

# Fire and Emergency Services Levy Act 2017 No 9

[2017-9]



New South Wales

## Status Information

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# Fire and Emergency Services Levy Act 2017 No 9



New South Wales

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# Fire and Emergency Services Levy Act 2017 No 9



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

***ad valorem component*** of levy—see section 17.

***ad valorem rate formula***—see section 28.

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

**Note—**

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

***assessed levy***—see section 97.

***assessed rate or charge***—see section 96.

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

***collection instalment*** means a collection instalment payable under section 99.

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

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

**compliance issue**—see sections 133 and 136.

**council** means a council within the meaning of the [Local Government Act 1993](#).

**Court** means the Land and Environment Court.

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

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

**farmland** means land classified as farmland under this Act.

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

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

**first financial year of the levy** means the financial year that commences on the start date for the levy.

**fixed component** of levy—see section 16.

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

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

**hardship guidelines**—see section 84.

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

**land** includes a stratum within the meaning of the [Valuation of Land Act 1916](#).

**land value**—see section 18 (6).

**lease** has the same meaning as it has in the [Local Government Act 1993](#).

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

**leviable land** has the meaning given by section 6.

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

**levy estimate information**—see section 34.

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

**levy recovery arrangement**—see section 91.

**levy valuation**—see section 21.

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

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

**Lord Howe Island** means the Island under the [Lord Howe Island Act 1953](#).

**Monitor** means the Emergency Services Levy Insurance Monitor appointed under the [Emergency Services Levy Insurance Monitor Act 2016](#).

**owner** has the same meaning as it has in the [Local Government Act 1993](#).

**parcel of land** includes a parcel that comprises a stratum within the meaning of the [Valuation of Land Act 1916](#).

**Note—**

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

**payment order**—see section 86.

**pensioner discount amount**—see section 25.

**property sector**—see section 40.

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

**published ad valorem rate**—see section 27.

**quarterly instalment period**—see section 82.

**relevant payment**—see section 95.

**relevant proportion**—see section 30.

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

**start date for the levy** means the date appointed as the start date for the levy by a regulation made under section 152.

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

**unvalued land**—see section 19.

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

**vacant land discount**—see section 23.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

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

(3) In this Act, a reference to a financial year, when immediately preceded by a reference to particular years (in the format of [year]/[year]), is a reference to the financial year that commences and ends in those years (respectively).

**Note—**

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

#### **4 Application of Act to Lord Howe Island**

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

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

## **Part 2 Fire and emergency services levy**

**Note—**

Part 11 of this Act postpones the introduction of the levy until a start date appointed by the regulations. Most of the provisions of this Act are suspended (and have no effect) until a start date for the levy is appointed.

#### **5 Fire and emergency services levy**

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

#### **6 Land on which levy is charged**

- (1) For the purposes of this Act, **leviable land** is any land situated in the area of a council that is within one of the following property sectors:
  - (a) public benefit land,
  - (b) farmland,
  - (c) residential land,

(d) industrial land,

(e) commercial land.

(2) Land is within a property sector if the land is classified to be within that property sector under this Act.

## **7 Who is liable to pay levy**

(1) The owner for the time being of leviable land is liable to pay the levy, except as provided by this section.

(2) If leviable land owned by the Crown or a State owned corporation (other than a liable State owned corporation) is the subject of a lease for value and the dominant use of the land is for the purposes of the lease, the lessee under the lease is liable to pay the levy.

(3) If there are 2 or more owners, or 2 or more lessees, who are liable to pay the levy in respect of the same land, they are jointly and severally liable to pay the levy.

### **Note—**

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

## **8 Levy is payable for each financial year**

The levy is payable for each financial year.

### **Note—**

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

## **9 Amount of levy**

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

## **10 Levy payable on each separate parcel of land**

(1) A separate levy is payable for each separate parcel of land.

(2) Land is taken to be a separate parcel of land for the purposes of this Act:

(a) if the land is separately valued under the [Valuation of Land Act 1916](#), or

(b) if the land is the subject of one valuation under that Act, or

(c) in any other circumstances provided for by or under this Act.

(3) Subsection (2) does not affect the application of this Act to land that is not valued under the [Valuation of Land Act 1916](#).

(4) This section is subject to Parts 5 and 8 and any regulations under this section.

**Note—**

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

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

## **11 Levy payable to council**

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

## **12 Council must charge and collect levy on behalf of State**

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

## **13 Levy to be apportioned over whole year**

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

## **14 No levy for government land**

There is no levy payable in respect of government land.

**Note—**

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

# **Part 3 Amount of levy**

## **Division 1 Fundamentals**

### **15 Components of levy: fixed and ad valorem**

- (1) The levy payable is the total of the following:
  - (a) the fixed component of the levy,
  - (b) the ad valorem component of the levy.
- (2) The components of the levy are based on the property sector that the land is within.

**Note—**

Part 5 sets out how land is classified into different property sectors.

## **16 Fixed component of levy**

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

## **17 Ad valorem component of levy**

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

## **18 Land value of land**

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

- (3) The **non-attributable value** of land is the land value of the land for the purpose of levying rates under Chapter 15 of the [Local Government Act 1993](#) minus the attributable part of the land value (within the meaning of Division 2 of Part 8 of Chapter 15 of the [Local Government Act 1993](#)).
- (4) If the council does not levy rates on the land, the land value of the land is the land value of the land determined in accordance with the [Valuation of Land Act 1916](#).
- (5) However, if the land is unvalued land, the land value of the land is the land value of the land determined in accordance with Division 2.
- (6) A reference in this Act to the land value of land, for levy purposes, is a reference to the land value of land determined as provided for by this section and Division 2.

**Note—**

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

Section 62 of the [Valuation of Land Act 1916](#) provides that the most recent valuation list is to be used to determine land value.

## **Division 2 Unvalued land**

### **19 Unvalued land—meaning**

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

### **20 Regulations may specify land value of unvalued land**

- (1) The regulations may specify the land value of unvalued land, or the method by which the land value of unvalued land is to be calculated, for the purposes of this Act.
- (2) The land value of unvalued land, or the method by which the land value is calculated, may be specified by reference to the owner of the land, the liable person in relation to the land, the use of the land, the location of the land or in any other way.
- (3) The regulations may specify a zero land value for unvalued land. In that case, the land



value of the land is zero and no levy is payable on the land (including no fixed component).

- (4) The regulations have effect despite anything to the contrary in the [Valuation of Land Act 1916](#).

## **21 Valuer-General to ascertain land value of unvalued land**

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

## **22 Application of [Valuation of Land Act 1916](#)**

- (1) Levy valuations are to be entered in the Register of Land Values kept under the [Valuation of Land Act 1916](#).
- (2) Information entered in the Register of Land Values about levy valuations is to be included in any valuation list or supplementary lists compiled by the Valuer-General and furnished to a rating or taxing authority under the [Valuation of Land Act 1916](#).
- (3) Subject to this Division, the [Valuation of Land Act 1916](#) and the regulations under that Act apply, with any necessary modifications, to levy valuations and to the information about levy valuations entered in the Register of Land Values in the same way as they apply to general valuations and to the information about general valuations entered in the Register of Land Valuers under that Act.

### **Note—**

Parts 3 and 4 of the [Valuation of Land Act 1916](#) permit objections to, and appeals against, valuations made by the Valuer-General.

Part 5 of the [Valuation of Land Act 1916](#), among other things, requires councils to use the valuation list as the basis for charging rates or taxes.

