

**FIRE AND EMERGENCY SERVICES LEGISLATION (EMERGENCY SERVICES LEVY)  
AMENDMENT BILL 2002**

**Explanatory Memorandum**

**Part 1 - Preliminary**

**Clause 1 Explanation Short title**

This is the formal clause titling the Bill.

**Clause 2 Explanation Commencement**

The date of commencement will be fixed by proclamation. Different commencement days may be fixed for different provisions.

**Part 2 – Amendments to the *Fire and Emergency Services Authority of Western Australia Act 1998***

**Clause 3 Explanation The Act amended**

The amendments in this Part of the Bill relate to *the Fire and Emergency Services Authority of Western Australia Act 1998*, the “FESA Act”.

**Clause 4 Explanation Section 3 amended**

This clause provides the additional definitions required for the purposes of the amendments to the FESA Act:

- annual estimate;
- assessment notice;
- Crown land;
- ESL category area;
- gross rental value;
- leviable land;
- levy;
- levy interest;
- levy year;
- owner.

### **Clause 5 Explanation Sections 3A and 3B inserted**

This clause inserts new sections 3A and 3B into the FESA Act.

Section 3A provides a definition of 'owner of land'. Its purpose is to specify the various categories of persons to whom the provisions of the Act which relate to land ownership (e.g. the emergency services levy) will apply (refer section 36P, 'Liability for levy'). This includes the State Government, Local Governments, the private sector, individuals, lessees of Crown land, holders of mining tenements and holders of petroleum production licences or petroleum exploration permits. It is intended that an exemption under the regulations will be granted in relation to levy otherwise payable on petroleum exploration permits.

Section 3B stipulates that the FESA Act 'binds the Crown'.

### **Clause 6 Explanation Section 12 amended**

This clause amends section 12, 'Powers of the Authority', to include a general power which will enable FESA to commercialise its expertise and intellectual property in accordance with Government endorsed policies.

### **Clause 7 Explanation Section 15 amended**

This clause amends the Minister's powers to delegate functions under the 'emergency services Acts' – the FESA Act, *Fire Brigades Act 1942* and *Bush Fires Act 1954*. The amendment will prevent the Minister from delegating functions in relation to the emergency services levy.

### **Clause 8 Explanation Section 18B amended**

This clause addresses an inadvertent omission from the *Fire and Emergency Services Legislation Amendment Bill 2001*. It amends Section 18B(3)(j) of Part 3A, 'State Emergency Service', of the FESA Act to empower FESA to "restrict or prohibit the movement of persons and vehicles including, if necessary, by the closure of roads or any area of water". The State Emergency Service may require such powers to exercise its functions in relation to natural disasters and search and rescue.

As amended, the provisions of section 18B(3)(j) will mirror the powers available in:

- Part 3B, 'Volunteer Marine Rescue Services' – refer section 18G(3)(f); and
- Part 3C, 'FESA Units' – refer section 18L(3)(f).

### **Clause 9 Explanation Part 6 heading replaced**

The existing heading of Part 6, 'Financial provisions', is replaced with a new heading, 'General financial provisions'.

**Clause 10 Explanation    Section 29 amended**

This clause amends section 29, 'Funds of the Authority', which covers, in broad terms, the sources of funds available for the purpose of enabling the Authority (FESA) to perform its functions. The provisions of existing sections 29(b), (c) and (d) are consolidated and simplified into new section 29(b) - "other moneys lawfully provided for the purposes of the emergency services Acts or received by the Authority in the performance of its functions under those Acts".

**Clause 11 Explanation    Section 30 amended**

Clause 11(1) deletes the existing reference to section 46 of the *Fire Brigades Act 1942*, as that section is being repealed by clause 22, 'Part IX repealed', of this Bill.

Clause 11(2) amends section 30(2) to include a new provision which empowers FESA's 'Fire and Emergency Services Authority Account' to be charged with amounts payable to local governments in relation to their fire and emergency services.

