additional contributions, are to be paid out of money provided by Parliament.

24F Contribution payable in instalments

The annual contribution is to be paid by the Treasurer in instalments on or before the following dates:

- (a) 1 August,
- (b) 1 October,
- (c) 1 January,
- (d) 1 April.

24G SES funding amount

- (1) As soon as practicable after the commencement of each financial year, the Minister must prepare and, subject to the Treasurer's agreement, adopt an update of SES funding for the financial year (the *SES funding amount*).
- (2) The SES funding amount is the estimated SES expenditure for the financial year (that is, EE_t in the SES funding target for the financial year), adjusted and updated in accordance with this section.
- (3) Estimated SES expenditure is to be adjusted for the purposes of the SES funding amount so that the estimate:
 - (a) is reduced or increased, as appropriate, for any difference between the estimate of SES expenditure for the financial year, as adopted in the SES funding target, and an updated estimate of that amount, and
 - (b) is reduced or increased, as appropriate, for any difference between the SES funding amount for the previous financial year and the actual amount of SES expenditure for that financial year.

- (4) Without limiting subsection (3), the Minister may, with the Treasurer's agreement, decide that adjustments are not to be made to the SES funding amount in respect of:
 - (a) any surplus in the Fund at the end of the previous financial year, or
 - (b) certain money paid into the Fund, or
 - (c) certain amounts it is estimated will be paid to the State Emergency Service for the financial year.
- (5) An adjustment to the estimated SES expenditure that is made under this section has no effect on, and is not to be used in the calculation of, the SES funding target for a financial year.

Division 4 Local councils to pay SES contribution

24H Council to pay SES contribution

A local council is to pay to the State Revenue Commissioner a SES contribution for each financial year.

24I Amount of contribution

- (1) The amount of the SES contribution is the amount determined by the Minister for each local council.
- (2) The Minister is to determine the contribution payable by a local council on the basis of the SES funding target for each local council area.
- (3) The contribution payable by local councils for each local council area is 11.7% of the SES funding target applicable to the area.
- (4) A local council or an officer of a local council must, if asked by the Minister, give the Minister any document or information required by the Minister to determine the local council's SES contribution.

24IA Contribution payable in instalments

A SES contribution payable by a local council for a financial year is payable in 4 instalments (each of which is a *SES contribution instalment*).

24IB Minister to advise State Revenue Commissioner

The Minister is to advise the State Revenue Commissioner, by the date of 15 April that occurs immediately before the commencement of a financial year, of:

- (a) the amount of the SES contribution payable by each local council for the financial year, and
- (b) the amount of the SES contribution instalments payable by each local council.

[10] Part 5A, Division 5, heading

Omit the heading. Insert instead:

Division 5 Payment of contributions by local councils

[11] Section 24J

Omit the section. Insert instead:

24J When instalments are to be paid

A local council must, in accordance with an instalment notice given to the council by the State Revenue Commissioner, pay to the State Revenue Commissioner a SES contribution instalment on or before each of the following days in a financial year:

- (a) 30 September,
- (b) 31 December,
- (c) 31 March,
- (d) 30 June.

[12] Sections 24K–24LA

Omit sections 24K and 24L. Insert instead:

24K Annual assessment notice

- (1) The State Revenue Commissioner must give to each local council that is required to pay a SES contribution for a financial year an assessment notice that sets out the amount of the SES contribution payable by the local council for that year.
- (2) The assessment notice must be given to the local council by 30 April in the year before the financial year for which the SES contribution is payable.

24L Instalment notices

The State Revenue Commissioner must give to each local council that is required to pay a SES contribution instalment a written notice (an *instalment notice*) that specifies:

- (a) the amount of the SES contribution instalment payable under the instalment notice, and
- (b) the date by which the SES contribution instalment is payable.