- (4) For the purpose of applying the [Valuation of Land Act 1916](#) to levy valuations of unvalued land on Lord Howe Island:
- (a) Lord Howe Island is taken to be an area, and
- (b) the Lord Howe Island Board is taken to be a rating or taxing authority, and a council, for that area.
- (5) The regulations under the [Valuation of Land Act 1916](#) may modify the application of,

or disapply, any provision of the [Valuation of Land Act 1916](#) or the regulations under that Act in relation to unvalued land and levy valuations.

## Division 3 Discounts

### 23 Discount for vacant land

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

### 24 Discount for eligible pensioners

- (1) A liable person is eligible for a pensioner discount in respect of the levy payable on leviable land if the liable person is an eligible pensioner.
- (2) The levy payable for a financial year is to be reduced by the pensioner discount amount.
- (3) The pensioner discount amount is proportionate to the number of quarterly instalment periods during the financial year in which the liable person is an eligible pensioner.
- (4) Only one pensioner discount can be claimed in respect of a parcel of land, even if more than one eligible pensioner is a liable person in respect of the land.
- (5) If the pensioner discount amount is more than the levy that (but for the discount) would be payable, the levy payable is zero.

### 25 Pensioner discount amount

- (1) The **pensioner discount amount** is the indexed amount for the financial year for which the levy is payable.
- (2) The indexed amount is the amount determined by multiplying \$50 by A/B, where:  
**A** is the Sydney CPI number for December in the financial year before the financial year for which the indexed amount is being determined, and

**B** is the Sydney CPI number for December 2016, and

**A/B** is calculated to the nearest 3 decimal places (and a fourth decimal place of 5 is to be rounded up).

- (3) If the indexed amount is not a multiple of 10 cents, the amount is to be rounded to the nearest 10 cent multiple (and an amount of 5 cents is to be rounded up).
- (4) The Treasurer is to publish a notice on the NSW legislation website by 30 April before the commencement of each financial year for which the levy is payable specifying the indexed amount for that financial year, calculated in accordance with this section.
- (5) In this section:

**Sydney CPI number** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician or, if the Australian Statistician fails or ceases to issue that number, another number or index prescribed by the regulations.

## **26 Change of circumstances**

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

## **Part 4 Method for calculating ad valorem rate**

### **Division 1 Treasurer to calculate ad valorem rate**

#### **27 Published ad valorem rate**

- (1) The Treasurer must, before the commencement of each financial year for which the levy is payable, determine an ad valorem rate of the levy for the next financial year.
- (2) The determination must specify an ad valorem rate of the levy for each property sector (other than government land).
- (3) The determination is to be made by order published on the NSW legislation website.

- (4) The order is to be published on the NSW legislation website by the date of 30 April that occurs immediately before the commencement of the financial year.
- (5) An ad valorem rate specified in the order for a property sector is the **published ad valorem rate** for that property sector for the financial year for which it is specified.
- (6) If an order specifying the ad valorem rate of the levy for a financial year is not published on the NSW legislation website by the date of 30 April that occurs immediately before the commencement of that financial year, the published ad valorem rate for a property sector is taken to be the published ad valorem rate for the financial year that immediately precedes the financial year.
- (7) Subsection (6) does not apply to the ad valorem rate for the first financial year of the levy.

## 28 Ad valorem rate formula

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

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

where:

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

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

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

**N<sub>nv</sub>** is the estimated number of non-vacant properties in the property sector for the financial year.

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

**N<sub>v</sub>** is the estimated number of vacant properties in the property sector for the financial year.

**C** is the pensioner discount amount for the financial year.

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

**V<sub>nv</sub>** is the estimated value of non-vacant properties in the property sector for the financial year.

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

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

## 29 Revenue target for property sector

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

### Note—

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

## 30 Relevant proportion

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

## 31 Estimate of non-vacant properties

- (1) The **estimated number of non-vacant properties** in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the number of non-vacant parcels of land in that property sector in that financial year.
- (2) The **estimated value of non-vacant properties** in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the total land value, for levy purposes, of all non-vacant parcels of land in that property sector in that financial year.
- (3) A parcel of land is non-vacant if it is not sub-classified as vacant land.

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

### **32 Estimate of vacant properties**

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

### **33 Estimate of pensioner discount properties**

- (1) The ***estimated number of pensioner discount properties*** in a property sector is an estimate adopted by the Valuer-General, for a financial year, of the number of parcels of land in that property sector that will be eligible for a pensioner discount in that financial year.
- (2) The Valuer-General is to prepare and adopt an estimated number of pensioner discount properties, for each property sector, and give each estimate to the Treasurer by 15 March in the year in which the financial year for which the estimate is made

commences or by a later date approved by the Treasurer.

- (3) An estimate is not required for the government land property sector.
- (4) In this section, a reference to a parcel of land is a reference to a parcel of land that is a separate parcel of land under this Act.

### **34 Councils to provide levy estimate information to Valuer-General**

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

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

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

## Division 2 FESL revenue target for ad valorem calculation

### 36 FESL revenue target

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

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

where:

**ER<sub>t</sub>** is the FESL revenue target for the financial year (represented by “t”).

**FT<sub>t</sub>** is the funding target for the financial year.

**CC<sub>t</sub>** is the collection cost for the levy in the financial year.

**ER<sub>t-2</sub>** is the FESL revenue target for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

**AR<sub>t-2</sub>** is the actual FESL revenue for the financial year that commenced 2 years before the period “t” (represented as “t-2”), as certified by the Treasurer.

**OC<sub>t</sub>** is the recovered over-collection amount for the financial year.

- (2) To avoid doubt, if  $ER_{t-2} - AR_{t-2}$  is a negative amount, that amount is subtracted from the total.
- (3) When calculating the FESL revenue target for the 2017/2018 financial year and the 2018/2019 financial year,  $ER_{t-2} - AR_{t-2}$  is taken to be zero.
- (4) The FESL revenue target is to include any additions made under Part 2 of Schedule 3.

**Note—**

Under Schedule 3, the Monitor budget and start-up costs for the levy can be added to the FESL revenue target during the initial period of the scheme.

- (5) Expressions used in the FESL revenue target formula have the meanings given by this Division.

### 37 Funding target

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

- (a) the SES funding target (within the meaning of Part 5A of the [State Emergency Service Act 1989](#)),
- (b) the fire brigades funding target (within the meaning of Part 5 of the [Fire and Rescue](#)



*NSW Act 1989*),

- (c) the rural fire brigade funding target (within the meaning of Part 5 of the *Rural Fires Act 1997*).

### 38 Collection cost

- (1) The **collection cost** for the levy in a financial year is the amount calculated by the Treasurer in accordance with this section.
- (2) The Treasurer is to calculate the collection cost for a financial year using the following formula:

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

where:

**CC<sub>t</sub>** is the collection cost for the financial year (represented by “t”).

**EC<sub>t</sub>** is the estimated collection cost for the financial year.

**AC<sub>t-2</sub>** is the actual collection cost for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

**EC<sub>t-2</sub>** is the estimated collection cost for the financial year that commenced 2 years before the period “t” (represented as “t-2”).

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

### 39 Recovered over-collection amount

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

## Part 5 Classification of land for levy

### Division 1 Councils required to classify land

#### 40 Land to be classified into property sectors

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

#### 41 Steps for classification

- (1) When classifying land, a council must first consider whether the land is government land.
- (2) The council is to classify the land as government land if the land meets the requirements for classification as government land.