Clause 11(3) amends section 30(2)(c) to allow a qualification, as per section 30(3), to the broad provision that the 'Fire and Emergency Services Authority Account' is to be charged with "all other expenditure lawfully incurred by the Authority in the performance of its functions".

Clause 11(4) adds new section 30(3), which prohibits the use of funds raised under Part 6A, 'Emergency services levy', from being expended upon services prescribed for the purposes of section 35B(2)(a). The estimated cost of those prescribed services is not included in the estimates used to determine the emergency services levy, so the cost of those services is not to be funded by the levy.

**Clause 12 Explanation    Section 33 amended**

This clause amends section 33, 'Other borrowing', to reflect that all of FESA's powers in relation to borrowings are being consolidated in the FESA Act. This involves:

- the repeal of section 46, 'Borrowing powers', of the *Fire Brigades Act 1942*, (by clause 22, 'Part IX repealed', of this Bill); and
- amendments to section 33 of the FESA Act.

Clause 12(a) amends section 33(1) to delete the existing reference to section 46 of the *Fire Brigades Act 1942*.

Clause 12(b) amends section 33(1) to reflect the consolidation of borrowing powers, by specifying that FESA may "borrow moneys for the purposes of performing its functions under the emergency services Acts" – rather than simply "for the purpose of performing its functions".

### **Clause 13 Explanation    Sections 35A and 35B inserted**

This clause inserts new sections 35A and 35B into the FESA Act.

Section 35A, 'Reserve funds', updates and replaces section 46A, 'Establishment of Replacement Funds', of the *Fire Brigades Act 1942*.

Reserve funds:

- may be credited with amounts provided for in FESA's annual estimates or with any other amounts approved by the Minister; and
- may be utilised:
  - to purchase, construct, renew, maintain or replace land, buildings, vessels, plant or equipment – or any other property approved by the Minister; or
  - to repay moneys borrowed by FESA; or
  - for any other purpose approved by the Minister.

Section 35B, 'Annual estimates of expenditure by Authority', requires that FESA prepare annual estimates of its expenditure in relation to services to be provided under the emergency services Acts.

These estimates are to be prepared in the manner and form approved by the Minister, and are to be submitted for the approval of the Minister by the time determined by the Minister. The Minister may either approve such estimates, or may direct FESA to submit amended estimates for approval. FESA is to comply with such directions.

FESA's annual estimate of expenditure is to include and specifically identify the following:

- the estimated expenditure related to prescribed services to be provided under the emergency services Acts (e.g. the cost of Volunteer Marine Rescue Services, which is not to be funded by the emergency services levy); and
- local governments' estimated expenditure on their fire and emergency services – to the extent that such expenditure has been approved by FESA under section 36A.

### **Clause 14 Explanation    Section 36 amended**

The provisions of the FESA Act and the *Fire Brigades Act 1942* which cover the 'Application of the *Financial Administration and Audit Act 1985*' are to be consolidated in the FESA Act.

The provisions of the *Financial Administration and Audit Act 1985* will apply to FESA, with the exception that section 35B, 'Annual estimates of expenditure by Authority', of the FESA Act will apply instead of section 42, 'Estimates of statutory authorities' of the *Financial Administration and Audit Act 1985*.

Clause 14 amends section 36 of the FESA Act to:

- delete the existing reference to section 47, 'Application of the *Financial Administration and Audit Act 1985*', of the *Fire Brigades Act 1942*, as that section is being repealed by clause 22, 'Part IX repealed', of this Bill; and
- insert a reference to section 35B of the FESA Act.

## **Clause 15 Explanation    Part 6A inserted**

This clause inserts Part 6A, 'Emergency services levy', which includes new sections 36A to 36ZL.

### **Division 1 – Annual estimates of expenditure**

Section 36A, 'Annual estimates of expenditure by local governments and payments by Authority', requires that local governments prepare annual estimates of their expenditure in relation to fire and emergency services. As this expenditure is to be funded by the emergency services levy ('the levy'), a formal submission/approval process is provided in the legislation.

