

# Emergency Services Levy Act 2017 No 32

[2017-32]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **See also**

[Emergency Services Levy Amendment Bill 2024](#)

[Emergency Services Levy Amendment \(Land Classification\) Bill 2024](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Emergency Services Levy Act 2017 No 32



New South Wales

An Act to re-establish an emergency services insurance contribution scheme; to postpone the introduction of the fire and emergency services levy; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

This Act commences or is taken to have commenced on 1 July 2017.

### 3 Definitions

(1) In this Act:

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

**contribution** means the emergency services contribution payable under this Act.

**contribution target** means the contribution target determined by the Treasurer under Part 4.

**final assessment notice**—see section 18.

**final contribution amount** means a final contribution amount determined by the Chief Commissioner in accordance with section 17.

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

**foreign insurer** means an insurer who is not authorised under a law of the Commonwealth or of a State or Territory to carry on an insurance business.

**former emergency services funding scheme** means the scheme for funding certain fire and emergency services from contributions required to be paid by insurers under the following provisions, as in force before the commencement of the *Fire and Emergency Services Levy Act 2017*:

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

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

**initial assessment notice**—see section 12.

**initial contribution amount** means an initial contribution amount determined by the Chief Commissioner in accordance with section 13.

**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.

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

**premiums**—see section 4.

**price discrepancy**—see section 40.

**relevant insurance**—see section 9.

**return date**—see section 31.

**subject to contribution**—see section 11.

**total amount of attributed charges**—see section 38.

**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 Premiums**

- (1) In this Act, a reference to a premium, or to the amount or total amount of 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 a policy of insurance the subject of the premiums, or
  - (c) such part of the premiums received by or due to the insurer as is paid or due to be paid by way of reinsurance by the insurer to another insurer in the State.
- (2) However, premiums do not include GST or duty payable under the [Duties Act 1997](#) in respect of policies of insurance the subject of the premiums.

#### **5 Taxation Administration Act 1996**

This Act is to be read together with the [Taxation Administration Act 1996](#) which provides for the administration and enforcement of this Act and other taxation laws.

## **Part 2 Emergency services insurance contribution**

#### **6 Emergency services insurance contribution**

An emergency services insurance contribution is payable in respect of premiums for relevant insurance.

**Note—**

This Act re-establishes an emergency services insurance contribution scheme pending the introduction of the levy imposed by the [Fire and Emergency Services Levy Act 2017](#).

#### **7 Insurers are liable to pay contribution**

An insurer who receives or is entitled to receive premiums for relevant insurance is required to pay the contribution.

#### **8 Contribution payable for each financial year**

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

#### **9 Meaning of “relevant insurance”**

For the purposes of this Act, **relevant insurance** means insurance against loss or damage to property in the State under a class of policy specified in Schedule 1.

## 10 Amount of contribution

- (1) The contribution payable by an insurer in respect of a financial year is the final contribution amount for that insurer for that financial year.
- (2) However, an insurer is required to pay an initial contribution amount by instalments, in advance of a determination of the final contribution amount, as provided for by Part 3.

## 11 Premiums that are subject to contribution

- (1) Both an initial contribution amount and a final contribution amount are calculated by reference to the total amount of premiums received by or due to an insurer that are subject to contribution.
- (2) A premium is subject to contribution if the premium is for a class of policy specified in Schedule 1.
- (3) For the purposes of this Act, the total amount of premiums that are subject to contribution in a financial year is the total of the relevant proportion of the total amount of premiums received by or due to an insurer in the financial year for each class of policy specified in Schedule 1.
- (4) The relevant proportion for a class of policy specified in Schedule 1 is the percentage specified in relation to that class of policy in Schedule 1.
- (5) An assessment under this Act of the total amount of premiums of an insurer that are subject to contribution in a particular financial year is to be made by reference to Schedule 1 as in force at the commencement of that financial year.

## Part 3 Calculation and payment of contribution

### 12 Initial assessment notice

- (1) The Chief Commissioner must give to each insurer who is required to pay a contribution for a financial year an initial assessment notice for the financial year.
- (2) An **initial assessment notice** is an assessment notice that specifies the initial contribution amount payable by the insurer for the financial year.
- (3) An initial assessment notice for a financial year must be served on an insurer on or before the date of 30 April in the financial year before the financial year for which the initial contribution amount is payable, subject to Part 5.