24LA SES contribution is debt payable to State Revenue Commissioner

- (1) If the whole or part of a SES contribution payable by a local council is not paid to the State Revenue Commissioner as required, the unpaid amount is recoverable by the State Revenue Commissioner as a debt in a court of competent jurisdiction.
- (2) The applied provisions of the *Taxation Administration Act 1996* apply in relation to the SES contribution payable by a local council under this Act as if Part 5A of this Act were a taxation law and the contribution were a tax payable by a council under a taxation law.
- (3) The *applied provisions* of the *Taxation Administration Act 1996* are the following provisions of that Act:
 - (a) Division 1 (Interest) of Part 5,
 - (b) sections 50 and 55 (which prohibit the giving of false and misleading information),
 - (c) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,
 - (d) sections 114, 115, 116, 118, 119 and 120,

- (e) any provisions that are relevant to the interpretation of the above provisions.
- (4) The applied provisions apply to an assessment made by the State Revenue Commissioner under this Act in the same way as they apply to an assessment under that Act.
- (5) To avoid doubt, Part 10 of the *Taxation Administration Act 1996* does not apply to a SES contribution or to the exercise of any of the State Revenue Commissioner's functions in respect of SES contributions (including under the applied provisions of the *Taxation Administration Act 1996*).

[13] Section 24M How contribution is to be funded

Insert at the end of the section:

- (2) Funds of a local council derived from donations and other voluntary contributions made for the purposes of this Act may not be used towards the payment of SES contributions by the local council unless approved by the Minister.

[14] Part 5A, Division 6 Contributions by insurance companies

Omit the Division.

[15] Section 24V New South Wales State Emergency Service Fund

Omit section 24V (2), (3) and (4). Insert instead:

- (3) There is to be paid into the Fund:
 - (a) all contributions payable by the Treasurer under this Part, and
 - (b) any other money appropriated by Parliament for payment into the Fund, and
 - (c) the proceeds of investment of money in the Fund, and
 - (d) any other money required by law to be paid into the Fund.

[16] Section 24V (5)

Omit "recurrent expenditure account". Insert instead "Fund".

[17] Section 24V (6)

Omit "capital account". Insert instead "Fund".

[18] Section 24W Management of unspent funds

Omit the section.

[19] Section 24Y

Omit the section. Insert instead:

24Y Certificate evidence

A certificate signed by the Minister that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the SES funding target, as adopted by the Minister under this Part,
- (b) the SES funding target applicable to a local council area, as adopted by the Minister under this Part,

- (c) the amount of the SES contribution determined by the Minister for a specified local council for the financial year.

[20] Schedule 1 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[21] Schedule 1, Part 6

Insert after Part 5:

Part 6 Provisions consequent on enactment of Fire and Emergency Services Levy Act 2017

13 Definitions

In this Part:

amending Act means the *Fire and Emergency Services Levy Act 2017*.

final contribution—see clause 16.

final return—see clause 15.

final year of the scheme means the financial year commencing on 1 July 2016.

insurance company means any body corporate, partnership, association, underwriter or person that or who:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to any property situated in New South Wales, or
- (b) receives premiums in respect of such policies of insurance on behalf of or for transmission to any body corporate, partnership, association, underwriter or person outside New South Wales.

insurer loading—see clause 16.

Monitor means the Emergency Services Levy Insurance Monitor appointed under the *Emergency Services Levy Insurance Monitor Act 2016*.

relevant insurance means insurance against loss of or damage to property in the State under the classes of policies specified in Schedule 2, as in force immediately before its repeal by the *Fire and Emergency Services Levy Act 2017*.

total amount, in relation to premiums, includes any brokerage or commission paid or due to be paid or allowed to be paid on:

- (a) the premiums, or
- (b) bonuses or return premiums allowed in respect of policies of insurance the subject of the premiums, or
- (c) such part of the premiums received by or due to the company as is paid or due to be paid by way of reinsurance by the company to another insurance company in the State,

but does not include duty payable under the *Duties Act 1997* in respect of policies of insurance the subject of the premiums.

14 Amendments have effect from 1 July 2017

- (1) The amendments to Part 5A of this Act made by the amending Act apply in respect of the financial year commencing on 1 July 2017 and subsequent financial years.

- (2) Subject to this Part, the amendments do not affect any liability for a SES contribution for a financial year commencing before 1 July 2017 and Part 5A, and Schedule 2, as in force immediately before the amendments made to this Act by the amending Act, continue to apply in respect of any such financial year as if the amendments had not been made.

15 Final returns to be provided by insurance companies

- (1) An insurance company must, by 30 September 2017 or another date specified by the Commissioner by notice published in the Gazette, give to the Commissioner:
- (a) a return in the form approved by the Commissioner showing the total amount of premiums received by or due to the company for the previous financial year for relevant insurance (a **final return**), and
 - (b) a certificate from an auditor that relates to the return and complies with subclause (2).
- (2) The certificate from the auditor must:
- (a) be in the form approved by the Commissioner, and
 - (b) be from an auditor who is:
 - (i) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (ii) a person not resident in the State who has qualifications that, in the Commissioner's opinion, are appropriate for the giving of the certificate.
- (3) An insurance company is guilty of an offence if it:
- (a) fails to give the Commissioner a return and certificate as required by this clause, or
 - (b) gives the Commissioner a return that is false or misleading in a material particular.
- Maximum penalty: 20 penalty units.