Local governments' estimates are to be prepared in the manner and form approved by the Minister, and are to be submitted for the approval of FESA by the time determined by the Minister. FESA may either approve such estimates, or may direct a local government to submit amended estimates for approval. The local government is to comply with such directions.

A local government will not be required to submit expenditure estimates if the Minister gives the local government written notice to that effect.

FESA will pay to local governments the amount of approved expenditure. Such payments will be made by the time, and in accordance with the procedures, determined by the Minister. (Refer also section 36Y, 'Ministerial guidelines'.)

### **Division 2 – Emergency services levy and ESL category areas**

Section 36B, 'Annual levy payable to Authority on land in an ESL category area'.

This section specifies that, unless otherwise provided for in Part 6A of the FESA Act, the levy is payable on all land located in an ESL category area. (Refer also section 36F, 'Declaration of ESL category areas'.)

Section 36C, 'Record of leviable land', requires FESA to ensure that a record is compiled of all leviable land – land on which the levy is payable. The record is to be compiled at the time and in the manner approved by the Minister.

One of the intentions of this provision is to make it clear that although the Valuer General is responsible for providing the valuations upon which levy calculations are based, FESA is responsible for identifying all land which requires such valuations.

### Section 36D, 'Exemptions may be prescribed'

This section specifies that exemptions may be prescribed in regulations. Such regulations may:

- provide for kinds of land that are exempt or partially exempt from the levy (For example, it is intended that an exemption under the regulations will be granted in relation to levy otherwise payable on petroleum exploration permits); and
- specify conditions to which the exemption, or partial exemption, is subject.

This section is included to cover anomalous situations that may arise in the application of the ESL. It is not intended that individuals generally could apply for an exemption.

### Section 36E, 'Exemptions in other enactments not to apply'

This section stipulates that any legislation, passed before or after the commencement of this section, that purports to exempt a person from liability to pay any rate, tax or imposition does not exempt that person from liability to pay the levy – unless it expressly exempts that person from liability to pay the levy.

### Section 36F, 'Declaration of ESL category areas'

This section provides that regulations may prescribe different emergency services categories for different kinds of services that are provided under the emergency services Acts. For example, it is envisaged that the following ESL categories will be established initially:

- ESL category 1 – communities supported by:
  - A network of Career Fire and Rescue Service stations; and
  - The statewide State Emergency Service (SES) network.
- ESL category 2 – communities supported by:
  - A Career Fire and Rescue Service station; and
  - The statewide SES network.
- ESL category 3 – communities supported by:
  - A Volunteer Fire and Rescue Service brigade or Bush Fire Brigade, with the availability of network of Career Fire and Rescue Service stations; and
  - The statewide SES network.and/or communities supported by:
  - A Volunteer Fire and Rescue Service brigade with additional on-site support from resident career firefighter/s; and
  - The statewide SES network.
- ESL category 4 – communities supported by
  - A Volunteer Fire and Rescue Service brigade; or
  - A FESA Unit or Bush Fire Brigade equipped with breathing apparatus; and
  - The statewide SES network.
- ESL category 5 – all other areas of the State.

The Minister will, by notice/s published in the *Government Gazette*, declare the ESL category within which each area in the State falls. These declarations may be

subsequently varied or revoked. Before a notice is published in relation to an area of the State, the Minister is to consult with each local government whose local government district falls within the area covered by the notice.

A notice cannot have effect during the levy year in which it is published, so it will only come into operation in the following levy year.

### **Division 3 – Determination and assessment of levy**

#### Section 36G, 'Minister to determine levy'

This section requires the Minister to declare, by notice published in *the Government Gazette*, the levy that is payable for the next levy year on all land located in an ESL category area.

This notice is to be published before either:

- A day declared by the Minister by notice published in the *Government Gazette* – after consultation with persons who the Minister believes effectively represent the interests of local governments; or
- 31 May, if no day has been declared under such arrangements.

(These arrangements have been established to ensure that the declarations are made in time to link in with local governments' budget and rating arrangements. Local governments will be collecting the levy in conjunction with their rates and service charges – refer section 36J, 'Assessment of levy and assessment notices'.)

