



New South Wales

Emergency Services Levy Bill 2017

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Appropriation Bill 2017*.

Overview of Bill

The objects of this Bill are:

- (a) to re-establish an emergency services insurance contribution scheme, and
- (b) to postpone the introduction of the levy imposed by the *Fire and Emergency Services Levy Act 2017*.

The *Fire and Emergency Services Levy Act 2017* introduced a fire and emergency services levy that is payable in respect of all land in the State (other than government land). The levy will be payable by landowners and some lessees and charged and collected by councils as part of council rates. It is currently proposed to start in the 2017/2018 financial year.

The levy replaced the scheme for funding of emergency services through insurance contributions under:

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

This Bill re-establishes the insurance contribution scheme formerly provided for by those Acts (the **former emergency services funding scheme**).

The re-established scheme requires a single emergency services contribution to be paid by insurers in each financial year to the Chief Commissioner of State Revenue (the **Chief Commissioner**), rather than requiring separate contributions for fire brigades, rural fires and state

emergency services. The contribution is payable by instalment in advance of a determination being made by the Chief Commissioner of the final contribution amount payable by the insurer.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 July 2017.

Clause 3 defines certain words and expressions used in the proposed Act.

An *insurer* means a person, partnership or association who (whether as an underwriter or otherwise):

- (a) issues or undertakes liability under policies of insurance against loss of or damage to property situated in the State, or
- (b) receives premiums in respect of policies of insurance against loss of or damage to property situated in the State on behalf of or for transmission to a person, partnership, association or underwriter outside the State.

Clause 4 makes it clear that a reference to premiums includes brokerage or commission in certain circumstances.

Clause 5 requires the proposed Act to be read in conjunction with the *Taxation Administration Act 1996*.

Part 2 Emergency services insurance contribution

Clause 6 requires an emergency services insurance contribution (a *contribution*) to be paid in respect of premiums for relevant insurance.

Clause 7 requires the contribution to be paid by an insurer who receives or is entitled to receive premiums for relevant insurance.

Clause 8 makes the contribution payable in respect of each financial year in which the insurer receives or is entitled to receive premiums for relevant insurance.

Clause 9 defines *relevant insurance* to mean insurance against loss or damage to property in the State under a class of policy specified in Schedule 1 to the proposed Act.

Clause 10 provides that the contribution payable by an insurer is the final contribution amount. However, an insurer is required to pay an initial contribution amount, by instalments, in advance of a determination of the final contribution amount.

Clause 11 explains that the contribution is charged by reference to premiums that are subject to contribution. The premiums that are subject to contribution are premiums for a class of policy specified in Schedule 1 to the proposed Act. Only the relevant proportion of premiums (the proportion specified in relation to those premiums in proposed Schedule 1) is subject to contribution.

Part 3 Calculation and payment of contribution

Clause 12 requires the Chief Commissioner to issue each insurer with an initial assessment notice that specifies the initial contribution amount payable by the insurer.

Clause 13 provides for how the initial contribution amount for each insurer is calculated. The initial contribution amount is a proportion of the contribution target for the financial year (which is set by the Treasurer). Proportions are calculated by reference to the amount of premiums of each insurer subject to contribution in the financial year 2 years before the financial year for which the initial contribution amount is payable. However, in some circumstances the Chief Commissioner

can assess an initial contribution on the basis of what is reasonably likely to be the final contribution amount of the insurer.

Clause 14 requires an insurer who is assessed for an initial contribution amount to pay that amount to the Chief Commissioner.

Clause 15 requires the initial contribution amount to be paid in 4 equal instalments.

Clause 16 requires the Chief Commissioner to issue an instalment notice for each instalment.

Clause 17 provides for how the final contribution amount for each insurer is calculated. The final contribution amount is a proportion of the contribution target for the financial year. Proportions are calculated by reference to the amount of premiums of each insurer that are subject to contribution in the financial year for which the final contribution amount is payable.

Clause 18 requires the Chief Commissioner to issue to each insurer who is required to pay a contribution for a financial year a final assessment notice that specifies the final contribution amount payable by the insurer.

Clause 19 requires the Chief Commissioner to make appropriate adjustments for insurers who have paid an initial contribution amount and have overpaid or underpaid the final contribution amount (by either refunding the overpayment or requiring the payment of an underpayment).

Clause 20 permits the Chief Commissioner to issue a final assessment notice without having first issued an initial assessment notice.

Clause 21 enables the Chief Commissioner to require an insured person to pay a contribution that would otherwise be payable by a foreign insurer.

Part 4 Contribution target

Clause 22 requires the Treasurer to determine a contribution target before the commencement of each financial year and sets out how that contribution target is calculated.

Clause 23 specifies the total funding target (which is the principal component of the contribution target). The total funding target is the total of the SES funding target, the fire brigades funding target and the rural fire brigade funding target.

Clause 24 provides for the recovered over-collection amount (amounts recovered from insurers by the Monitor), which reduces the contribution target.

Part 5 Assessments

Clause 25 permits the Chief Commissioner to issue a late initial assessment notice.

Clause 26 requires due dates for instalments to be adjusted if an initial assessment notice is issued late.

Clause 27 permits the Chief Commissioner to make estimates if an insurer fails to lodge a return for a financial year.

Clause 28 requires an insurer who is liable for an initial contribution amount in a financial year to be treated as liable for an initial contribution amount in the following financial year.

Clause 29 provides that an assessment or reassessment of the liability of an insurer for a contribution does not affect the liability of any other insurer for a contribution, if it is made after the cut-off date for initial assessments or final assessments (as the case requires) and the other insurer has already been assessed. This avoids the need to reassess the liability of all insurers because an individual insurer's liability is reassessed.