### 13 Assessment of initial contribution amount

- (1) The **initial contribution amount** payable by an insurer for a financial year is the amount determined by the Chief Commissioner in accordance with the following



formula:

$$I_t = C_t \times \frac{P_{(t-2)}}{T_{(t-2)}}$$

where:

$I_t$  is the initial contribution amount payable by an insurer for the financial year (represented by “t”).

$C_t$  is the contribution target for the financial year (represented by “t”).

$P_{(t-2)}$  is the total amount of premiums of the insurer subject to contribution in the financial year that commenced 2 years before the period “t” (represented by “t-2”).

$T_{(t-2)}$  is the total amount of premiums of all insurers subject to contribution in the financial year that commenced 2 years before the period “t” (represented by “t-2”).

- (2) The Chief Commissioner may, instead of determining the initial contribution amount as provided for by subsection (1), estimate the final contribution amount that is reasonably likely to be payable by the insurer for the financial year. In that case, that estimate is the initial contribution amount payable by the insurer for the financial year.
- (3) Subsection (2) applies only if the insurer was not required to pay a contribution in the financial year that commenced 2 years before the financial year for which the determination is made.
- (4) An assessment that is made under subsection (2) does not affect the determination of the initial contribution amount for other insurers who are assessed in accordance with subsection (1).

**Note—**

An assessment under subsection (2) may result in the total of all initial contribution amounts exceeding the contribution target for the financial year, but when final assessments are made any over-collection amounts are refunded to insurers.

- (5) The initial contribution amount is to be rounded down to the nearest whole dollar amount.

#### **14 Insurer liable for initial contribution amount**

An insurer who is assessed for an initial contribution amount must pay the initial contribution amount to the Chief Commissioner in accordance with this Act.

#### **15 Initial contribution amount to be paid in instalments**

- (1) The initial contribution amount is payable in 4 equal instalments.
- (2) An instalment is payable by the date of 1 September, 1 December, 1 March and 1 June in the financial year for which the initial contribution amount is payable.

- (3) If an instalment is not paid in full within 21 days after the due date, the remainder of the initial contribution amount payable by the insurer for the financial year becomes due and payable.

## 16 Instalment notices

- (1) The Chief Commissioner must give to each insurer who is required to pay an initial contribution amount a written notice, in relation to each instalment that is payable (an **instalment notice**), that specifies:
  - (a) the amount of the instalment payable under the instalment notice, and
  - (b) the date by which the instalment is payable.
- (2) The instalment notice must state the following:
  - (a) the initial contribution amount payable by the insurer for the financial year,
  - (b) the amount of any instalments already paid by the insurer for the financial year,
  - (c) the amount that remains to be paid for the financial year after payment of the instalment.
- (3) An instalment notice must be served on the insurer no less than 21 days before the date by which the instalment is payable.
- (4) If the instalment notice is served on an insurer less than 21 days before the date by which the instalment is payable, the due date for payment of the instalment is extended to the date that is 21 days after service of the instalment notice.
- (5) An instalment notice is not an assessment of tax liability.

## 17 Assessment of final contribution amount

- (1) The **final contribution amount** payable by an insurer for a financial year is the amount determined by the Chief Commissioner in accordance with the following formula:

$$F_t = C_t \times \frac{P_t}{I_t}$$

where:

**$F_t$**  is the final contribution amount payable by an insurer for the financial year (represented by "t").

**$C_t$**  is the contribution target for the financial year (represented by "t").

**$P_t$**  is the total amount of premiums of the insurer subject to contribution in the financial year (represented by "t").

$T_t$  is the total amount of premiums of all insurers subject to contribution in the financial year (represented by “t”).

- (2) The final contribution amount is to be rounded down to the nearest whole dollar amount.

### **18 Final assessment notice**

- (1) The Chief Commissioner must give to each insurer who is required to pay a contribution for a financial year a final assessment notice for that financial year.
- (2) A **final assessment notice** is an assessment notice that specifies the final contribution amount payable by the insurer for the financial year.
- (3) The Chief Commissioner is to issue a final assessment notice to each insurer required to pay a contribution for a financial year as soon as practicable after the return date for the financial year.