When determining the levy payable, the Minister is to take into consideration:

- the total estimated expenditure which is to be funded by the levy, which is the annual estimate of expenditure by FESA approved by the Minister under section 35B, after deduction of
  - the amount of estimated expenditure identified in relation to prescribed services; and
  - moneys appropriated by Parliament for the purposes of services provided under the emergency services Acts;and
- any other matter that the Minister considers relevant to a proper determination of the levy.

Different rates of levy may be determined in respect of each ESL category area, and/or the purpose for which the land is to be used.

#### Section 36H, 'Determination of levy by reference to gross rental value etc.'

Except as otherwise provided for in this section and in section 36I, 'Minimum and maximum amounts of levy', the levy payable on land will be determined as a rate in the dollar of the gross rental value in force under the *Valuation of Land Act 1978* as at 1 July in the levy year.

If the gross rental value in force as at 1 July in the levy year is amended as at that date, then the amended gross rental value shall apply in respect of the levy.

After consulting with the Valuer General and with the local government for the district in which the land is located, the Minister may determine the levy as a rate in the dollar of the gross rental value of a portion of the land, or on any other basis that the Minister considers appropriate (e.g. a flat charge amount).

#### Section 36I, 'Minimum and maximum amounts of levy'

The Minister may determine the minimum and maximum amounts of levy payable. Different minimum and maximum amounts may be determined according to either or both of the following:

- the ESL category area in which the land is located;
- the purpose for which the land is used.

#### Section 36J, 'Assessment of levy and assessment notices'

Local governments are to assess the amount of levy payable by each person who owns land in the local government district, and are to send written assessment notices to such persons. (The exceptions to this are that FESA will collect the levy payable by local governments and by the State or a State agency or instrumentality.)

The assessment notice is to state the date that the notice was issued, and is to include or be accompanied by any matters prescribed by the regulations. If the levy assessment is based upon the purpose for which the land is used, then the notice is also to state that purpose.

The levy assessment notice is to be given by a local government as part of its rates notice issued under the *Local Government Act 1995*, or if no such notice is issued, as a separate notice. An assessment notice is taken to have been served on an owner if it is sent to the address shown on the local government's rate record. If the owner is not listed on the local government's rate record, the notice is taken to have been served if it has been delivered to the person personally, or posted to the person's last known address.

If leviable land is owned by two or more owners, service of the levy assessment notice on any one of them is taken to be service on each of them.

#### Section 36K, 'Authority to ensure local governments have information'

This section requires that FESA ensure that a local government is provided with all information relating to the levy and leviable land that the local government reasonably needs to perform its functions under section 36J.

#### Section 36L, 'Assessment of levy payable by the State, local governments and other persons'

This section requires FESA to assess the levy payable on land owned by the State, a State agency or instrumentality. It also empowers FESA to assess the levy payable by other persons.

FESA is to serve the assessment notices on the Treasurer, the agency/instrumentality or the other person respectively.

The provisions of section 36J in relation to levy assessment notices issued by local governments also apply to levy assessment notices issued by FESA.

Section 36M, 'When levy becomes due and payable'

The levy becomes due and payable on the date determined by the Minister and stated in the assessment notice, subject to any concessions or agreements made under section 36R, and to the provisions of the *Rates and Charges (Rebates and Deferments) Act 1992*.

The date determined by the Minister shall not be earlier than 35 days after the issue date of the assessment notice.

Section 36N, 'Notice and payment of levy payable on State land'

As an alternative to the provisions of section 36L, 'Assessment of levy payable by the State, local governments and other persons', FESA may enter into arrangements with the Treasurer concerning billing / payment arrangements in respect of the levy. For example, it may be more efficient to 'bulk bill' rather than issuing individual notices.

Section 36O, 'Levy is a charge on land'

The levy, levy interest and recovery costs, are charges on the leviable land.

This section mirrors the equivalent provision of the *Local Government Act 1995* (section 6.43) in relation to local government rates and service charges.

Section 36P, 'Liability for levy'

The owner of leviable land is liable to pay the levy. If leviable land is owned by two or more persons, they are jointly and severally liable to pay the levy.

