

**Submission
No 67**

ASSETS, PREMISES AND FUNDING OF THE NSW RURAL FIRE SERVICE

Organisation: Northern Rivers Joint Organisation

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The Hon. Jason Yat-Sen Li, MP
The Chair, Public Accounts Committee
PublicAccountsCommittee.PAC@parliament.nsw.gov.au

Dear Chair Li,

Submission to the inquiry into the assets, premises and funding of the NSW Rural Fire Service

Thank you for the opportunity to make a submission to the Public Accounts Committee's inquiry into the funding, maintenance, accounting and operational management of NSW Rural Fire Service (RFS) assets and premises.

This submission is made by the Northern Rivers Joint Organisation (NRJO) on behalf of its 7 member councils in relation to the NSW Northern Rivers region.

From the outset, the NRJO and its members would like to stress that we wholeheartedly support the RFS and its volunteers who do a heroic job keeping our communities safe. We also appreciate more than most just how critical a well funded, managed and operated RFS is – especially given the series of natural disaster emergencies that have devastated the Northern Rivers in recent years.

Nevertheless, we welcome the committee's inquiry as the arrangements between councils and the RFS (a NSW Government agency) require review and reform to ensure council expenditure on other essential community services and infrastructure is not unfairly impacted.

While we note the committee's wide-ranging terms of reference, the focus of this submission particularly relates to:

- **Terms of Reference 1c – the mechanisms for accounting for the ownership of Rural Fire Service assets and premises**

About the Northern Rivers Joint Organisation

Formed in June 2018, the NRJO is one of a network of 13 joint organisations established for regional areas by the NSW Government.

Joint organisations are local government entities with legal powers that enable its member councils to work together at a regional level – as well as with government agencies and other organisations – to achieve better planning, economic, infrastructure and service delivery outcomes for their communities.



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Like all joint organisations, the NRJO has 3 principal functions enshrined in the *Local Government Act 1993* (NSW):

- establish strategic regional priorities and develop strategies and plans for delivering those priorities
- provide regional leadership and advocate for strategic regional priorities
- identify and take up opportunities for inter-governmental co-operation on regional matters.

Seven member councils make up the NRJO – Ballina Shire, Byron Shire, Clarence Valley, Kyogle, Lismore City, Richmond Valley and Tweed Shire councils.

As the peak body for local government in the NSW Northern Rivers, the NRJO is the recognised voice for a region spanning more than 20,000 square kilometres from Tweed Heads in the north to well beyond Grafton in the south and to Woodenbong, Tabulam and Newton Boyd in the west.

Context – growing burden of cost shifting on local government

Like all NSW councils, ‘cost shifting’ remains one of the most significant challenges facing the NRJO’s member councils.

Essentially, cost shifting is where the responsibility for – or merely the costs of – providing a service, asset or other function is imposed on local councils by the NSW Government, either without the corresponding funding needed or the means to raise the added revenue required.

As a result, councils are forced to cover the cost shift by diverting funding collected from ratepayers via general rates away from essential services, infrastructure, programs and projects the community expects from their council or a council has committed to deliver for their community. Such expectations and commitments are the outcome of close consultation between councils and their communities as part of the robust and rigorous integrated planning and reporting requirements set out in the *Local Government Act 1993* and *Local Government (General) Regulation 2021*.

Along with the effects of high inflation, the growing burden of cost shifting is especially acute for the NRJO’s member councils as they continue to deal with recovering from one of the nation’s largest and most costly natural disasters – the 2022 Northern Rivers flood disaster.

Published in 2023,¹ the results of independent research commissioned by Local Government NSW estimated that cost shifting to councils totalled \$1.36 billion in 2021–22, which represents an increase of \$540 million over the previous 5-year period. The research found this alarming increase in cost shifting has been accelerated by various NSW Government policies.

One of the most significant examples in 2021–22 was the Emergency Services Levy and associated emergency service contributions, which totalled \$165.4 million and represented the largest direct cost shift to local councils. In 2021–22, councils contributed \$142 million through the Emergency Services Levy, \$12.7 million through RFS obligations, and \$10.7 million in depreciation expenses on RFS assets.

¹ [Cost Shifting 2023: How State Costs Eat Council Rates](#) by independent consultants Morrison Low provides analysis and insights from the 2021–22 Cost Shifting Survey conducted in May 2023.



It is the financial burden for regional and rural councils of being forced by the NSW Government to account for the depreciation expense of RFS assets that is of particular relevance to the NRJO's submission. This NSW Government policy disproportionately impacts rural and regional councils as they have a proportionally larger RFS presence.