### **19 Contribution adjustment**

- (1) A final assessment notice that is issued to an insurer who has been assessed for an initial contribution amount for the financial year must also specify the following:
  - (a) if the final contribution amount exceeds the initial contribution amount for the insurer, the difference between those amounts (which is a contribution deficit),
  - (b) if the initial contribution amount exceeds the final contribution amount payable by the insurer, the difference between those amounts (which is a contribution surplus).
- (2) If the final assessment notice specifies a contribution deficit, the insurer is required to pay the contribution deficit to the Chief Commissioner within 30 days after the final assessment notice is served on the insurer or by a later date specified by the Chief Commissioner.
- (3) If the final assessment notice specifies a contribution surplus, the Chief Commissioner is required to refund the amount of the contribution surplus to the insurer within 30 days after issuing the final assessment notice.
- (4) This section is subject to Part 4 of the [Taxation Administration Act 1996](#).

### **20 Chief Commissioner may issue final assessment only**

- (1) The Chief Commissioner may, at any time after the return date for a financial year, issue a final assessment notice for the financial year to an insurer without having first issued an initial assessment notice in any circumstances that the Chief Commissioner considers appropriate.
- (2) In that case, the final contribution amount specified in the notice is payable to the

Chief Commissioner within 30 days after the final assessment notice is served on the insurer or by a later date specified by the Chief Commissioner in the notice.

## **21 Insured person may be required to pay contribution payable by foreign insurer**

- (1) The Chief Commissioner may require a person (an **insured person**) to pay the contribution that a foreign insurer is required to pay under this Act for premiums received by the foreign insurer in respect of any policy of insurance obtained, effected or renewed by the insured person, as if the insured person were liable for the contribution.
- (2) The requirement is to be made by notice in writing.
- (3) The contribution payable by the insured person is:
  - (a) the amount estimated by the Chief Commissioner as the proportion of the final contribution amount that would be payable by the foreign insurer for premiums received by the foreign insurer in respect of the policy of insurance, or
  - (b) if the regulations prescribe another way of calculating the contribution payable, the amount calculated as provided for by the regulations.
- (4) This Act applies in relation to the contribution payable by the insured person (with any necessary adjustments) as if it were a final contribution amount payable by an insurer.
- (5) This section applies whether the premium concerned was received in or outside the State.
- (6) A person who pays a contribution under this section is entitled to recover the amount so paid from the foreign insurer as a debt, together with the costs of recovery, or to retain or deduct that amount out of any money in the person's hands belonging or payable to the other person.
- (7) The regulations may make further provision for the assessment and payment of contributions under this section and for the application of this Act in respect of those contributions.

## **Part 4 Contribution target**

### **22 Treasurer to determine contribution target**

- (1) The Treasurer is to determine the contribution target for a financial year in accordance with the following formula:

$$C_t = (F_t \times 0.737) + (C_{(t-2)} - AC_{(t-2)}) - O_t$$

where:

**C<sub>t</sub>** is the contribution target for the financial year (represented by "t").

$F_t$  is the total funding target for the financial year (represented by “t”).

$C_{(t-2)}$  is the contribution target for the financial year that commenced 2 years before the period “t” (represented by “t-2”).

$AC_{(t-2)}$  is the actual contribution revenue for the financial year that commenced 2 years before the period “t” (represented by “t-2”), as certified by the Treasurer.

$O_t$  is the recovered over-collection amount for the financial year (represented by “t”).

(2) To avoid doubt, if

$$C_{(t-2)} - AC_{(t-2)}$$

is a negative amount, that amount is to be subtracted from the total.

(3) Expressions used in this section have the meaning given to them by this Part.

(4) The Treasurer is to publish a notice in the Gazette of the amount determined by the Treasurer as the contribution target for a financial year on or before 15 April in the financial year before the financial year for which the determination is made or a later date appointed by the regulations.

**Note—**

Schedule 2 includes transitional provisions that are relevant to the calculation of the contribution target in the first 2 financial years of operation of this Act.

### 23 Total funding target

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

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

### 24 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 within 7 days after the end of that period or by a later date approved by the Treasurer.

## **Part 5 Assessments**

### **25 Late assessment of initial contribution amount**

An initial assessment notice for a financial year may be served on an insurer after the date of 30 April occurring immediately before the financial year for which the initial contribution amount specified in the notice is payable:

- (a) if the Chief Commissioner does not become aware that an insurer is liable or likely to be liable for a contribution in the financial year until after the date of 31 March occurring immediately before the financial year, or
- (b) in any other circumstances that the Chief Commissioner considers necessary.