The levy is payable to the local government which issued the assessment notice, or to FESA if FESA issued the assessment notice.

This section is consistent with the equivalent provision of the *Local Government Act 1995* (section 6.44) in relation to local government rates and service charges.

Section 36Q, 'Minister may approve payment of levy by instalments'

The levy is payable by a single payment, however the Minister may approve arrangements for:

- the levy to be paid by instalments; and
- the charges which are to apply to such arrangements.

This section is consistent with the equivalent provision of the *Local Government Act 1995* (section 6.45) in relation to local government rates and service charges.

Section 36R, 'Discounts, concessions and agreements'

The Minister is empowered to grant discounts or other incentives for early payment of the levy, and to grant other concessions or waive the levy.

Local governments may accept payment of the levy in accordance with agreements made between the local government and the person/s concerned.

This section is consistent with the equivalent provisions of the *Local Government Act 1995* (sections 6.46, 6.47 and 6.49) in relation to local government rates and service charges.

Section 36S, 'Accrual of interest on overdue levy'

Interest accrues a levy which is not paid to the local government or FESA by the due date.

The interest rate to be charged will be that declared by the Minister and published in the Government Gazette.

This section is consistent with the equivalent provision of the *Local Government Act 1995* (section 6.51) in relation to local government rates and service charges.

Section 36T, 'Levy may be apportioned'

The levy is apportionable between successive owners of the land, and between owners of several portions of the land.

If a person other than the owner of leviable land pays the levy, the owner is liable to reimburse that person, unless there is an agreement to the contrary.

This section is consistent with the equivalent provision of the *Local Government Act 1995* (section 6.52) in relation to local government rates and service charges.

Section 36U, 'Local government receives levy on behalf of Authority'

Where a local government collects the levy on behalf of FESA, any amounts of levy and levy interest paid to the local government are received by it on behalf of FESA.

If a local government credits moneys received on behalf of FESA to the local government's Trust Fund, and subsequently invests the moneys, the local government may retain the investment income earned.

Section 36V, 'Local government to pay levy and other amounts to Authority'

Levy and levy interest collected by local governments, on behalf of FESA, are to be paid to FESA at the time and in accordance with the procedures determined by the Minister after consultation with the local government.

The levy payable by the local government on any leviable land that it owns is also to be paid to FESA in accordance with the above arrangements.

Section 36W, 'Local governments to be paid certain fees'

The fees to be paid to local governments for their performance of functions under Part 6A are to be determined by the Minister, together with the times and procedures for payment of such fees.

The Minister is to consult with persons who the Minister believes effectively represent the interests of local governments. The Minister is also to take into consideration the costs reasonably incurred by the local governments in making the preparations necessary to perform their functions under Part 6A.

Section 36X, 'Interest payable on amounts not paid by due date to Authority'

Interest is payable on amounts of levy and levy interest received by a local government but not paid to FESA within the timeframes determined under Section 36V.

The applicable interest rate is to be declared by the Minister and published in the Government Gazette.

Section 36Y, 'Ministerial guidelines'

For the purposes of the levy arrangements, the Minister may issue guidelines setting out the times and procedures determined by the Minister. These guidelines may be amended or revoked.

In relation to the guidelines to apply to functions performed by local governments, the Minister is to consult with persons who the Minister believes effectively represent the interests of local governments.

Copies of the guidelines are to be provided to FESA and to each local government that performs functions to which the guidelines apply.

**Division 6 – Recovery of unpaid levy**

Section 36Z, 'Recovery of unpaid levy'

Unpaid levy, levy interest and recovery costs are recoverable by the local government or by FESA from the owner of the land.

This section is consistent with the equivalent provision of the *Local Government Act 1995* (section 6.55) in relation to local government rates and service charges.

Section 36ZA, 'Question of title to land not to affect jurisdiction'

If there is a question of the title to land, it does not affect the jurisdiction's ability to entertain proceedings to recover the levy or to entertain related matters.