Accounting for the ownership of Rural Fire Service assets

The NSW Government's continued push to have councils recognise RFS 'red fleet' assets and account for their depreciation in council financial reports has been a contentious and unnecessary issue for too long. To be clear, the RFS 'red fleet' assets referred to here include fire trucks, vehicles, plant and other mobile assets and equipment.

The NRJO's position is that 'red fleet' assets are ordered, used, maintained and disposed of by the RFS and, as such, they are property owned and controlled by the RFS. This means the depreciation expenses should be recorded accurately in RFS accounts, not those of NRJO member councils.

Unfortunately, the NSW Government has so far refused to accept the clear crux of this position – that is, ultimately local councils do not have any control whatsoever over any RFS 'red fleet' assets. Most importantly, this refusal (and blatant cost shift) by the NSW Government carries financial implications for councils.

Current situation

Until recently, the NSW Government's Local Government Code of Accounting Practice and Financial Reporting gave councils the choice whether to include red fleet assets and associated depreciation expenses in their financial statements. In doing so, the code required councils to assess whether they controlled any rural firefighting assets or equipment according to the Australian Accounting Standards Board's requirements.

Following recommendations by their Audit, Risk and Improvement committees in recent years, several NRJO member councils resolved not to recognise these assets as it was clear they did not control them. In doing so, they joined a number of other NSW councils who also chose to leave the depreciation of the NSW Government's RFS assets out of their financial reports.

As a result, however, numerous NSW councils (including several NRJO members) received a 'qualified' audit opinion of their 2021–22 financial reports from the Audit Office of NSW. The implications of a qualified audit opinion for councils are discussed further below.

Disappointingly, at the very end of 2023 the code was amended to remove this choice available to councils. The code now stipulates that:

- councils should recognise material rural firefighting equipment in their financial statements
- the NSW Government has confirmed its view that these assets are not controlled by the NSW RFS or the State.

Unfortunately, it appears this amendment to the code was made by the NSW Office of Local Government without consulting local councils.



The NSW Government's view essentially turns on the operation of section 119(2) of the *Rural Fires Act 1997* (NSW), which states all firefighting equipment purchased using the NSW Rural Fire Fighting Fund (maintained by NSW Treasury) is to be 'vested' in the council of the area for or on behalf of which the equipment has been purchased.

This concept of asset ownership vesting with councils is a legacy of the local government origins of the RFS. These origins date back to the early 1900s when councils had direct responsibilities for organising and delivering bush fire services. The provision of such services has changed dramatically since then.

It is the RFS who now has the substantive responsibilities under the *Rural Fires Act 1997* for the prevention, mitigation and suppression of bush and other fires in NSW. The RFS has evolved into a single state government agency with a coordinated command structure up to the RFS Commissioner and responsibilities under national emergency management arrangements.

Key issues

The accounting practices and financial reporting of NSW councils are subject to a comprehensive regime of statutory regulation and other professional standards. Above all else, this regime is supposed to provide a key point of accountability and transparency between councils and their communities about how funding collected from ratepayers via general rates is being spent on council services and assets.

Sections 412 and 413 of the *Local Government Act 1993* (NSW) require councils to keep accounting records that correctly record and explain their financial transactions and position and enable them to prepare financial reports that present fairly their financial position and results of their operations.

Along with the requirements of the Act, councils must prepare their financial reports in accordance with the *Local Government (General) Regulation 2021* (NSW), which stipulates at regulations 206 and 214 that councils accounting practices and financial reporting must accord with the NSW Government's Local Government Code of Accounting Practice and Financial Reporting.

Subject to the Regulation, the Act also requires councils to prepare their financial reports in accordance with the requirements of the publications issued by the Australian Accounting Standards Board. As referred to in the previous section of this submission, until recently the code gave councils the choice whether to recognise red fleet assets by determining if they controlled such assets according to the board's requirements.

Australian Accounting Standards Board requirements

Key accounting frameworks, standards and statements compiled by the board are littered with pronouncements and guidance that several NRJO members have long argued expressly contradict the view of the NSW Government and highlight the questionable accounting practice of compelling councils to recognise a state government entity's assets and associated depreciation expenses in their financial reports.

- **Conceptual Framework for Financial Reporting** (Chapter 4)

An entity controls an asset if it has the present ability to direct the use of it and obtain the economic benefits that may flow from it. Control includes the present ability to prevent other parties from directing the asset's use and from obtaining economic benefits that may flow from it. It follows that, if one party controls an economic resource, no other party controls that resource.



- **Framework for the Preparation and Presentation of Financial Statements** (paragraphs 49–59)

Assets are a key element directly related to measurement of financial position. An asset is a resource controlled by the entity as a result of past events and from which future economic benefits (including service potential in accordance with an entity’s objectives) are expected to flow to the entity.