Clause 30 enables the Chief Commissioner to certify, for the purposes of any legal proceedings, the Chief Commissioner's assessment of the total amount of premiums of all insurers that are subject to contribution, so as to facilitate proof of that total amount.

Part 6 Returns and other requirements

Clause 31 specifies the return date for each financial year.

Clause 32 requires insurers to lodge returns with the Chief Commissioner relating to a financial year on or before the return date for the financial year.

Clause 33 requires an insured person who is insured with a foreign insurer to lodge a return.

Clause 34 provides that a failure to lodge a return within the time required is treated as a tax default. Accordingly, interest and penalty tax may be charged.

Clause 35 requires an insurer who becomes liable for contributions to notify the Chief Commissioner of that fact.

Clause 36 requires an insurer who ceases to be liable for contributions to notify the Chief Commissioner of that fact.

Part 7 Protection of policy holders

Clause 37 requires an insurer to disclose to policy holders the amount of any insurance charge that the insurer estimates to be attributable to a contribution under the proposed Act.

Clause 38 defines what is meant by attributed charges (these are charges on policies that an insurer attributes to a contribution under the proposed Act).

Clause 39 requires the Chief Commissioner to provide to the Treasurer, at the end of each financial year, the final contribution amount payable by each insurer and the total amount of attributed charges of each insurer (as disclosed in the insurer's return).

Clause 40 provides that an insurer has a price discrepancy for a financial year if the total amount of attributed charges for premiums of the insurer for the financial year exceeds the final contribution amount payable by the insurer for the financial year.

Clause 41 enables the Treasurer to require an insurer to explain a price discrepancy and the actions that will be taken to remedy a price discrepancy. If the Treasurer is not satisfied with the insurer's response, the Treasurer may make public the fact that the insurer has a price discrepancy.

Clause 42 protects the State and others from liability for matters published in good faith under the proposed Part.

Part 8 Transition to fire and emergency services levy

Clause 43 provides for definitions used in the proposed Part. The *start date for the levy* means the start date for the fire and emergency services levy appointed by a regulation made under the *Fire and Emergency Services Levy Act 2017*.

Clause 44 provides that no contribution is payable under the proposed Act for a financial year that commences on or after the start date for the levy.

Clause 45 requires the Chief Commissioner to notify the Emergency Services Levy Insurance Monitor (the *Monitor*) of final contribution amounts for the purpose of enabling the Monitor to assess over-collection amounts under proposed amendments to the *Emergency Services Levy Insurance Monitor Act 2016*.

Clause 46 enables the regulations to make further provision for the winding up of the emergency services insurance contribution scheme and the transition to the levy under the *Fire and Emergency Services Levy Act 2017*.

Part 9 Miscellaneous

Clause 47 requires insurers to provide premium information to the Treasurer to assist in the evaluation and implementation of emergency services levy reform.

Clause 48 enables the Treasurer to delegate some functions under the proposed Act.

Clause 49 provides for service of notices by the Treasurer.

Clause 50 applies the *Recovery of Imposts Act 1963* to the Treasurer's calculation of a contribution target under the proposed Act.

Clause 51 provides that the proposed Act binds the Crown.

Clause 52 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 53 enables the regulations to amend Schedule 1 (which sets out the premiums that are subject to contribution and the proportions that are subject to contribution). An amendment does not affect the application of the proposed Act to a financial year that commenced before the regulation commenced.

Schedule 1 Insurance and premiums subject to contribution

Schedule 1 sets out the classes of insurance policy that are subject to contribution under the proposed Act and the proportions of premiums that are subject to contribution. These are the same as provided for by the former emergency services funding scheme.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. The provisions make it clear that a contribution is payable for the 2017/2018 financial year and make various adjustments for the first 2 financial years in which the proposed Act operates.

Schedule 3 Amendment of Acts

Emergency Services Levy Insurance Monitor Act 2016 No 23

Schedule 3.1 amends the *Emergency Services Levy Insurance Monitor Act 2016*.

The amendments confer additional functions on the Monitor, in connection with the re-established insurance contribution scheme. The Monitor will be able to assess over-charging by insurers in the first 2 financial years of the re-established insurance contribution scheme.

The date on which that Act is repealed is extended to 1 July 2020 or a later date prescribed by the regulations. The amendments will enable the persons currently appointed as Monitor and Deputy Monitor to be re-appointed for that extended term.

Fire and Emergency Services Levy Act 2017 No 9

Schedule 3.2 amends the *Fire and Emergency Services Levy Act 2017*.

The amendments postpone the introduction of the levy imposed by that Act to a start date appointed by the regulations. Any such regulation must be published on the NSW legislation website at least 1 year before the start date.

The amendments suspend most of the provisions of the Act, pending the appointment of a start date. Provisions of the Act have no effect while they are suspended. This means that councils will not be required to charge the levy and will no longer be required to classify land in connection with the levy.

The amendments make other changes to the Act that are consequential on the postponement of the levy.

Taxation Administration Act 1996 No 97

Schedule 3.3 amends the *Taxation Administration Act 1996*.

The amendments make the proposed *Emergency Services Levy Act 2017* a taxation law for the purposes of that Act. The *Taxation Administration Act 1996* provides for the assessment and enforcement of tax obligations under taxation laws.

The amendments also make it clear that the Chief Commissioner can disclose taxation information to the Commissioner of the State Emergency Service, the Commissioner of Fire and Rescue NSW, the Commissioner of the NSW Rural Fire Service and the Executive Director of the Office of Emergency Management and may delegate functions under the *Emergency Services Levy Insurance Monitor Act 2016*.