This section mirrors the equivalent provision of the *Local Government Act 1995* (section 6.59) in relation to local government rates and service charges.

## **Division 7 – Sale of land if levy is unpaid**

### Section 36ZB, ‘Definition’

This section provides that in this section, “levy” includes levy interest.

### Section 36ZC, ‘Application for order of sale of land’

If Levy that is due and payable on land is outstanding for three years or more, FESA may apply to the Supreme Court for an order to sell the land, or part of the land. The sale proceeds may then be applied towards satisfaction of the outstanding debt.

The procedures to be followed by FESA prior to making application to the Supreme Court are detailed in section 36ZC, as are the action which may be taken by the Supreme Court.

The manner in which the sale proceeds are to be applied is detailed in section 36ZC/5.

This section is consistent with the equivalent provisions of the *Local Government Act 1995* (sections 6.64 and 6.68) in relation to local government rates and service charges.

### Section 36ZD, ‘Authority has interest in land on which levy is due and payable’

In respect of land where there is an unpaid levy, FESA may lodge a caveat to preclude dealings in relation to the land.

## **Division 8 – Objections and Appeals**

### Section 36ZE, ‘Objection to determination of use of land’

If a levy determination is based on the purpose for which the land is used, the owner may object to the determination. Such objections are to be addressed in writing to the Minister, and are to be served on the Minister within 60 days after the date of assessment notice.

The Minister may either allow or disallow the objection. The person making the objection is to be given written notice of the Minister’s determination, and the reasons for the determination.

### Section 36ZF, ‘Appeal against determination of Minister on objection’

A person who is dissatisfied with the Minister’s determination on an objection by the person, may service written notice on the Minister requiring the Minister to treat the objection as an appeal.

This section is consistent with the equivalent provisions of the *Local Government Act 1995* (section 6.77) in relation to local government rates and service charges.

### Section 36ZG, 'Referral of appeal to Tribunal'

Upon receipt of a notice under section 36ZF, the Minister is to refer the objections to a Land Valuation Tribunal.

This section mirrors the equivalent provision of the *Local Government Act 1995* (section 6.79) in relation to local government rates and service charges.

### Section 36ZH, 'Liability to pay levy not affected by objection or appeal'

The lodgement of an objection/appeal under this Division, or under the Valuation of Land 1978, does not affect the liability to pay the levy.

This section mirrors the equivalent provision of the *Local Government Act 1995* (section 6.81) in relation to local government rates and service charges.

If an objection/appeal lodged by a person is successful, the necessary adjustments are to be made to the levy, and the person is to be given written notice of the adjusted levy.

## **Division 9 – Fees and Charges**

### Section 36ZI, 'Emergency services fees and charges in certain cases'

This section updates and consolidates the fees and charges provisions that were previously detailed in the *Fire Brigades Act 1942*.

Fees and charges, at a level prescribed in the regulations, are payable to FESA for the provision of the following services under the emergency services Acts:

- services provided in respect of land that is exempt or partially exempt from the levy,
- services provided in respect of a vessel in a port,
- services provided in respect of confining or ending a hazardous material incident and rendering the site of the incident safe, or
- an attendance in response to a false alarm.

### **Clause 16 Explanation    Section 38A amended**

This clause addresses an inadvertent omission from the *Fire and Emergency Services Legislation Amendment Bill 2001*. It amends section 38A(1) to clarify that a person must not obstruct or hinder a relevant officer in the performance of the officer's functions under Part 3C, 'FESA Units'. There is already a reference to Part 3C in section 38A(2) and (3).

### **Part 3 – Amendments to the Fire Brigades Act 1942**

#### **Clause 17 Explanation    The Act amended**

The amendments in Part 3 of the Bill relate to the *Fire Brigades Act 1942*.

#### **Clause 18 Explanation    Section 4 amended**

The existing definitions of “insurance company”, “policy of insurance” and “year” are to be deleted, as they were only required in relation to the funding arrangements included in provisions of this Act which are being repealed.