### **26 Due dates for instalments to be adjusted for late assessment**

- (1) If the initial assessment notice for a financial year is not served by 30 April in the previous financial year, an instalment of the initial contribution amount is not payable until 60 days after service of the notice, or the date on which the instalment would be payable under Part 3, whichever is the later.
- (2) If, as a result of this section, more than one instalment is payable on the same date, the Chief Commissioner may give one instalment notice in relation to all those instalments.

### **27 Use of estimates—failure to lodge return**

If an insurer fails to lodge with the Chief Commissioner a return relating to a financial year by the return date:

- (a) the Chief Commissioner may estimate the total amount of premiums subject to contribution for that insurer for the financial year for which the return is required using any information available to the Chief Commissioner (including information from previous returns, if any), and
- (b) that estimate is taken to be the total amount of premiums subject to contribution of that insurer for that financial year.

### **28 Insurers previously liable to be treated as liable**

- (1) An insurer who is required to pay an initial contribution amount in a financial year is required to pay an initial contribution amount in the next financial year.
- (2) This section applies even if a change in circumstances occurs, subject to subsection (6).

- (3) A **change in circumstances** occurs if an insurer ceases to receive and to be entitled to receive premiums for relevant insurance.
- (4) A change in circumstances that occurs during a financial year does not affect the assessment of, or an insurer's liability to pay, an initial contribution amount for that financial year.
- (5) A change in circumstances that occurs after 31 March in a financial year does not affect the assessment of, or an insurer's liability to pay, an initial contribution amount for the next financial year.
- (6) A change in circumstances that occurs before 31 March in a financial year does not affect the assessment of, or an insurer's liability to pay, an initial contribution amount for the next financial year unless:
  - (a) the insurer gives notice to the Chief Commissioner of the change in circumstances before 31 March in the financial year before the financial year for which the initial contribution amount would otherwise be payable, and
  - (b) the Chief Commissioner is satisfied that a change in circumstances has occurred.
- (7) In this section:

**insurer** includes any person who has been assessed as liable for an initial contribution amount for the financial year or the previous financial year, whether or not the person is still an insurer.

## 29 Late assessments or reassessments do not affect other insurers

- (1) If the Chief Commissioner assesses or reassesses the liability of an insurer for an initial contribution amount in a financial year after the initial assessment date for that financial year, that assessment or reassessment does not affect the liability of any other insurer for an initial contribution amount for which a notice of assessment has already been issued.
- (2) The **initial assessment date** for a financial year is the date of 31 March occurring immediately before the commencement of the financial year.
- (3) If the Chief Commissioner assesses or reassesses the liability of an insurer for a final contribution amount in a financial year after the final assessment date for that financial year, that assessment does not affect the liability of any other insurer for a final contribution amount for which a notice of assessment has already been issued.
- (4) The **final assessment date** for a financial year means the date that is 30 days after the return date for the financial year.

### 30 Certificate evidence

- (1) A certificate signed by the Chief Commissioner that states the total amount of premiums of all insurers subject to contribution in a specified financial year is admissible in proceedings under this Act and, in the absence of evidence to the contrary, proof of that fact.
- (2) This section does not limit any provision of the [Taxation Administration Act 1996](#).

## Part 6 Returns and other requirements

### 31 Return date

In this Act, the **return date** for a financial year means:

- (a) the date of 30 September that occurs immediately after the end of the financial year, or
- (b) another date decided by the Chief Commissioner and published in a notice in the Gazette.

### 32 Returns by insurers

- (1) An insurer must, on or before the return date for each financial year, lodge with the Chief Commissioner a return showing:
  - (a) the total amount of premiums received by or due to the insurer for that financial year, for each class of policy that is relevant insurance, and
  - (b) the total amount of attributed charges for those premiums.
- (2) The return must be lodged with a certificate from a qualified auditor, relating to the return, that is in a form approved by the Chief Commissioner.
- (3) A **qualified auditor** means an auditor who is:
  - (a) a registered company auditor within the meaning of the [Corporations Act 2001](#) of the Commonwealth, or
  - (b) a person not resident in the State who has qualifications that, in the Chief Commissioner's opinion, are appropriate for the giving of the certificate.
- (4) The return must disclose the accounting method used by the insurer to record premiums received by or due to the insurer.
- (5) Only one accounting method may be used in the return.
- (6) The insurer must use the same accounting method as the insurer used in the return provided for the previous financial year, unless a change in accounting method is approved by the Chief Commissioner.