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

**Note—**

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

## **42 Requirements for classification as government land**

- (1) Land meets the requirements for classification as **government land**, subject to the regulations, if:
  - (a) the land is owned by the Crown, unless:
    - (i) the regulations declare that the land is not government land, or
    - (ii) the land is leased and subsection (2) applies to the land, or
  - (b) the land is owned by a State owned corporation, unless:
    - (i) the regulations declare that the corporation is a liable State owned corporation, or
    - (ii) the land is leased and subsection (2) applies to the land, or

- (c) the land is owned by the Commonwealth, or
  - (d) the land is owned by a council, unless:
    - (i) the regulations declare that the land is not government land, or
    - (ii) the land is leased and subsection (2) applies to the land, or
  - (e) the land is situated within any part of the Western Division (within the meaning of the [Crown Land Management Act 2016](#)) that is not constituted as an area under the [Local Government Act 1993](#), or
  - (f) the land is the premises of a mission to which the [Diplomatic Privileges and Immunities Act 1967](#) of the Commonwealth applies, or
  - (g) the land is declared by the regulations to be government land.
- (2) Land that is owned by the Crown, a State owned corporation or a council does not meet the requirements for classification as government land if the land is the subject of a lease for value and the dominant use of the land is for the purposes of the lease.
- (3) However, subsection (2) does not apply if:
- (a) the land is owned by the New South Wales Land and Housing Corporation, or by the Aboriginal Housing Office, and the dominant use of the land under the lease is for residential accommodation, or
  - (b) the land is owned by the Crown and leased to an individual who is employed in the service of the Crown, in his or her capacity as an employee, and the dominant use of the land under the lease is for residential accommodation, or
  - (c) the land is owned by a State owned corporation and leased to an individual who is employed by the State owned corporation, in his or her capacity as an employee, and the dominant use of the land under the lease is for residential accommodation, or
  - (d) the land is owned by a council and leased to an individual who is employed by the council, in his or her capacity as an employee, and the dominant use of the land under the lease is for residential accommodation, or
  - (e) a regulation under subsection (1) (g) declares the land to be government land (unless otherwise provided by the regulations).
- (4) Residential accommodation means the type of residential accommodation that permits rateable land to be categorised as residential under section 516 of the [Local Government Act 1993](#).
- (5) A provision of a regulation that is made under this section may specify the date on

and from which the provision takes effect for classification purposes. The date may occur before, on or after the date of publication of the regulation on the NSW legislation website but not before the commencement of the financial year in which publication occurs.

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

#### **43 Requirements for classification as public benefit land**

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

#### **44 Requirements for classification as farmland**

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

#### **45 Requirements for classification as residential land**

Land meets the requirements for classification as **residential land** if it is categorised as

residential by the council for ratings purposes under the [Local Government Act 1993](#) or would be so categorised if it were rateable land under that Act.

#### **46 Requirements for classification as industrial land**

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

#### **47 Classification of land not yet being used**

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

### **Division 2 Classification process**

#### **48 Declaration of property sector**

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

#### **49 Effective date for classification**

- (1) A classification of land takes effect from the date specified for the purpose in the declaration of the council (this is the **effective date** for the classification).

- (2) The effective date for the classification must be a date of 1 July, 1 October, 1 January or 1 April.

**Note—**

These dates are the beginning of each quarterly instalment period for the levy.

- (3) The effective date for the classification may be a date that is before the date the declaration is made.

**Note—**

See also sections 72 and 73.

## **50 Notice of classification**

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

## **51 Application for classification or review of classification**

- (1) A liable person may apply to the council at any time:
- (a) to have the person's land classified as being within a particular property sector for the purposes of this Act, or
  - (b) for a review of a classification by the council of the person's land or the effective date for the classification (or both).
- (2) An application:
- (a) must be in a form approved by the council, and
  - (b) must include a description of the land, and
  - (c) must nominate the property sector that the applicant considers the land should be within (if a different classification is sought), and
  - (d) must set out the reasons why the applicant considers the land should be within that property sector, and

- (e) must nominate the effective date for the classification that is sought by the applicant, and
  - (f) must be accompanied by the fee (if any) charged by the council for the application.
- (3) If the council has reasonable grounds for believing that the land does not meet the requirements for classification for the nominated property sector, or that the effective date for classification nominated is not appropriate, it may notify the applicant of any further information it requires in order to decide the application.
- (4) The regulations may prescribe a maximum fee that may be charged by a council for making an application under this section.

## **52 Council to decide application**

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



## **Division 3 Sub-classification of land as vacant land**

### **53 Sub-classification of land as vacant land**

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

### **54 Criteria for sub-classification**

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

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

### **55 Application for sub-classification**

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

category.

- (4) The regulations may prescribe a maximum fee that may be charged by a council for making an application under this section.

## **56 Council to decide application**

- (1) After considering an application for land to be declared to be vacant land, and any further information provided by the applicant, the council must either:
  - (a) declare the land to be vacant land, or
  - (b) refuse the application.
- (2) The council must declare the land to be vacant land if the council is satisfied that the land satisfies the requirements for sub-classification as vacant land.
- (3) The council must notify the applicant of its decision. The council must include the reasons for its decision if it refuses the application.
- (4) If the council refuses the application, the council must include in the notice:
  - (a) the reasons for the decision, and
  - (b) information about appeals to the Land and Environment Court (including the time limit for making an appeal).
- (5) If the council has not notified the applicant of its decision within 40 days after the application is made to it, the council is taken, at the end of the 40-day period, to have refused the application.
- (6) The fee (if any) for making an application that land be declared to be vacant land is to be refunded:
  - (a) if the council declares the land to be vacant land, or
  - (b) if the council fails to notify the applicant of a decision within 40 days after the application is made to it.

## **57 Effective date for sub-classification**

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

### **Note—**

These dates are the beginning of each quarterly instalment period for the levy.

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

**Note—**

See also sections 72 and 73.

## **58 Sub-classifications to be reviewed**

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

## **Division 4 Revocation of sub-classification of land**

### **59 Revocation of sub-classification**

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

### **60 Effective date for revocation of sub-classification**

- (1) A revocation of sub-classification takes effect on a date specified by the council in its declaration that the sub-classification is revoked (this is the **effective date** for the revocation).
- (2) The effective date for the revocation must be a date of 1 July, 1 October, 1 January or 1 April.

**Note—**

These dates are the beginning of each quarterly instalment period for the levy.

- (3) The effective date for the revocation may be a date that is before the date the declaration is made.

## **61 Notice of revocation**

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

## **62 Application for review of revocation**

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

## **63 Council to decide application**

- (1) After considering an application for review of a council decision under this Division, and any further information provided at the request of the council, the council must:

- (a) affirm its decision, or
  - (b) set aside its decision.
- (2) If the council sets aside its decision, it may substitute a new decision.
- (3) The council must notify the applicant of its decision.
- (4) If the council affirms its original decision, the council must include in the notice:
  - (a) the reasons for the decision, and
  - (b) information about appeals to the Land and Environment Court (including the time limit for making an appeal).
- (5) If the council has not notified the applicant of its decision within 40 days after the application is made to it, the council is taken, at the end of the 40-day period, to have affirmed its decision to revoke sub-classification with the same effective date as it previously specified.
- (6) The fee (if any) for making an application that land be declared to be vacant land is to be refunded:
  - (a) if the council sets aside its original decision, or
  - (b) if the council fails to notify the applicant of a decision within 40 days after the application is made to it.

