

Our ref: R12/0060 Out-35875

29 May 2023

The Hon. Daniel Mookhey MLC
Treasurer

The Hon. Jihad Dib MP
Minister for Emergency Services

The Hon. Ron Hoenig MP
Minister for Local Government

By email: office@treasurer.nsw.gov.au, office@dib.minister.nsw.gov.au
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Dear Treasurer and Ministers

Emergency Services Levy – Options for Reform

Thank you for our recent meeting to discuss a way forward to resolve the significant Emergency Services Levy (ESL) cost burden on councils.

As you are no doubt aware, this issue continues to be of great concern to every council across the State as they finalise their budgets and prepare their rates collection notices.

For so many councils, the ESL increase for 2023/24 will largely, if not wholly, absorb the rate peg increase for the year, placing significant restrictions on their ability to fund community projects, staffing resources or much needed asset maintenance within their local areas.

Again, on behalf of all 128 councils across NSW – and their local communities – we urge you to consider restoring the ESL subsidy for the 2023/24 financial year. The timing of the announcement that the subsidy would not be provided this year, compounded by the dramatic increase in the amount of this year's levy, has caused considerable financial distress among councils. A reinstatement of the subsidy by the Minns Labor Government would be widely and warmly welcomed by our sector.

I appreciated you expressing interest at our 12 May meeting for longer term, financially sustainable solutions so that this situation does not arise year after year. As discussed in that meeting, councils are calling on the NSW Government to urgently introduce legislation to decouple the ESL from the rate peg, thereby enabling councils to recover the full cost of this impost. The local government sector warmly welcomed NSW Labor's support for this amendment in Parliament in 2021, however the reform was unfortunately blocked by the Berejiklian Government at that time.

LGNSW has reviewed how best to achieve decoupling the ESL from the rate peg and has received legal advice that this outcome can be achieved by amending the *Local Government*

Act 1993 and making a consequential amendment to the Local Government (General) Regulation 2005.

The format and content of those proposed amendments is provided in Attachment A. LGNSW would welcome the opportunity to discuss those proposed amendments with your relevant staff with a view to them being brought to Parliament at the earliest opportunity.

In summary, the key elements of the amendments are as follows:

1. the levy is charged for each parcel of rateable land in a local council's area,
2. the owner of rateable land is liable to pay the levy,
3. the levy is charged for each financial year,
4. the levy may be charged in the rates and charges notice or in a separate notice,
5. the levy may be paid in a single instalment or by quarterly instalments as specified in the levy notice,
6. interest accrues on unpaid levies that are due and payable,
7. the levy is payable to the local council of the area in which the land on which the levy is charged is situated,
8. levy monies must be held in the consolidated fund of local councils,
9. the levy monies must be applied by local councils towards meeting their 'contribution obligations' under the 'emergency services legislation',
10. the amount of income that may be earned by a local council from all levies charged within its area for a financial year must not exceed the contribution obligations of the Council for that year,
11. levies due and payable to a local council may be recovered as a debt due in a court of competent jurisdiction,
12. the levy is a charge on land,
13. concessions and writing-off provisions of the Local Government Act relating to rates and charges apply to levies,
14. information about levies is included in s603 certificates (which specify outstanding rates, charges and debts payable to Council in relation to a property.)

I would welcome your review of the proposed amendments attached. Given the significant cost burden and uncertainty that the imposition of the ESL is currently causing to councils, and the flow on adverse impacts that will impact every community across NSW, I would appreciate you treating this request as a matter of urgency.

If you would like to discuss this matter further, please have your office contact Bronwen Regan, Government Relations Manager at bronwen.regan@lgnsw.org.au or on 02 9242 4057.

Yours sincerely



Cr Darriea Turley AM
President

Attachment A

Amendments to the Local Government Act 1993 for an Emergency Services Levy

Section 491: Insert “levies” after fees in section 491

491 Some sources of a council’s income

A council may, in accordance with this Chapter, obtain income from—

- rates
- charges
- fees
- levies
- grants
- borrowings
- investments.

Section 505 Application of Part

In section 505(a)(vii) Insert “and a levy charged under Part 10A, and”

- (vii) fire and emergency service levies payable under the Fire and Emergency Services Levy Act 2017 and a levy charged under Part 10A, and

Part 10A Emergency Services Levy

After Part 10 in Chapter 15 insert a new Part 10A

Part 10A Emergency Services Levy

612A Interpretation

In this Part –

emergency services contribution obligations means:

- (a) a fire brigade contribution within the meaning of Division 4 of Part 5 of the *Fire and Rescue NSW Act 1989*,
- (b) a rural fire brigade contribution within the meaning of Division 5 of Part 5 of the *Rural Fires Act 1997*,
- (c) a SES contribution within the meaning of Division 4 of Part 5A of the *State Emergency Service Act 1989* **levy** means a levy referred to in s612B.