(7) In this section:

**accounting method** means the cash accounting method or the accrual accounting method.

**insurer** includes any person who has been assessed as liable for a contribution for the previous financial year, whether or not the person is still an insurer.

**Note—**

It is an offence under section 57 of the [Taxation Administration Act 1996](#) to fail to lodge a statement as required by this section.

It is also an offence under the [Taxation Administration Act 1996](#) to provide false or misleading information to the Chief Commissioner.

### 33 Returns by insured persons

If a foreign insurer holds a risk in respect of property situated in the State, the insured person in respect of that risk must, before the return date for each financial year, lodge with the Chief Commissioner a return that shows the amount of the premiums paid by the insured person in respect of the property to the insurer during:

- (a) the financial year, or
- (b) another period decided by the Chief Commissioner.

**Note—**

It is an offence under section 57 of the [Taxation Administration Act 1996](#) to fail to lodge a return as required by this section.

### 34 Failure to lodge returns

- (1) A person who fails to lodge a return when required by this Act or by the Chief Commissioner, or who fails to include in any return any premiums that are subject to contribution, is taken to have committed a tax default for the purposes of Part 5 of the [Taxation Administration Act 1996](#).
- (2) In relation to the tax default:
  - (a) interest is payable in accordance with Part 5 of the [Taxation Administration Act 1996](#) but accrues on the final contribution amount payable by the person for the period commencing on the last day allowed for lodging the return, or providing the correct particulars of premiums, and ending on the following day (whichever first occurs):
    - (i) the day on which the return is lodged or the correct particulars are provided,
    - (ii) the day on which the assessment calculated on the basis of the return that is required, or the correct particulars that are required, is made,

(iii) the day on which the whole final contribution amount assessable to the person is paid, and

(b) penalty tax is payable in accordance with Part 5 of the *Taxation Administration Act 1996* on the amount of the final contribution amount that is unpaid.

### **35 Notice that insurer is liable for contributions**

- (1) An insurer who receives, or becomes entitled to receive, premiums for relevant insurance in a financial year must, within 30 days of receiving or becoming entitled to receive the premiums, lodge with the Chief Commissioner a written statement advising the Chief Commissioner of that fact.
- (2) Subsection (1) does not apply to an insurer who was liable for a contribution in the previous financial year.

**Note—**

It is an offence under section 57 of the *Taxation Administration Act 1996* to fail to lodge a statement as required by this section.

### **36 Notice that insurer is no longer liable for contributions**

- (1) An insurer who ceases to receive, and to be entitled to receive, premiums for relevant insurance must, within 30 days of ceasing to receive and being entitled to receive the premiums, lodge with the Chief Commissioner a written statement advising the Chief Commissioner of that fact.
- (2) In this section:

***insurer*** includes any person who has been assessed as liable for a contribution for the financial year or the previous financial year, whether or not the person is still an insurer.

**Note—**

It is an offence under section 57 of the *Taxation Administration Act 1996* to fail to lodge a statement as required by this section.

## **Part 7 Protection of policy holders**

### **37 Information to policy holders**

- (1) An insurer is not to issue to a person any invoice or other statement as to the premium payable in respect of the issue or renewal of a policy of insurance to which this section applies unless the statement also indicates how much of the premium is estimated to be attributable to the contribution payable under this Act.

Maximum penalty: 100 penalty units.

- (2) This section applies to a policy of insurance:
  - (a) that is a policy of a class described in Part A of the table in Schedule 1, and
  - (b) the premium for which is subject to contribution under this Act.
- (3) This section does not require an invoice or other statement to indicate how much of the premium payable is estimated to be attributable to the contribution payable under this Act if no part of the premium payable is estimated to be attributable to the contribution payable under this Act.

### 38 Attributed charges

- (1) An **attributed charge** is any amount specified by an insurer, in an invoice or other statement given to a policy holder as to the premium payable in respect of the issue or renewal of a policy of insurance, as being the amount of the premium that is attributable to the contribution payable under this Act.
- (2) For the purposes of this Act, the **total amount of attributed charges** for premiums of an insurer that are received by or due to the insurer in a financial year is the total of all attributed charges for those premiums.
- (3) This section applies to any policy of insurance of a class described in Schedule 1.

