

INQUIRY INTO FIRE AND EMERGENCY SERVICES LEVY

Organisation: National Insurance Brokers Association of Australia

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The Hon Robert Borsak MLC
Chair
Portfolio Committee No. 4 – Legal Affairs
Legislative Council
Macquarie Street
Sydney NSW 2000

Dear Mr Borsak,

Submission to the Inquiry into the fire and emergency services levy

The National Insurance Brokers Association of Australia (NIBA) appreciates the opportunity to make this submission to the inquiry into the fire and emergency services levy.

NIBA is the industry association for insurance brokers across Australia. The association has around 320 member firms, employing over 5,000 insurance brokers in all States and Territories, in the cities, towns and regions of Australia.

About Insurance Brokers

Insurance brokers work with their clients to assist them –

- understand and manage their risks, including the risk of loss of or damage to property due to fire, storm, other weather events;
- obtain appropriate insurance cover for their risks and their property; and
- pursue claims under their policies when an insured event occurs, in which case the insurance broker becomes the advocate for the client during the assessment and resolution of the claim.

Insurance brokers act primarily for and on behalf of their client, and they owe legal duties to their clients for the nature and quality of the work they perform on their behalf. When acting for and on behalf of the client, insurance brokers do not SELL insurance policies – they PURCHASE insurance policies on behalf of their clients from the markets available to them.

Insurance brokers work predominantly in the area of commercial insurance, assisting the small, medium, large and multinational companies operating in Australia manage and finance their risks. Insurance brokers place in excess

of \$18 billion in insurance premiums each year, around half of the total general insurance premium pool in Australia.

Many insurance brokers also provide advice and assistance to retail customers in relation to their domestic insurance needs.

All insurance brokers are members of the Financial Ombudsman Service (FOS).

Taxes on Insurance in New South Wales

Property owners who insure property located in New South Wales pay three taxes and charges to the Federal and State Governments:

- GST
- Stamp Duty on the Premium
- Fire and Emergency Services Levy (ESL).

These taxes operate cumulatively, and have been described as a “tax on a tax”.

Prior to the announcement of the Government’s decision to reform ESL, NSW policyholders were paying taxes and charges which increased the cost of their property insurance for domestic residences by **35% to 40%**. At the same time, taxes and charges increased the cost of property insurance for commercial premises in NSW by around **50%**.

Royal Commissions (HIH Royal Commission, Victorian Bushfires Royal Commission, others), Inquiries (Henry Tax Review, others) and numerous Parliamentary and other investigations have consistently found these taxes to be unfair, inequitable, and totally contrary to good public policy for two key reasons:

1. Property insurance is widely regarded as a positive and worthwhile product: it allows property owners to recover from their loss by using insurance proceeds to repair and rebuild their property and buildings after a fire or other type of loss. Individuals, businesses and communities suffer when losses occur and there is little or no insurance to fund recovery from those losses.

Tax rates of 35% and up to 50% indicate the product is something akin to alcohol and tobacco – something to be discouraged by artificially inflating the cost of the product via taxation revenue. This simply does not make sense.

2. The Fire and Emergency Services Levy is only paid by those to take out property insurance. However, the fire and emergency services respond to fires and other events at all properties and addresses across New South Wales. It is inherently inequitable and unfair that responsible members of the community – those who protect their financial position by taking out insurance against potential losses to their property – are hit with a levy for services provided to all property owners across the State. There is simply no justification for this inequitable position.

Royal Commissions, Inquiries, Parliamentary Reviews and academic analysis of indirect insurance structure and approach have all acknowledged these and other deficiencies, and have all argued for revenue of this nature to be raised via taxes that are fundamentally more viable, fair and equitable. As a result of these findings and recommendations:

- All mainland States and Territories, other than New South Wales, have abolished their fire and emergency services levies, with Victoria being the most recent in 2013, following strong recommendations from the Victorian Bush Fire Royal Commission;
- The Australian Capital Territory has taken one step further and has abolished stamp duty on insurance policies in that jurisdiction.

In all cases of ESL and indirect tax reform, unfair and inequitable taxes have been replaced by taxes on property owners, usually collected as part of the local government rates. This makes the revenue equitable – it is spread across a wide population of potential tax payers, and much more stable – it is much more difficult to avoid a tax on property.

The NSW Fire and Emergency Services Levy was designed in a manner which would follow the lead of all other mainland States and Territories in removing the levy on insurance premiums and replacing it with a property tax.

NSW Fire and Emergency Services Levy

There are further issues with the NSW emergency services levy on insurance premiums.

- The levy is optional. A property owner does not have to insure their property. If they chose not to insure the property, they do not pay a contribution to the fire and emergency services that might be required to attend the property if an emergency event occurs.

Further, a property owner who is able to finance the risk of loss to the property by means other than insurance also does not pay the

emergency services levy. Alternative methods of financing risk include discretionary mutual pools, “captive” insurance arrangements, and sophisticated alternative risk financing mechanisms. None of these financial arrangements involve the payment of an insurance premium, and therefore none of these arrangements attract the emergency services levy on insurance premiums.

It is illogical, seriously unfair and quite absurd, to have a position where responsible members of the community whose only option to cover their risk of property loss is to take out insurance are bound to pay the levy, while others who do not insure their property or are able to make use of sophisticated risk financing mechanisms do not pay the levy but still receive the benefit of the State’s emergency services.