612B Emergency services levy

- (1) A council may charge and collect a levy for each financial year for each parcel of rateable land in its area.
- (2) The amount of the levy may be the same or different for different parcels of rateable land.
- (3) A levy collected by a council under this Part is to be held and applied by the council towards funding the council's emergency services contribution obligations for the financial year in which the levy is charged.

612C What criteria are relevant in determining the amount of the levy?

In determining the amount of the levy, the council may have regard to (but is not limited to) the following—

- the location of the land for which the levy will be charged
- the area of land for which the levy will be charged
- the categorisation of rating purposes of the land for which the levy will be charged
- the nature and use of premises situation on the land for which the levy will be charged.

612D Who is liable to pay the levy?

- (1) The owner for the time being of rateable land in respect of which a levy is charged is liable to pay the levy to the council, except as provided by this section.
- (2) If land owned by the Crown is leased, the lessee is liable to pay the levy.
- (3) If there are two or more owners, or two or more lessees from the Crown, of the land, they are jointly and severally liable to pay the levy.

612E Levy is payable for financial year

The levy is payable for the financial year in which the levy is charged.

612F Limit on income earned from levy

The total amount of income that may be earned by a council from all levies charged within its area for a financial year must not exceed the council's emergency services contribution obligations for that year.

612G How is the levy charged?

- (1) The levy is to be charged by serving notice on the rateable person for the parcel of rateable land on which the levy is charged.
- (2) The levy is to be described in the notice as the "Emergency Services Levy".
- (3) A levy notice may be combined with the notice of the rates or charges that is served the rateable person or may be served separately.
- (4) A levy notice may be served at any time after 1 July in the financial year for which the levy is charged.

612H How is the levy paid?

The levy may be paid in a single instalment by a date specified in the levy notice or by quarterly instalments by the dates specified in the levy notice.

612I Levies 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.

612J Interest on unpaid levy

Sections 566 and 567 apply to interest on unpaid levies that are due and payable in the same way as those sections apply to interest on unpaid rates and charges.

612K Levy is a charge on land

Section 550 applies to a levy charged under this Part in the same way as it applies to a rate or charge that has been levied on land.

612L Sale of land to recover levy

Division 5 of Part 2 of Chapter 17 applies to the levy in the same way as it applies to a rate or charge.

612M Strata lots and company titles treated as separate parcels

Section 495A applies in respect of the charging of a levy under this Part in the same way as it applies in respect of the levying of an annual charge under that Act.

612N Application of strata provisions

- (1) Section 192 of the *Strata Schemes Development Act 2015* applies to the charging of the levy under this Part in the same way as it applies to the levying of a rate.
- (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.

612O Application of Act to company title

Section 547 (except subsection (1)(b)) applies to the charging of levies under this Part in the same way as it applies to levying rates and charges.

612P Writing off levy and accrued interest

Section 567, 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.

612Q Collection of levy from occupier

Section 569 applies in respect of the levy in the same way as it applies in respect of a rate or charge under that Act.

612R Transfer of land to pay levy

Section 570 applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.

612S Transfer of land

Section 571 applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.

612T Subdivision of land

Section 573 applies in relation to the levy in the same way as it applies in relation to rates or charges under that Act.

612U Concessions

Section 575 (excluding subsection (3)) and sections 577–579 apply for the purposes of this Part in the same way as they apply for the purposes of Division 1 of Part 8 of Chapter 15.

612V Waiving payment of levy

- (1) Section 582 applies to the levy in the same way as it applies to rates or charges under that Act.
- (3) Section 583 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.

612W Certificate as to levy

A reference in section 603 to rates, charges or other amounts includes a reference to the levy.

612X Recovery of levy as debt

- (1) A levy payable to a council under this Part 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 this Act.

612Y Proceedings for recovery of levy

- (1) Section 712 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.

Consequential Amendment to Clause 127, Local Government (General) Regulation 2005

In the heading to Clause 127 insert “and” after Rates and “and levy” after charges:

127 Rates ~~and~~, charges and levy notices

Clause 127(2):

Omit clause 127(2). Insert instead—

(2) A levy notice under section 612G of the Act must contain the following information:

- (a) the land on which the levy is charged,
- (b) the amount of the levy payable,
- (c) particulars of any outstanding arrears of levies charged on the land and of any interest payable on those amounts,
- (d) the total amount due and the date for payment of the levy,
- (e) the amounts payable for, and the due dates for payment of, instalments of the levy,
- (f) the information in subclause (1)(j), (k), (o), (p) and (q)(x) and (xi).

Clause 127(3):

Omit the subclause.