## Division 5 Appeals

### 64 Appeals to Land and Environment Court

- (1) A liable person who is dissatisfied with a relevant decision may appeal to the Land and Environment Court against the decision.
- (2) In this Division, a **relevant decision** means:
  - (a) a decision that the council makes on an application by the person for the classification of the person's land, or
  - (b) a decision that the council makes on an application for a review of the classification of the person's land, or the effective date for the classification, or both, or
  - (c) a decision that the council makes on an application by the person for the sub-classification of the person's land as vacant land, or
  - (d) a decision that the council makes on an application for a review of the revocation of the sub-classification of the person's land as vacant land, or the effective date for the revocation, or both.

- (3) An appeal must be made no later than 30 days after notice of the relevant decision is given to the person.

#### **65 Council to give Valuer-General notice of appeal**

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

#### **66 Powers of Land and Environment Court on appeal**

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

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

### **Division 6 Provision of information to Valuer-General**

#### **67 Councils to provide annual return to Valuer-General**

- (1) Each council is to provide to the Valuer-General, by 15 February in each year, a return for the year ending on the preceding 31 December relating to the decisions made by the council under this Part.
- (2) The return is to contain the following information about the year ending on the preceding 31 December:
  - (a) information about the decisions made by the council under this Part, including any information specified in the regulations,
  - (b) any other information that the Valuer-General reasonably requires for the purpose of exercising his or her functions under this Act.
- (3) The return is to be in a form approved by the Valuer-General.
- (4) The information provided must be up to date as of 31 December in the year before the return is required to be provided.
- (5) The regulations may make further provision for returns under this section.
- (6) Without limiting subsection (5), the regulations may require the general manager or the public officer of a council to certify the accuracy and completeness of information

contained in the return.

#### **68 Valuer-General may require further information**

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

### **Division 7 Miscellaneous**

#### **69 Rules about classification and sub-classification**

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

#### **70 Zoning and use changes**

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

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

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

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

sub-classification, the levy for the whole year has been paid in full, the portion of the payment that is proportionate to the number of quarterly instalment periods remaining in the year is to be credited to the levy payable in respect of the remaining part of the year.

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

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

### **Note—**

A regulation that changes classification requirements may specify when it takes effect for classification purposes.

## **73 Notice of change of circumstances is required**

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



#### 74 Classification of mixed development land

- (1) If a valuation is furnished under the [Valuation of Land Act 1916](#) for mixed development land, a council may:
  - (a) classify the part of the land that is non-residential land as industrial land, commercial land or public benefit land, as the case requires (the **first classification**), and
  - (b) classify the remaining part of the land as residential land (the **second classification**).
- (2) In that case, the levy payable is the sum of the following amounts:
  - (a) the amount obtained by applying the apportionment factor to the levy that would be payable for the land if it were wholly within the first classification,
  - (b) the amount obtained by applying the remainder factor to the levy that would be payable for the land if it were wholly within the second classification.
- (3) The apportionment factor is the apportionment factor for the parcel ascertained under section 14X of the [Valuation of Land Act 1916](#).
- (4) The remainder factor is the factor obtained by deducting the apportionment factor from 100%.
- (5) In this section, **mixed development land** and **non-residential land** have the same meanings as in Division 5 of Part 1B of the [Valuation of Land Act 1916](#).

#### 75 Parcel of land in 2 or more areas

- (1) If different parts of the same parcel of land are situated in different areas, each part of the parcel that is situated in a separate area is taken, for the purposes of this Act, to be a separate parcel of land.
- (2) Accordingly, a council must:
  - (a) classify, and sub-classify (if necessary), the part of the parcel of land that is situated in the council's area, as if that land were a separate parcel of land, and
  - (b) charge a levy in respect of the part of the parcel of land that is within the council's area, as if that land were a separate parcel of land.

**Note—**

Section 28 of the [Valuation of Land Act 1916](#) provides for the apportionment of a land valuation between parcels of land that are situated in more than one district.

- (3) However, a council may, on application by a liable person, waive or refund part of the fixed component of the levy charged by the council in respect of a parcel of land if

satisfied that the parcel of land is situated in more than one area and that, accordingly, more than one levy is payable in respect of the parcel.

- (4) The maximum amount that can be waived or refunded under this section is the amount obtained when the appropriate proportion is deducted from the fixed component of the levy.
- (5) The **appropriate proportion** is the amount that is obtained by dividing the fixed component of the levy that would be payable if the land were situated wholly in the council's area by the number of areas in which the parcel of land is situated.
- (6) This section is in addition to, and does not limit, the functions of a council under Part 8.

## **76 Powers of entry and inspection**

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

### **Note—**

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

# **Part 6 Charging and collection of levy by council**

## **Division 1 Charging of levy**

### **77 Council must charge levy**

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

### **78 Levy to be charged by notice**

- (1) A council is to charge a levy by serving notice of the levy on the liable person.
- (2) The levy notice is to contain the following information:
  - (a) the land on which the levy is charged,
  - (b) the classification of the land,
  - (c) the sub-classification of the land (if any),
  - (d) the amount of the levy payable,
  - (e) the land value, for levy purposes, of the land to which it relates,
  - (f) the date of 1 July by reference to which the land is valued (unless the land is unvalued land),

- (g) any other information specified in the regulations.
- (3) The levy is to be described as the “NSW Government Fire and Emergency Services Levy” or as the “NSW Govt FESL”. The description may include a reference to the property sector that the land is within.
- (4) It is not necessary to specify the name of the liable person or the person liable to pay the charge in the notice if the council does not know the person’s name.
- (5) If rates and charges are payable in respect of the land under the [Local Government Act 1993](#), the levy notice is to be combined with the notice of the rates or charges that is served under that Act, subject to any exceptions provided for by the regulations.
- (6) Subject to the regulations, the levy notice may be combined with the following:
  - (a) notice of classification of the land under this Act,
  - (b) notice of categorisation of the land under the [Local Government Act 1993](#).
- (7) The regulations may make provision for the form of the levy notice and the manner in which information is to be set out in the levy notice.

#### **79 Timing for service of levy notice**

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

#### **80 Time for payment of levy**

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

#### **81 Payment by single instalment**

- (1) If a levy is paid by single instalment, the instalment is payable by 31 August.
- (2) However, if the levy notice is not served by 1 August, the single instalment is payable

by 30 November, or the day that is 30 days after service of the notice, whichever is the later.

## **82 Payment by quarterly instalments**

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

## **83 Accrual of interest on overdue levies**

- (1) Interest accrues on any levy or part of a levy that remains unpaid after it becomes due and payable.
- (2) Interest accrues on a daily basis.
- (3) The rate of interest is that set by the council but must not exceed the rate specified for overdue rates and charges by the Minister administering the [Local Government Act 1993](#) under section 566 of that Act.
- (4) If the council charges interest on overdue rates and charges under the [Local](#)

[Government Act 1993](#), the rate of interest set by the council must be the same as the rate of interest charged on overdue rates and charges.

- (5) Accrued interest is, for the purpose of its recovery, taken to be part of the levy that is due and payable.
- (6) Interest continues to accrue on an unpaid levy or part of a levy even though judgment for payment of the levy may have been obtained in a court. Interest is not payable on the amount of the judgment (exclusive of any order for costs), despite any other Act.

## **Division 2 Waiver or reduction of levy**

### **84 Hardship guidelines**

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

### **85 Chief Commissioner may waive or reduce levy**

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

### **86 Liable person required to make full and true disclosure**

- (1) A liable person who makes a claim for a waiver or reduction of a levy by the Chief Commissioner must fully and truly disclose to the Chief Commissioner all the facts and

circumstances relating to that claim.

Maximum penalty: 100 penalty units.