### 39 Information to be provided to Treasurer

- (1) The Chief Commissioner is to provide to the Treasurer, as soon as practicable after the return date for a financial year, the following information in relation to each insurer required to pay a contribution in the financial year:
  - (a) the final contribution amount payable by the insurer for the financial year,
  - (b) the total amount of attributed charges of the insurer for the financial year, as disclosed in the return for the financial year lodged by the insurer under this Act.
- (2) If the Chief Commissioner's assessment of the final contribution amount payable by an insurer for a financial year is subject to objection or review under the [Taxation Administration Act 1996](#), the Chief Commissioner is to indicate that fact.
- (3) The Chief Commissioner is to advise the Treasurer if an insurer's final contribution amount is reassessed.

### 40 Price discrepancy

For the purposes of this Act, 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.

#### **41 Treasurer may require price discrepancies to be explained**

- (1) If an insurer has a price discrepancy for a financial year, the Treasurer may, by notice in writing served on an insurer, require the insurer to explain the price discrepancy.
- (2) The notice may require the insurer to indicate any measures that will be taken by the insurer to remedy the price discrepancy.
- (3) The insurer must respond to the notice within 21 days after the notice is served on the insurer or by a later date specified by the Treasurer in the notice.
- (4) If the insurer fails to respond to the notice, or the Treasurer is not satisfied with the insurer's response to the notice, the Treasurer may make public the fact that the insurer has a price discrepancy for the financial year. The Treasurer may identify the insurer and the financial year to which the price discrepancy relates.
- (5) This section does not authorise the Treasurer, or a person employed in the Treasury, to disclose to any person other than a person employed in the Treasury:
  - (a) the final contribution amount payable by the insurer for the financial year, or
  - (b) the total amount of attributed charges of the insurer for the financial year, or
  - (c) the amount of any price discrepancy.

#### **42 Protection from liability**

- (1) No liability is incurred by the State, the Treasurer or the Chief Commissioner, a person acting under the direction of the Treasurer or the Chief Commissioner or any person or body engaged in the administration of this Act or the [Taxation Administration Act 1996](#) in respect of anything done, or omitted to be done, in good faith in the exercise of or to enable the exercise of a function conferred by this Part.
- (2) In this section:

**liability** includes liability for defamation.

**the State** includes the Crown in right of the State and the Government of the State.

### **Part 8 Transition to fire and emergency services levy**

#### **43 Definitions**

In this Part:

**start date for the levy** means the start date for the levy under the [Fire and Emergency Services Levy Act 2017](#).

**transition period** means the financial years commencing on 1 July 2017 and 1 July 2018.

#### **44 No contribution for period after start date for levy**

A contribution under this Act is not payable for any financial year that commences on or after the start date for the levy.

#### **45 Chief Commissioner to advise Monitor of final contribution amounts**

- (1) The Chief Commissioner must provide the Monitor with the following, in relation to each insurer liable for a contribution payable for a financial year in the transition period:
  - (a) a copy of the Chief Commissioner's assessment of the final contribution amount for the insurer for the financial year commencing on 1 July 2017,
  - (b) a copy of the Chief Commissioner's assessment of the final contribution amount for the insurer for the financial year commencing on 1 July 2018.
- (2) The Chief Commissioner must provide the Monitor with the information required under subsection (1) within 30 days after issuing a notice of assessment for the final contribution amount payable by an insurer for the financial year commencing on 1 July 2018.
- (3) The Chief Commissioner is to provide the Monitor with such other information, in connection with an assessment, as the Monitor reasonably requires to exercise the Monitor's functions under Part 3A of the *Emergency Services Levy Insurance Monitor Act 2016*.

#### **46 Regulations may provide for transition to levy scheme**

The regulations may make further provision for the winding up of the contribution scheme imposed by this Act and the transition to the fire and emergency services levy under the *Fire and Emergency Services Levy Act 2017*.

### **Part 9 Miscellaneous**

#### **47 Insurers to provide information**

- (1) The Treasurer may, by notice in writing served on an insurer, require the insurer to provide specified information about any relevant insurance in relation to which the insurer receives, or is entitled to receive, premiums.
- (2) Information may be obtained and used under this section only for the purposes of the evaluation and implementation of emergency services levy reform.
- (3) An insurer who fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) Division 3 of Part 9 of the *Taxation Administration Act 1996* does not apply to information obtained under this section.
- (5) This section does not authorise the Treasurer or a person employed in the Treasury to disclose personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) to any person who is not employed in the Treasury.
- (6) This section does not limit the functions of the Chief Commissioner under the *Taxation Administration Act 1996*.
- (7) In this section:  
**emergency services levy reform** means:
  - (a) the abolition, by the *Fire and Emergency Services Levy Act 2017*, of the former emergency services funding scheme, and
  - (b) the establishment of a fire and emergency services levy by that Act, and
  - (c) the transition to the fire and emergency services levy by the re-establishment of an emergency services insurance contribution under this Act.