In assessing whether an item meets the definition of an asset, attention needs to be given to its underlying substance and economic reality and not merely its legal form. In determining the existence of an asset, the right of ownership is not essential – rather it is essential to determine if the entity controls the benefits that are expected to flow from the asset.

- **Accounting Standard 116 – Property, Plant and Equipment** (paragraph 7)

The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if: it is probable that future economic benefits associated with the item will flow to the entity; and the cost of the item can be measured reliably.

Underlying substance and economic reality of red fleet assets and their control

NRJO member councils have identified a range of key underlying, substantial factors clearly indicating that in reality it is the RFS who control red fleet assets according to accepted Australian accounting standards:

- Red fleets assets and other firefighting equipment are purchased, acquired, replaced, sold or disposed of directly by the RFS.
- The RFS maintains and insures all its red fleet assets and other firefighting equipment.
- Councils have no access to, nor are they permitted to use, any RFS red fleet assets or firefighting equipment as part of their day-to-day operations.
- The RFS solely determines where, when and how its red fleet assets and firefighting equipment are deployed and used. Often RFS assets and equipment are used across multiple local government areas.
- Section 119(3) of the *Rural Fires Act 1997* (NSW) prohibits councils from selling or disposing of any red fleet assets or firefighting equipment without the written consent of the RFS Commissioner.
- Councils do not receive any proceeds from the sale or disposal of red fleet assets or other firefighting equipment. Rather section 119(4) of the *Rural Fires Act 1997* (NSW) requires any such funds or proceeds received to be credited to the NSW Rural Fire Fighting Fund maintained by NSW Treasury.

Despite the legal ‘vesting’ of red fleet assets and other firefighting equipment in local councils, these factors undoubtedly demonstrate they are materially controlled by the RFS – who have the present ability



to direct how they are used, obtain the benefits from them in carrying out core firefighting operations, and can prevent other entities (including councils) from using or obtaining benefits from them.

It should also be noted that the NSW Government's view that these assets are not controlled by the RFS or State contradicts how the assets and equipment of the State Emergency Service and Fire and Rescue NSW are treated, recognised and accounted for, despite the budgets of all 3 NSW Government agencies being funded via the Emergency Services Levy. The NRJO's firm view is that there should be consistency in ownership between the services.

Financial and other implications for councils

For the NRJO and its member councils, there are important financial and other implications that hinge on the interpretation of the legal and accounting rules outlined above and identifying where control of red fleet assets and equipment really lies. A summary of the main implications flowing from the NSW Government's current view follows.

1. The NRJO is concerned its member councils are being compelled to misstate and misrepresent their financial transactions and position to their communities in violation of the *Local Government Act 1993* (NSW).
It is a blatant example of cost shifting by the NSW Government that places more financial uncertainty and pressure on councils – especially at a time when they can least afford it in the face of unprecedented natural disasters and high inflation.
2. The increase in depreciation expenses brought about by recognising red fleet assets will reduce a council's overall surplus or increase its deficit, which affects a council's measures of financial sustainability.
3. In trying to account for these assets, councils must dedicate staff and other resources to do so each financial year. The costs incurred by councils to inspect, record and book these assets in their accounts can hardly be considered good use of ratepayers' money.
4. Should a council refuse to recognise red fleet assets, qualified audits can create serious financial repercussions by limiting a council's ability to obtain the loans and government grants they depend on to provide and maintain community infrastructure and services.

Conclusion – reform needed

In order to support the financial sustainability of local councils, the NSW Government should cease with compelling them to carry the responsibility of accounting for depreciation costs of RFS equipment and fleet in their financial statements.

Ideally, the NRJO would like to see the *Rural Fires Act 1997* (NSW) amended so that red fleet assets and firefighting equipment are clearly vested in (and thus controlled by) the RFS rather than local councils. This is by no means a novel approach and would bring the RFS in line with other emergency services (also NSW Government agencies) by ensuring it takes responsibility for all RFS asset and equipment costs.

To this end a non-Government / private members Bill – the Rural Fires Amendment (Red Fleet) Bill 2023



(NSW) – was introduced into the NSW Parliament’s Legislative Assembly in September 2023. The Bill’s object was to amend section 119(2) of the *Rural Fires Act 1997* to essentially vest ownership and control of all RFS assets and equipment in the RFS Commissioner, thereby ensuring such assets and equipment no longer vest in any NSW councils. Unfortunately, the Bill lapsed in December 2023.

This legislative change would also provide the foundation for the improved management and strategic planning of the firefighting fleet recommended by the Audit Office of NSW in its report on *Planning and managing bushfire equipment* released in February 2023.

Should you need to discuss any of the above further, please do not hesitate to contact myself or the NRJO’s Executive Officer Phillip Rudd.

Yours sincerely



Phillip Rudd
Executive Officer
Northern Rivers Joint Organisation