- (2) The Chief Commissioner may, by order in writing served on a person (a **payment order**), require a person to pay to the Chief Commissioner a specified amount if:
  - (a) the Chief Commissioner waived or reduced the levy payable by the person, and
  - (b) the Chief Commissioner is satisfied that the person contravened subsection (1) in relation to the person's claim for a waiver or reduction of the levy.
- (3) A payment order may require the person to pay the whole or part of a waived amount to the Chief Commissioner by a date specified in the order (being not less than 30 days after the date of service of the order).
- (4) A **waived amount** is the amount of the levy that was waived or, if the levy was reduced, the amount of the reduction.
- (5) A payment order may require the person to pay interest in respect of the waived amount, calculated as provided for by this Division.
- (6) A payment order may be made whether or not the person against whom it is made has been prosecuted for, or found guilty of, an offence under subsection (1).
- (7) A payment order cannot be made more than 3 years after the contravention of subsection (1) is alleged to have occurred.
- (8) In this section:

**Chief Commissioner** includes a delegate of the Chief Commissioner and any other person engaged in the administration of this Act.

## **87 Application of [Taxation Administration Act 1996](#)**

- (1) The applied provisions of the [Taxation Administration Act 1996](#) apply in relation to a payment order as if this Act were a taxation law and the amount payable under the order were a tax payable by the person to the Chief Commissioner.
- (2) The **applied provisions** of the [Taxation Administration Act 1996](#) are the following provisions of that Act:
  - (a) Division 1 (Interest) of Part 5,
  - (b) Division 1 of Part 7,
  - (c) sections 50 and 55 (which prohibit the giving of false and misleading information),
  - (d) Division 1 (Tax officers), Division 2 (Investigation) and Division 3 (Secrecy) of Part 9,

- (e) sections 114, 115, 116, 118 and 120,
- (f) any provisions that are relevant to the interpretation of the above provisions.
- (3) For the purposes of the applied provisions, a tax default is taken to have occurred on the date the Chief Commissioner waived or reduced the levy, unless the Chief Commissioner decides that a later date should be treated as the tax default date.
- (4) If the Chief Commissioner decides that a later date should be treated as the tax default date, a tax default does not occur until that later date.
- (5) To avoid doubt, Part 10 of the [Taxation Administration Act 1996](#) does not apply to a payment order or to the exercise of any of the Chief Commissioner's functions under this Division (including under the applied provisions of the [Taxation Administration Act 1996](#)).

#### **88 References to levy include interest on levy**

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

### **Division 3 Recovery of levy**

#### **89 Recovery of levy as debt**

- (1) A levy payable to a council under this Act may be recovered by the council as a debt in a court of competent jurisdiction.
- (2) The levy has the same priority as rates or charges that are owed to the council under the [Local Government Act 1993](#).

**Note—**

Part 8 gives the council the same remedies for the recovery of the levy as the council has for rates and charges.

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

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

## 91 Transfer of levy recovery to Chief Commissioner

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



- (7) Any amount recovered by the Chief Commissioner under a debt recovery arrangement:
  - (a) is payable to the Consolidated Fund (not to the council), and
  - (b) is not to be included in the council's relevant payments under Part 7.
- (8) Section 571 of the [Local Government Act 1993](#), as it applies to the levy under Part 8, continues to apply in respect of a referred levy as if a reference in that section to the council were a reference to the Chief Commissioner.
- (9) The regulations may make further provision for the application of the [Local Government Act 1993](#) in respect of a referred levy, including by modifying the application of any provision of that Act that applies to a levy that is payable to the council.
- (10) In this section:  
**transfer date** means the date agreed in writing between a council and the Chief Commissioner as the date on which a referred levy is referred to the Chief Commissioner for recovery.

## **92 Record of levies**

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

## **93 Collection payments**

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

Parliament.

- (3) A payment made by the Treasurer under this section is a **collection payment**.

## **Part 7 Payment of levy to State**

### **Division 1 Preliminary**

#### **94 Council required to apportion relevant payments**

A council is to:

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

#### **95 Relevant payment—meaning**

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

#### **96 Assessed rate or charge—meaning**

- (1) An **assessed rate or charge** is a rate or charge that has been levied by the council under Chapter 15 of the [Local Government Act 1993](#).
- (2) An assessed rate or charge includes any amount payable as accrued interest on an assessed rate or charge.
- (3) An assessed rate or charge does not include:
  - (a) any amount payable for the out-of-pocket expenses incurred by the council in tracing persons that may be recovered as a rate or charge under the [Local Government Act 1993](#), or
  - (b) a rate or charge, or a part of a rate or charge, that has been written off or the payment of which has been waived by the council.

- (4) If a rate or charge is reduced by a council, the reduction is not to be included in an assessed rate or charge.
- (5) If the payment of any part of a rate is postponed under Division 2 of Part 8 of Chapter 15 of the [Local Government Act 1993](#):
  - (a) the postponed rate is not an assessed rate or charge, during the period in which payment is postponed, and
  - (b) any interest on the postponed rate, that accrues under section 592 of that Act, is taken to be an assessed rate or charge.
- (6) The regulations may make further provision for the calculation of an assessed rate or charge, including by modifying the application of any provision of this section.
- (7) The Minister is not to recommend the making of a regulation under this section unless the Minister certifies that the regulation is made with the concurrence of the Minister administering the [Local Government Act 1993](#).

#### **97 Assessed levy—meaning**

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

### **Division 2 Payment of collection instalments to State**

#### **98 Relevant payments to be applied towards old debt first**

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

payment (or part):

- (a) towards payment of an assessed rate or charge, or an assessed levy, that became due in that financial year, or
- (b) towards payment of accrued interest on an assessed rate or charge, or an assessed levy, and the assessed rate or charge or assessed levy became due in that financial year.

#### **99 Collection instalments to be paid to Chief Commissioner**

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

#### **100 Reconciliation periods**

- (1) Each of the following periods is a **reconciliation period**:
  - (a) the first quarter reconciliation period—which is the period starting on 1 June and ending on 31 August in the same year,
  - (b) the second quarter reconciliation period—which is the period starting on 1 September and ending on 30 November in the same year,
  - (c) the third quarter reconciliation period—which is the period starting on 1 December and ending on 28 February in the next year (or 29 February in a leap year),
  - (d) the fourth quarter reconciliation period—which is the period starting on 1 March and ending on 31 May in the same year.
- (2) The start dates and end dates of a reconciliation period are inclusive.
- (3) For the 2017/2018 financial year, the first quarter reconciliation period is taken to start on 1 July 2017.

#### **101 Amount of collection instalment**

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

**Note—**

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

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

## **102 Calculation of levy proportion**

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

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

where:

**L** is the levy proportion of the relevant payments.

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

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

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

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

## **103 Payment dates for reconciliation periods**

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

#### **104 Council to keep a record of relevant payments**

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

### **Division 3 Functions of Chief Commissioner**

#### **105 Chief Commissioner may recover collection instalment from council**

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

#### **106 Application of certain provisions of [Taxation Administration Act 1996](#)**

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

[Administration Act 1996](#)).

#### **107 Councils to provide annual return to Chief Commissioner**

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

#### **108 Provision of other information to Chief Commissioner**

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

### **Part 8 Harmonisation with council rates and charges**

#### **109 Strata lots and company titles treated as separate parcels**

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

- (4) Anything that is taken, under that section, to be a separate parcel of land for the purposes of categorisation is taken to be a separate parcel of land for the purposes of classification or sub-classification under this Act.