#### **48 Delegation of Treasurer's functions**

- (1) The Treasurer may delegate to the Secretary of the Treasury or any person employed in the Treasury any of the Treasurer's functions 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 Treasury, if authorised in writing to do so by the Treasurer.

#### **49 Service of notices**

Section 116 of the *Taxation Administration Act 1996* applies to a notice served by the Treasurer under this Act in the same way as it applies to a notice served by the Chief Commissioner.

#### **50 Application of *Recovery of Imposts Act 1963***

For the purposes of the *Recovery of Imposts Act 1963*, the validity or invalidity of taxation legislation includes the validity or invalidity of a decision of the Treasurer under Part 4.

#### **51 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.

#### **52 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 20 penalty units.

### 53 Amendments to Schedule 1

- (1) The regulations may amend Schedule 1.
- (2) A regulation that amends Schedule 1 does not affect the application of this Act to a financial year that commenced before the regulation commenced.

## Schedule 1 Insurance and premiums subject to contribution

Column 1	Column 2
Classes of policies of insurance	Relevant proportion
<b>Part A</b>	
1 Any insurance of property including consequential loss but not including any insurance of a class specified elsewhere in this Schedule	80%
2 Houseowners and householders, however designated (buildings or contents or both)	50%
<b>Part B</b>	
3 Personal combined on personal jewellery and clothing, personal effects and works of art	10%
4 Motor vehicle and motor cycle	2.5%
5 Marine and baggage—any insurance confined to maritime perils or confined to risks involving transportation on land or in the air, including storage incidental to transportation by sea, land or air, but not including static risks* (which are to be declared under Item 1) [*static risks includes all movements of goods and/or stock and/or material associated with processing or storage operations at any situation.]	1%
6 (a) Combined fire and hail on growing crops	1%
(b) Livestock	1%
7 Aviation hull	Nil
8 Any insurance solely covering:	
(a) Loss by theft	Nil

(b) Plate glass	Nil
(c) Machinery—confined to mechanical breakdown and/or consequential loss arising from mechanical breakdown	Nil
(d) Explosion or collapse of boiler and pressure vessels—confined to damage other than by fire	Nil
(e) Inherent or latent defects—confined to damage and/or consequential loss arising out of defective design, defective workmanship or defective materials but excluding any damage or consequential loss from fire	Nil

## **Schedule 2 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**

#### **2 First year of contribution**

The contribution payable under this Act is payable in respect of the 2017/2018 financial year and subsequent financial years, subject to Part 8 of this Act.



### **3 Deadline for initial assessment notices**

- (1) An initial assessment notice for an initial contribution amount payable for the 2017/2018 financial year is to be served on an insurer no later than 1 month after the date notice of the Treasurer's determination of the contribution target for the financial year is published in the Gazette or a later date prescribed by the regulations (despite section 12).
- (2) To avoid doubt, section 26 applies to an initial assessment notice for the 2017/2018 financial year.
- (3) This clause does not affect the application of section 25 to the 2017/2018 financial year.

### **4 Contributions and premiums subject to contribution**

- (1) A reference in this Act to a contribution, in relation to a financial year before the 2017/2018 financial year, is a reference to a contribution by an insurer under the former emergency services funding scheme.
- (2) A reference in this Act to premiums subject to contribution, in relation to a financial year before the 2017/2018 financial year, is a reference to premiums subject to contribution under the former emergency services funding scheme.
- (3) This clause applies despite section 11.

### **5 Deadline for contribution target**

The Treasurer is to determine the contribution target for the 2017/2018 financial year within 30 days after the commencement of this Act or by a later date prescribed by the regulations (and the reference to 15 April in section 22 is to be disregarded).