16 Calculation of final contribution

- (1) The Commissioner must, by the end of 30 November 2017, calculate a final contribution for each liable insurance company.
- (2) A **final contribution** is the total SES contribution that would have been payable by the insurance company for the final year of the scheme if the contribution had been calculated on the basis of:
- (a) the premium total provided by the insurance company in its final return, and
 - (b) the premium totals provided by all insurance companies in their final returns.
- (3) If an insurance company fails to provide a final return to the Commissioner within the time required under clause 15, or any further time (not exceeding 30 days) allowed by the Commissioner:
- (a) the Commissioner may estimate the premium total for that insurance company using any information available to the Commissioner (including information from previous returns, if any), and
 - (b) that estimate is taken to be the premium total provided by the insurance company in its final return.

- (4) If the Commissioner estimates the premium total for an insurance company under subclause (3), the final contribution payable by that insurance company is that estimate plus an insurer loading of 50% of that estimate.
- (5) In this clause:
liable insurance company means an insurance company liable for a SES contribution in the final year of the scheme.
premium total means the total amount of premiums of an insurance company that are subject to an SES contribution.

17 Final assessment

- (1) The Commissioner must give to each insurance company that made or is required to make a SES contribution for the final year of the scheme a final assessment notice for that year.
- (2) The final assessment notice must state the following:
- (a) the final contribution payable by the insurance company for the final year of the scheme,
 - (b) the amount of any SES contribution already paid by the insurance company for that financial year including, if paid in instalments, the total of all instalments already paid (the **total contribution already paid**),
 - (c) if the final contribution payable by the insurance company exceeds the total contribution already paid:
 - (i) the difference between those amounts (a **contribution deficit**), and
 - (ii) the date by which the contribution deficit must be paid to the Commissioner (being a date that is no earlier than 30 days after the assessment notice is given to the insurance company),
 - (d) if the total contribution already paid exceeds the final contribution payable by the insurance company, the difference between those amounts (a **contribution surplus**).
- (3) If the assessment notice specifies a contribution deficit, the insurance company must pay the contribution deficit to the Commissioner.
- (4) The contribution deficit is payable to the Commissioner by the date for payment specified in the assessment notice or any later date permitted by the Commissioner.
- (5) If an insurance company fails to pay a contribution deficit in full by the date on which it is payable to the Commissioner, the applied provisions of the *Taxation Administration Act 1996* apply to the unpaid amount as if the unpaid amount were a tax and this Act were a taxation law.
- (6) The **applied provisions** of the *Taxation Administration Act 1996* are the following provisions of that Act:
- (a) Division 1 (Interest) of Part 5,
 - (b) Division 2 (Penalty tax) of Part 5 (except sections 28–30),
 - (c) any provisions that are relevant to the interpretation of the above provisions.

- (7) For the purpose of the applied provisions of the *Taxation Administration Act 1996*:
 - (a) a tax default is taken to occur if the contribution deficit is not paid in full by the date on which it is payable, and
 - (b) a reference to the Chief Commissioner is to be read as a reference to the Commissioner under this Act.
- (8) If a contribution deficit, or any part of a contribution deficit, is not paid in full by an insurance company to the Commissioner by the date on which it is payable, the unpaid amount and any interest and penalty tax payable on the unpaid amount:
 - (a) constitutes a debt due and payable to the Commissioner, and
 - (b) may be recovered in a court of competent jurisdiction by the Commissioner.
- (9) A contribution deficit is to be paid into the Fund.
- (10) If the assessment notice specifies a contribution surplus, the Commissioner is to refund the amount of the contribution surplus to the insurance company no later than 30 June 2018.
- (11) A refund is to be paid from the Fund.