#### **110 Application of Act to company title**

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

#### **111 Aggregation of parcels**

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

#### **112 Levy is a charge on land**

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

#### **113 Writing off levy and accrued interest**

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

#### **114 Collection of levy from occupier**

Section 569 of the [Local Government Act 1993](#) applies in respect of the levy in the same way as it applies in respect of a rate or charge under that Act.



### **115 Transfer of land to pay levy**

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

### **116 Transfer of land**

Section 571 of the [Local Government Act 1993](#) applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.

### **117 Subdivision of land**

Section 573 of the [Local Government Act 1993](#) applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.

### **118 Definition of “eligible pensioner”**

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

### **119 Waiving payment of levy**

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

**levy** includes any interest payable on a levy.

**rates or charges** includes any interest payable on any rates or charges.

### **120 Certificate as to levy**

A reference in section 603 of the [Local Government Act 1993](#) to rates, charges or other amounts includes a reference to the levy.

### **121 Notice of transfer of land**

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

### **122 Notices**

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

### **123 Proof of ownership**

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

### **124 Recovery of levy**

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

### **125 Sale of land to recover levy**

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

### **126 Regulations relating to rates and charges**

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

## **127 Application of strata provisions**

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

## **128 Power to modify and apply further legislative provisions**

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

## **129 References to council extend to Lord Howe Island Board**

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

# **Part 9 Compliance and enforcement**

## **Division 1 Preliminary**

### **130 Definitions**

- (1) In this Part:

***breach of this Act*** means:

- (a) a contravention of or failure to comply with this Act, or
- (b) a threatened or an apprehended contravention of or a threatened or apprehended failure to comply with this Act.

***classification obligation*** means any function conferred or imposed on a council by

Part 4 or 5.

**financial obligation** means any of the following functions of the council:

- (a) a function conferred or imposed by Part 3, 6 or 7,
  - (b) a function under Part 8 that relates to the charging and collection of the levy.
- (2) In this Part, to comply with an obligation includes to properly exercise a function.
- (3) In this Part, a reference to this Act or to a part of this Act includes a reference to any regulations, rules or other instruments made under this Act or part, as the case requires.

## **Division 2 Monitoring role of Valuer-General**

### **131 Monitoring of council compliance with classification obligations**

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

### **132 Reviews by Valuer-General**

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

### **133 Valuer-General may issue compliance certificate**

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

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

## **Division 3 Monitoring role of Chief Commissioner**

### **134 Monitoring of council compliance with financial obligations**

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

### **135 Audits by Chief Commissioner**

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

### **136 Chief Commissioner may issue compliance certificate**

- (1) The Chief Commissioner may, at the request of the Treasurer or on his or her own initiative, give to the Treasurer a certificate, in writing, about the Chief Commissioner's assessment of a council's compliance with any of its financial obligations (a **compliance certificate**).
- (2) The Chief Commissioner may, in a compliance certificate, give an opinion as to whether or not the council is complying with any of its financial obligations.
- (3) If the Chief Commissioner considers that he or she does not have sufficient information or evidence to be satisfied that the council is complying with any of its financial obligations, the Chief Commissioner may state in the certificate that he or she is unable to give an opinion on the matter, for that reason.
- (4) The compliance certificate is to specify any compliance issues identified by the Chief Commissioner.
- (5) A compliance issue is any fact or circumstance that:
  - (a) forms the basis of the Chief Commissioner's opinion that the council is not complying with any of its financial obligations, or
  - (b) because of which, the Chief Commissioner considers that he or she does not have sufficient information or evidence to be satisfied that the council is complying with any of its financial obligations.
- (6) Before issuing a compliance certificate that specifies compliance issues, the Chief Commissioner must:
  - (a) give the council an opportunity to make submissions in relation to the compliance issues within a period (of not less than 30 days) specified by the Chief Commissioner, and
  - (b) take into consideration any submissions made by the council during that period.
- (7) The Chief Commissioner is to provide a copy of a compliance certificate issued by the Chief Commissioner to the council to which it relates.
- (8) A compliance certificate is admissible in any legal proceedings and is evidence of any compliance issues specified in the certificate.

## **Division 4 Treasurer's enforcement powers**

### **137 Order by Treasurer**

- (1) The Treasurer may, by order in writing served on a council, require the council to take any action that, in the opinion of the Treasurer, is necessary to remedy or restrain a

breach of this Act by the council.

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

**Note—**

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

### **138 Withholding collection payments**

- (1) The Treasurer may withhold any collection payment that would otherwise be paid or payable to a council if the Treasurer is satisfied that a breach of this Act has been or will be committed by the council.
- (2) Payments may be withheld until the breach is remedied or restrained to the satisfaction of the Treasurer.
- (3) Without limiting subsection (1), the Treasurer may withhold payments under this section if the Treasurer receives a compliance certificate about the council and the certificate specifies compliance issues.
- (4) A compliance certificate that specifies compliance issues is sufficient evidence to justify withholding payments under this section.
- (5) The Treasurer may, but is not required to, give the council prior notice of the Treasurer's intention to withhold payments under this section.

## **Part 10 Miscellaneous**

### **139 Notice relating to fire and emergency services levy**

- (1) The Treasurer may, by order published in the Gazette, require a council to give an approved notice to liable persons for land in the council's area.

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

#### **140 Sharing of information between councils and agencies**

- (1) A council may disclose to the Valuer-General or the Chief Commissioner information held by the council:
  - (a) in accordance with a requirement imposed on the council by or under this Act, or
  - (b) otherwise for the purposes of the administration or execution of this Act.
- (2) The Valuer-General may disclose to the Chief Commissioner or a council information held by the Valuer-General for the purposes of the administration or execution of this Act.
- (3) The Chief Commissioner may disclose to the Valuer-General information held by the Chief Commissioner for the purposes of the administration or execution of this Act.
- (4) The Chief Commissioner may disclose to a council information obtained by the Chief Commissioner in the exercise of functions under this Act for the purposes of the administration or execution of this Act.
- (5) The Valuer-General may collect information held by a council or the Chief Commissioner, and use that information, for the purposes of the administration or execution of this Act.
- (6) The Chief Commissioner may collect information held by a council or the Valuer-General, and use that information, for the purposes of the administration or execution of this Act.
- (7) This section applies despite section 11 of the [Valuation of Land Act 1916](#).



(8) This section does not limit section 82 of the [Taxation Administration Act 1996](#).

(9) In this section:

**Chief Commissioner** includes a person authorised by the Chief Commissioner.

**council** includes a person authorised by a council.

**information** includes personal information within the meaning of the [Privacy and Personal Information Protection Act 1998](#).

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

#### **141 Disclosure of information to Treasurer**

(1) The Valuer-General may disclose to the Treasurer any information held by the Valuer-General for the purposes of the administration or execution of this Act.

(2) This section applies despite section 11 of the [Valuation of Land Act 1916](#).

(3) This section does not authorise the disclosure of personal information (within the meaning of the [Privacy and Personal Information Protection Act 1998](#)).

(4) In this section:

**Treasurer** includes a person authorised by the Treasurer.

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

#### **142 Notices to be in writing**

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

#### **143 Act binds the Crown**

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

#### **144 Delegation of functions**

(1) The Treasurer may delegate to the Secretary of the Treasury or any person employed in the Public Service any function of the Treasurer under this Act, other than a function under Part 4 or this power of delegation.

(2) A delegate may sub-delegate any function delegated by the Treasurer to any person employed in the Public Service, if authorised in writing to do so by the Treasurer.

(3) The Chief Commissioner may delegate to any person employed in the Public Service any function of the Chief Commissioner under this Act, other than this power of

delegation.