- It is almost impossible for insurance companies to collect the correct amount of ESL on insurance premiums.

Insurance companies operate in a dynamic, competitive and changing market. Both domestic and commercial insurance markets indicate high levels of competition, with changes to market share and to amounts or premium collected by insurers during the course of a year.

The ESL on insurance premiums is not a rate or percentage of premium. Rather, the Government determines the amount of levy to be provided by insurers each financial year. Insurers then have to do their best to collect a levy on insurance premiums which will allow them to fund their levy obligation to the State.

Insurers do not know the final amount of their obligation until the November following the close of the financial year. It is only at this point that a proper assessment of market shares and premium collections for a financial year for each insurer can be determined.

It is extremely unreasonable and unfair to subject insurance companies to a statutory levy without providing a fair and transparent mechanism which allows the collection of the correct amount of the levy during each financial year.

The net result of this process – which has been reinstated since 1 July 2017 – is that it is virtually inevitable that insurers collect the wrong amount of ESL levy, and hence it is virtually inevitable that consumers and businesses pay the wrong amount of levy as part of their insurance premiums.

- Following the Government’s initial announcement to remove the levy on insurance premiums as from 1 July 2017, virtually all insurers had removed the levy on insurance premiums by April 2017. As a result,

policyholders – domestic and commercial – who took out or renewed policies during April, May and June 2017 paid little or no ESL levy on their insurance premiums. The insurance industry had fulfilled its commitment to remove the levy by 30 June 2017.

Following the Government's decision to defer the introduction of the ESL property levy, and continue the ESL on insurance premiums, those who paid little or no levy in April, May and June 2017 will face significant **"bill shock"** in April, May and June 2018. This is because domestic insurance premiums will be between 18% and 24% higher than they were during these months in 2017, and commercial premiums will be between 35% and 40% higher than they were during these months in 2017.

This "bill shock" will occur at a time when insurance premiums are increasing across the board because of losses sustained in property insurance markets in recent years.

- With the ESL on commercial insurance premiums now increasing the cost of commercial property insurance by 35% to 40%, there is a strong incentive for those businesses who are able to do so to find ways to finance their property loss risks by means other than traditional insurance. As noted above, this can be done by the use of discretionary mutual arrangements, "captive" insurance financing (the risk is transferred to an "insurance" fund within the corporate group, but is not passed outside the corporate group to an insurance company) or other alternative risk financing mechanisms. As noted above, if there is no traditional insurance premium paid to an insurance company, there is no emergency services levy.

Each time a corporate group ceases to purchase traditional insurance and funds property risks by other means, the amount of levy payable by traditional policyholders (domestic and commercial) increases. This is because the insurance industry has to fund a dollar amount of contribution each financial year. For the 2017/2018 financial year, **the contribution from insurance premiums will be \$794 million.**

There is no logical or rational public policy justification for any of these circumstances, but these circumstances exist in New South Wales at the present time.

Responses to the Committees' Terms of Reference

This submission now addresses the Committee's Terms of Reference.

The policy process and financial modelling underlying the provisions of the Fire and Emergency Services Levy Act 2017

NIBA has not had access to the financial modelling associated with the development of the emergency services property levy in NSW.

We note that the emergency services property levy was introduced in Victoria in July 2013, and the levy mechanism is published and is fully transparent.

See: <http://www.firelevy.vic.gov.au/how-much-am-i-contributing.html>

The emergency services levy was reformed in Western Australia in 2003. A similar approach was followed at that time, and the levy mechanism is published and is fully transparent.

See: <https://www.dfes.wa.gov.au/emergencyserviceslevy/Pages/default.aspx>

NIBA submits that there are at least two funding models – Victoria and Western Australia - which are clear and successful precedents for the introduction of an emergency services property levy in New South Wales.

The Government's media release of 30 May 2017, announcing the deferral of the ESL reforms, referenced unintended consequences, and unexpected burdens on commercial and industrial property owners. Despite numerous requests, NIBA is not aware of the nature of the unintended consequences, or the extent to which the new property levy would have operated in an unreasonable or unfair manner.

NIBA is seriously concerned that those who have previously received the benefit of the emergency services across NSW without paying a contribution towards the cost of those services, still continue to have the benefit of this very favourable position. Other domestic and commercial policyholders have no such benefit.

The policy and financial implications for all stakeholders of repealing this Act

This submission has set out the situation in New South Wales before the Government's announcement to abolish the ESL on insurance premiums, the insurance industry's response to the announcement to implement reform, and the consequences of the Government's decision to defer the implementation of the emergency services property levy.

At this time, NIBA has not seen any justification for the maintenance of a seriously unfair and inequitable statutory levy. There have been no responses to the serious issues and concerns set out in this submission by any party.

Alternative models for ensuring that fire and emergency services are fully funded in a fair and equitable manner

All mainland States and Territories, other than New South Wales, have reformed the unfair and inequitable levy on insurance premiums. Precedents exist in Victoria and Western Australia, and in other States and Territories, for the fair and equitable funding of the fire and emergency services provided by the State.

NIBA strongly submits that a similar approach should be introduced in New South Wales at the earliest opportunity.

We would be pleased to discuss this matter further with the members of the Portfolio Committee No. 4.

Yours sincerely,

Dallas Booth
Chief Executive Officer