### **6 Calculation of contribution target in first 2 financial years**

- (1) This clause applies for the purpose of calculating the contribution target for the 2017/2018 financial year and the 2018/2019 financial year.
- (2) The contribution target for the financial year that commenced 2 years before the 2017/2018 financial year (that is,  $C_{(t-2)}$  in section 22) is taken to be 73.7% of the total of the following, as certified by the Treasurer:
  - (a) the estimate of fire brigades expenditure for the 2015/2016 financial year,
  - (b) the estimate of rural fires expenditure for the 2015/2016 financial year,
  - (c) the estimate of SES expenditure for the 2015/2016 financial year.
- (3) The actual contribution revenue for the financial year that commenced 2 years before the 2017/2018 financial year (that is,  $AC_{(t-2)}$  in section 22) is taken to be the amount

certified by the Treasurer as the total amount contributed by all insurers in respect of the 2015/2016 financial year under the former emergency services funding scheme.

- (4) The contribution target for the financial year that commenced 2 years before the 2018/2019 financial year (that is,  $C_{(t-2)}$  in section 22) is taken to be 73.7% of the total of the following, as certified by the Treasurer:
  - (a) the estimate of fire brigades expenditure for the 2016/2017 financial year,
  - (b) the estimate of rural fires expenditure for the 2016/2017 financial year,
  - (c) the estimate of SES expenditure for the 2016/2017 financial year.
- (5) The actual contribution revenue for the financial year that commenced 2 years before the 2018/2019 financial year (that is,  $AC_{(t-2)}$  in section 22) is taken to be the amount certified by the Treasurer as the total amount contributed by all insurers in respect of the 2016/2017 financial year under the former emergency services funding scheme.
- (6) In this clause:

**estimate of fire brigades expenditure** means the estimated expenditure under Part 5 of the *Fire Brigades Act 1989*, as in force immediately before the commencement of the *Fire and Emergency Services Levy Act 2017*.

**estimate of rural fires expenditure** means the estimated expenditure under Part 5 of the *Rural Fires Act 1997*, as in force immediately before the commencement of the *Fire and Emergency Services Levy Act 2017*.

**estimate of SES expenditure** means the estimated expenditure under Part 5A of the *State Emergency Service Act 1989*, as in force immediately before the commencement of the *Fire and Emergency Services Levy Act 2017*.

## **7 Adjustments to contribution target for 2017/2018 financial year**

- (1) The Treasurer is to subtract the amount of \$6,854,100 from the contribution target calculated under Part 4 for the 2017/2018 financial year only (this amount being the cost of the Monitor previously recovered from insurers).
- (2) There is no recovered over-collection amount for the 2017/2018 financial year. Accordingly,  $O_t$  is not to be deducted from the contribution target for that financial year and section 24 (2) is to be disregarded.

## **8 Insurers liable under former scheme taken to be liable**

A reference in section 28 to an initial contribution amount includes a reference to a contribution payable under the former emergency services funding scheme.

## 9 Returns

- (1) The first financial year for which returns are required under sections 32 and 33 is the 2017/2018 financial year.
- (2) A reference in section 32 to a return provided under this Act includes a reference to a return provided under the former emergency services funding scheme.

## 10 Attributed charges

- (1) The requirement to disclose a total amount of attributed charges in a return provided under this Act does not apply to a financial year commencing before 1 July 2019.
- (2) Section 39 does not apply to a financial year commencing before 1 July 2019.

### Note—

For the financial years commencing 1 July 2017 and 1 July 2018, the Monitor is responsible for investigating and assessing over-charging by insurers.

## 11 Requirement to provide information to Treasurer

Section 47 has no effect until 1 July 2020.

## 12 Returns and other information to be provided to Chief Commissioner

- (1) A relevant person is to provide the following to the Chief Commissioner as soon as practicable after being requested to do so by the Chief Commissioner:
  - (a) a copy of any return provided by an insurer under the former emergency services funding scheme,
  - (b) any other information collected under the former emergency services funding scheme that the Chief Commissioner reasonably requires for the purpose of exercising the Chief Commissioner's functions under this Act.
- (2) In this clause:

**relevant person** means:

  - (a) the Commissioner of Fire and Rescue NSW, or
  - (b) the Commissioner of the NSW Rural Fire Service, or
  - (c) the Commissioner of the State Emergency Service, or
  - (d) the Executive Director, Office of Emergency Management, Department of Justice.

## Part 3 Provision consequent on enactment of [State Revenue](#)

## Legislation Amendment Act 2018

### 13 Application of amendment

The amendment made to this Act by the *State Revenue Legislation Amendment Act 2018* has effect as if it had commenced on the commencement of this Act (1 July 2017).

### Schedule 3 (Repealed)