#### **145 Service of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by any of the following methods:
  - (a) in the case of an individual—by personal delivery to the person,
  - (b) by post to the address specified by the person for the service of documents of that kind,
  - (c) in the case of an individual who has not specified such an address—by post to the residential or business address of the person last known to the person serving the document,
  - (d) in the case of a corporation—by post to the registered office or any other office of the corporation or by leaving it at any such office with a person apparently over the age of 16 years,
  - (e) by email to an email address specified by the person for the service of documents of that kind,
  - (f) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of any other Act or law or of the rules of a court authorising a document to be served on a person by any other method.
- (3) In this section, **serve** includes give or send.

#### **146 Application of [Recovery of Imposts Act 1963](#)**

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

#### **147 General tax exemption for council does not apply**

This Act has effect despite section 741 of the [Local Government Act 1993](#).

**Note—**

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

#### **148 Nature of proceedings for offences**

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

#### **149 Regulations**

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

#### **150 Review of Act**

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

### **Part 11 Postponement of introduction of levy**

#### **151 Introduction of levy postponed**

- (1) The charging of a levy under this Act is postponed until the financial year that commences on the start date for the levy. Accordingly, no levy is chargeable until that financial year.
- (2) The provisions of this Part have effect despite anything to the contrary in this Act.

#### **Note—**

Initially the levy was to be charged in the 2017/2018 financial year. This Part postpones the introduction of the levy until a start date appointed by the regulations. The [Emergency Services Levy Act 2017](#) establishes an insurance contribution scheme that is to operate until the start date for the levy.

#### **152 Regulations may appoint start date for the levy**

- (1) The regulations may appoint a start date for the levy.
- (2) The start date must be a date of 1 July.

- (3) A regulation that appoints a start date for the levy must be published on the NSW legislation website no later than the date of 1 July in the financial year before the financial year in which the start date occurs.

### **153 Suspension of key provisions of Act during postponement**

- (1) The following provisions of this Act are suspended:
  - (a) Part 2 (Fire and emergency services levy),
  - (b) Part 3 (Amount of levy),
  - (c) Part 4 (Method for calculating ad valorem rate),
  - (d) Part 5 (Classification of land for levy),
  - (e) Part 6 (Charging and collection of levy by council), other than section 93,
  - (f) Part 7 (Payment of levy to State),
  - (g) Part 8 (Harmonisation with council rates and charges),
  - (h) Part 9 (Compliance and enforcement),
  - (i) any other provision specified in the regulations.
- (2) A provision of this Act has no operation while it is suspended, subject to this Part and the regulations.
- (3) The suspension imposed by this section is revoked on the date a regulation appointing the start date for the levy is published on the NSW legislation website or, if another date for the revocation of the suspension is appointed by the regulations, on that date.
- (4) Different revocation dates may be appointed for different provisions.
- (5) The regulations may suspend a provision of another Act or a regulation, but only as it operates in relation to the levy.
- (6) The suspension of a provision of this Act does not affect any proceedings under this Act pending before the Land and Environment Court immediately before the suspension. However, the Court may terminate any such proceedings and make such orders as it thinks fit in connection with that termination.
- (7) The regulations may make further provision for the effect of a suspension and the revocation of a suspension.
- (8) Nothing in this section authorises a levy to be charged before the start date for the levy.

#### **154 Pending applications are terminated**

- (1) The suspension of Part 5 of this Act terminates any application made by a person to a council under that Part that is pending before the council immediately before that suspension. Accordingly, a council is not required to decide on the application.
- (2) The council to whom the application was made is to advise the applicant of the termination and refund any application fee paid in connection with the application.
- (3) This section does not prevent a further application being made if the suspension of the provision under which the application is made is revoked.

#### **155 General saving**

The suspension, by or under this Act, of a provision of this Act, another Act or a regulation does not affect the validity of anything done before the suspension, including the validity of any regulation or other instrument made before the suspension.

### **Schedule 1 Public benefit land**

(Section 43)

- 1** Animal shelter, being premises used by a community group for the treatment or adoption of animals.
- 2** Approved education and care service (within the meaning of the [Children \(Education and Care Services\) National Law \(NSW\)](#)) or a State regulated education and care service (within the meaning of the [Children \(Education and Care Services\) Supplementary Provisions Act 2011](#)).
- 3** Boat shed, ramp or jetty.
- 4** Cemetery or crematorium, but only if the land is included on the Cemeteries and Crematoria Register under the [Cemeteries and Crematoria Act 2013](#).
- 5** Community centre, being a facility used for the physical, social, cultural or intellectual development or welfare of the community.
- 6** Cultural site, being an aquarium, art gallery, botanic garden, concert hall, library or archive, monument, memorial, museum, observatory, theatre or zoo.
- 7** Emergency services, being any of the following:
  - (a) a fire station, an ambulance station or a police station,
  - (b) land used by an emergency service for training purposes,
  - (c) land used by the State Emergency Service (within the meaning of the [State Emergency Service Act 1989](#)).
- 8** Higher education provider (within the meaning of Division 16 of Part 2-1 of the [Higher Education](#)

*Support Act 2003* of the Commonwealth).

- 9** Hospital (within the meaning of the *Public Health Act 2010*) or rehabilitation clinic.
- 10** Nature, being any of the following:
  - (a) a bicycle track, park, or walking trail,
  - (b) a flora reserve or State forest (within the meaning of the *Forestry Act 2012*),
  - (c) a marine park (within the meaning of the *Marine Estate Management Act 2014*),
  - (d) a conservation area or state conservation area (within the meaning of the *National Parks and Wildlife Act 1974*),
  - (e) land that is the subject of a conservation agreement under the *Biodiversity Conservation Act 2016*,
  - (f) a wilderness area (within the meaning of the *Wilderness Act 1987*),
  - (g) a World Heritage site.
- 11** A non-government school (within the meaning of the *Education Act 1990*).
- 12** Place of worship.
- 13** Public toilet or amenities block.
- 14** Sporting complex, including sports club facilities.
- 15** TAFE establishment (within the meaning of the *Technical and Further Education Commission Act 1990*).

## **Schedule 2 Industrial land**

(Section 46)

- 1** Manufacturing, including:
  - (a) a general purpose factory, being a building or place used for manufacturing, assembly or repairs (for example, a factory, motor vehicle repair facility, or workshop), and
  - (b) a food processing factory, being a purpose-built food processing facility (for example, a cannery, milk production plant, dairy or processing plant), and
  - (c) a major industrial complex with special purpose improvements for large-scale industrial use (for example, a car plant or paper mill).
- 2** Warehousing, distribution or storage, including:
  - (a) a general purpose warehouse used for the storage of goods, and
  - (b) open-area storage, with extensive hardstand area used for the storage of goods and equipment

(for example, a wrecking yard, concrete batching yard, or container storage).