18 Liability of owner where foreign insurer involved

- (1) The Commissioner may notify a relevant owner that the owner is responsible for an appropriate proportion of any contribution deficit that is required to be paid by a foreign insurance company that holds a risk in respect of the owner's property.
- (2) The appropriate proportion is the proportion that the premiums paid by the relevant owner for the final year of the scheme bears to the premium total provided (or taken under this Part to have been provided) by the insurance company in its final return.
- (3) Any insurer loading is not to be included in the calculation of the contribution deficit under this clause.
- (4) If the relevant owner fails to pay the appropriate proportion of the final contribution within 30 days after it is due, the owner is guilty of an offence.
Maximum penalty: 10 penalty units.
- (5) An amount paid by a person under this clause may be deducted from any premium recoverable in the State by or on behalf of the foreign insurance company on the issue or renewal of an insurance policy on the property or may be recovered from the foreign insurance company as a debt by the person making the payment.
- (6) This clause applies whether the premium concerned was received in or outside the State.
- (7) In this clause:
relevant owner means a person who is the owner of property in respect of which a foreign insurance company has received a premium subject to a SES contribution.

19 Commissioner to make final 2-year assessment

- (1) The Commissioner must make an assessment, in relation to each insurance company that was required to make SES contributions in the final year of the

scheme or the previous financial year, of the total amount of SES contributions payable by the insurance company for the final 2 years of the scheme (a *final 2-year assessment*).

- (2) The final 2-year assessment is to consist of the total of the following amounts, as assessed by the Commissioner:
 - (a) the final contribution payable by the insurance company for the final year of the scheme (excluding any insurer loading payable by the insurance company),
 - (b) the total of SES contributions payable by the insurance company for the financial year commencing on 1 July 2015.
- (3) The Commissioner is to give the final 2-year assessment to the Monitor.
- (4) The Commissioner must give to the Monitor a final 2-year assessment in relation to an insurance company within 30 days after making an assessment of the final contribution payable by the insurance company for the final year of the scheme.

20 Certificate evidence

A certificate signed by the Commissioner that states any of the following matters is admissible in proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the certificate:

- (a) the final contribution payable by an insurance company,
- (b) the final 2-year assessment of an insurance company,
- (c) the amount of any contribution deficit,
- (d) the amount of any contribution surplus.

21 Transitional provision for adjusted estimates by Minister

A reference in Part 5A of this Act, as amended by the amending Act, to contributions made to the New South Wales State Emergency Service Fund by the Treasurer includes a reference to SES contributions made for the financial year commencing on 1 July 2016 or a previous financial year.

[22] Schedule 2 Contributions of insurance companies

Omit the Schedule.

4.8 Taxation Administration Act 1996 No 97

Section 4 Meaning of “taxation laws”

Insert at the end of the section:

Note. The *Fire and Emergency Services Levy Act 2017* applies parts of this Act to the levy payable under that Act if the responsibility for levy recovery is transferred to the Chief Commissioner or if the Chief Commissioner requires a waived amount of the levy to be repaid.

The *Fire and Emergency Services Levy Act 2017* also applies parts of this Act to the collection instalments payable by a council under that Act as if those instalments were a tax.

In addition, some of the provisions of this Act apply to the contributions payable by councils under the following:

- (a) Part 5 of the *Fire Brigades Act 1989*,
- (b) Part 5 of the *Rural Fires Act 1997*,
- (c) Part 5A of the *State Emergency Service Act 1989*.

4.9 Valuation of Land Act 1916 No 2

[1] Section 4A

Insert after section 4:

4A Application of Act to fire and emergency services levy

- (1) In this Act:
 - (a) a reference to a rate or tax includes a reference to the fire and emergency services levy under the *Fire and Emergency Services Levy Act 2017*, and
 - (b) a reference to the levying of a rate or tax by a council includes a reference to the charging of that fire and emergency services levy by a council.
- (2) However, the application of this Act to the fire and emergency services levy is subject to provisions of the *Fire and Emergency Services Levy Act 2017*.
Note. The *Fire and Emergency Services Levy Act 2017* enables certain unvalued land (for example land on Lord Howe Island) to be valued for the purposes of the levy as provided for by the regulations under that Act. The valuation method is different from the method by which a general valuation for land is ascertained under Part 1B.

[2] Section 48 Furnishing valuation lists to authorities

Omit “4 years” from section 48 (2) (b). Insert instead “3 years”.

[3] Section 48 (3)

Omit the subsection.

[4] Section 67 Valuation for the purposes of the Fire Brigades Act 1989

Omit “section 53” from section 67 (3) (h). Insert instead “section 51”.

[Second reading speech made in—
Legislative Assembly on 7 March 2017
Legislative Council on 29 March 2017]