- 3** Bulk grain storage, a silo or other structure used for the storage of grain, or bunkers used for the storage of grain.
- 4** Bulk liquid storage fuel depot, being a building or place with tanks for the storage and distribution of bulk liquids (for example, a fuel depot or oil terminal) but excluding retail fuel outlets and service stations.
- 5** Coolstore or coldstore, being a purpose-built structure used for the cold storage of perishable products.
- 6** Works depot, being a building or place used as a works depot in conjunction with infrastructure maintenance (for example, a municipal depot).
- 7** Tannery or skins drying depot, being a building or place used for the tanning of skins and hides.
- 8** Abattoir, being a purpose-built structure used for the holding and slaughter of stock and the preparation of meat for the wholesale market.
- 9** Stock sales yard, being a purpose-built structure used for the yarding and selling of stock.
- 10** Rendering plant, being a purpose-built structure used for the extraction of lard, tallow and oil from animal parts.
- 11** Oil refinery, being a purpose-built structure used in the refinement and storage of petroleum products.
- 12** Petro-chemical manufacturing, being a purpose-built structure used in the production of chemical-based products from petroleum.
- 13** Sawmill, being a purpose-built structure used for the milling and curing of timber.
- 14** Mining, being land that is classified as mining for the purposes of the [\*Local Government Act 1993\*](#).
- 15** Other extractive industries, including the extraction of sand, gravel, stone, clay, limestone, dolomite, gypsum, soil, precious metals, uranium, bauxite, gold, other metals, precious stones, and other minerals and ore, and the extraction of non-metals by a licensed operator, from deep underground, by way of an inclined or vertical passageway or shaft equipped with lifting machinery.
- 16** Tailings dump, being the storage or treatment of minerals or non-minerals in tailing dumps or dams.
- 17** Oil well or bore.
- 18** Water well, being a narrow hole drilled or dug into the earth for the production of water, including mineral water, water for stock or domestic purposes, and water for use in irrigation.
- 19** Evaporative salt pan.
- 20** Salt extraction basin, being the extraction of salt from a lake or man-made evaporative basin.
- 21** Dredging operations, being activities involving dredging for the extraction, treatment and

restoration of submerged materials.

- 22** Gas or fuel well, being specialist infrastructure used as a gas or fuel well.
- 23** Gas or fuel refinery.
- 24** Gas or fuel storage excluding retail fuel outlets and service stations.
- 25** Electricity power generators, including thermal power plants, hydroelectric generators, wind farms, and solar electric generation.
- 26** Refuse incinerator.
- 27** Refuse transfer station.
- 28** Sanitary landfill, being the disposal of household, commercial, industrial and public waste.
- 29** Refuse recycling.
- 30** Hazardous materials or toxic storage centre.
- 31** Toxic by-product storage or decontamination site for the storage of mining waste.
- 32** Sewerage or stormwater treatment plant.
- 33** Sewerage or stormwater pump station.
- 34** Water treatment plant, including a desalination plant.
- 35** Water storage tank, pressure control tower or pumping station.
- 36** Weighbridge.
- 37** Railway switching and marshalling yards.
- 38** Railway maintenance facility.
- 39** Railway passenger terminal, including a station.
- 40** Railway freight terminal facility.
- 41** Tramway maintenance and terminal facility.
- 42** Tram stop, including a shelter or a platform.
- 43** Airport hangar.
- 44** Heliport.
- 45** Port dock or berth, including the seabed adjoining a wharf with infrastructure used for the berthing of ships.
- 46** Cargo port wharf or pier and apron, being specialist infrastructure to facilitate the movement of



containers and cargo to and from ships.

- 47** Wharf storage sheds, being enclosed storage facilities within a wharf.
- 48** Piers, storages and slipways used for maintenance and launching of boats.
- 49** Lighthouse and navigation aids, being specialist infrastructure used to assist in sea navigation.
- 50** Postal exchange and mail and package sorting centre.
- 51** Telecommunications buildings and maintenance depots.
- 52** Telecommunications towers and aerals.
- 53** Printing works and printing press, being specialist infrastructure used for printing works (for example, newspaper print and magazines).
- 54** Purpose-built telephone exchange.

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

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

## **Part 2 Provisions consequent on enactment of this Act**

### **Division 1**

#### **1 (Repealed)**

### **Division 2 Introduction of levy**

#### **3 First financial year of the levy**

The levy is to be charged on and from the first financial year of the levy.

#### **4 Validation of things done in anticipation of commencement**

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

#### **5 (Repealed)**

#### **6 Matters that may be dealt with by regulation**

- (1) This clause has effect pending the making of regulations under this Act, and ceases to have effect when there is a regulation in force under this Act.
- (2) Land that is exempt from all rates under section 555 (1) (g) or (h) of the [Local Government Act 1993](#) is taken to be unvalued land under section 19.
- (3) The land referred to in subclause (2) is taken to have a land value of zero (as if a zero land value were specified by the regulations under this Act).
- (4) The land value of land on Lord Howe Island is to be calculated at a rate of \$70 per square metre or part of a square metre (as if that rate were specified by the regulations under this Act).
- (5) For the purposes of section 42 (1) (b) (i) of this Act, each of the following State owned corporations, and any subsidiary of those corporations, is taken to have been declared by the regulations to be a liable State owned corporation (accordingly, land owned by the State owned corporation or subsidiary is not government land):
  - (a) Essential Energy,
  - (b) Ausgrid,
  - (c) Endeavour Energy.
- (6) For the purposes of section 42 (1) (g) of this Act, the following land is taken to have been declared by the regulations to be government land:

- (a) land owned by WCX M4 Pty Limited (ACN 602 963 806),
- (b) land owned by the Crown or by a council that is the subject of a lease to the Crown (within the meaning of this Act) or a council, if the dominant use of the land is for the purposes of the lease,
- (c) land that is the subject of a lease and is used for the purpose of a government school (within the meaning of the [Education Act 1990](#)), if that use is the dominant use of the land,
- (d) Schedule 14 lands, or ALR Act lands, within the meaning of Part 4A of the [National Parks and Wildlife Act 1974](#), that are leased to the Minister under that Part.

## **7 Classification deadline**

- (1) For the purpose of enabling the levy to be charged on and from the start date for the levy, a council must classify all parcels of land within its area by the date that is 30 days after the suspension of Part 5 of this Act (under Part 11 of this Act) is revoked or by a later date prescribed by the regulations.
- (2) A failure by a council to classify any land in its area by that date does not affect the validity of any classification (whether done before or after that date).
- (3) (Repealed)

## **8 (Repealed)**

## **9 Extended time for initial appeals and reviews**

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

- (4) This clause has no effect during the suspension of Part 5 of this Act under Part 11 of this Act.

#### **10 Estimates under Part 4—adjustments for first financial year of the levy**

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

#### **11 Allowance for Monitor budget in first 2 years**

- (1) In the first 2 financial years of the levy, the Monitor budget is to be added into the calculation of the FESL revenue target under Division 2 of Part 4 of this Act (so that the FESL revenue target includes the Monitor budget for the financial year).
- (2) The Treasurer must, before the date of 30 April that occurs before the commencement of each of the first 2 financial years of the levy, prepare and adopt an estimate of the total of the expenditure that will be incurred in the exercise of the Monitor's functions for that financial year. That estimate is the **Monitor budget** for the financial year for which it is made.
- (3) The **first 2 financial years of the levy** means the first financial year of the levy and the financial year immediately after that.

## 12 Allowance for start-up costs in initial period

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

### Note—

This subclause permits initial start-up costs to be spread over the first 5 years of the scheme.

- (6) However, the Treasurer may add a start-up cost, or part of a start-up cost, to the FESL revenue target in a financial year only if the amount has not been included in the calculation of the FESL revenue target for a previous financial year.
- (7) This clause permits a start-up cost to be added to the FESL revenue target for a financial year only in the first financial year of the levy or a financial year that commences no later than 5 years after the start date for the levy.

## 13 Returns under section 107

The first return that is required under section 107 is a return for the first financial year of the levy.

## Part 3 Provision consequent on enactment of **Emergency Services Levy Act 2017**

## 14 Saving of things done before amendments

An amendment made to this Act by the *Emergency Services Levy Act 2017* does not

affect the validity of anything done before the commencement of the amendment.

#### **Schedule 4 (Repealed)**