#### **Clause 19 Explanation    Section 26A amended**

This clause deletes:

- section 26A(2)(e) which is no longer required as it has been upgraded and replaced by new section 12(2)(e) of the FESA Act – being inserted by clause 6 of this Bill.
- section 26A(2)(j)(ii) which is no longer required as it has been replaced by new section 36ZI(1)(c) of the FESA Act – being inserted by clause 15 of this Bill.

#### **Clause 20 Explanation    Section 35 amended**

This clause updates the provisions of section 35, ‘Power to make regulations’ to:

- incorporate the general provisions of section 35(z) into the preamble as new section 35(1), with the balance of section 35 then becoming section 35(2);
- amend the reference in existing section 35(pa) to reflect that section 26A of the Act has been amended;
- delete existing section 35(q) which is no longer required as it has been replaced by new section 36ZI(1)(b) of the FESA Act – being inserted by clause 15 of this Bill; and
- amend the reference to ‘fees’ in existing section 35(v) to ‘fees and charges’.

#### **Clause 21 Explanation    Section 35A replaced**

This clause repeals section 35A, to remove the references to insurance matters related to the funding arrangements that are being replaced by the emergency services levy.

The provisions of 35A relating to the declaration of permanent brigade districts are retained.

#### **Clause 22 Explanation    Part IX repealed**

This clause repeals Part IX, 'Financial provisions', of the Act, which included the following provisions relating to funding arrangements and financial management. Such matters are now to be dealt with in the FESA Act:

- section 36, 'Annual estimate of expenditure';
- section 37, 'Contributions towards expenditure';
- section 38, 'Contributions of local governments, how raised';
- section 39, 'Returns by insurance companies';
- section 40, 'Amount of contribution by individual insurance companies, how to be ascertained';
- section 41, 'Marine insurance companies';
- section 42, 'Insurance companies to permit books to be inspected';
- section 43, 'Recovery of contributions and further contributions for delay in payment';
- section 44, 'Insurance companies to contribute in certain cases';
- section 45, 'Supply of deficit in any year and appropriation of any surplus';
- section 46, 'Borrowing powers';
- section 46A, 'Establishment of Replacement Funds';
- section 46B, 'Estimated expenditure may be placed in separate account';
- section 47, 'Application of *Financial Administration and Audit Act 1985*';

#### **Clause 23 Explanation    Section 62 repealed**

This clause repeals section 62, 'Owner to give information as to insurance', which is no longer required as it related to the funding arrangements included in provisions of this Act which are being repealed.

#### **Clause 24 Explanation    Section 65 repealed**

This clause repeals section 65, 'Charges for brigades attending fires', as such matters will be dealt with in section 36ZI of the FESA Act – being inserted by clause 15 of this Bill.

#### **Clause 25 Explanation    Section 68 repealed**

This clause repeals section 68, 'Powers of agents', as it related to the funding arrangements included in provisions of this Act which are being repealed

#### **Clause 26 Explanation    Section 69 repealed**

This clause repeals section 69, 'Power of agents to deduct payments made for owners', a 1942 provision which is no longer required. These days one would expect such powers to be the subject of agreement between the agent and principal.

**Clause 27 Explanation**    **Section 70 repealed**

This clause repeals section 70, 'Power of trustee', a 1942 provision which is no longer required. It appears that the matters intended to be provided for in this section would be covered by the *Trustees Act 1962* s.30(1)(g) by which a trustee may pay rates, taxes, assessments, insurance premiums and other outgoings in relation to the property.

**Clause 28 Explanation**    **Fourth Schedule repealed**

This clause repeals the Fourth Schedule, which is no longer required. It relates to matters provided for in section 46(8), which is being repealed by clause 22 of this Bill.

**Part 4 – Rates and Charges (Rebates and Deferments) Act 1992**

**Clause 29 Explanation**    **The Act amended**

The amendments in Part 4 of the Bill relate to the *Rates and Charges (Rebates and Deferments) Act 1992*.

The intention of these amendments is that the pensioners or seniors rebates and deferments that apply in relation to local government rates will also apply in relation the levy.

**Clause 30 Explanation**    **Section 3 amended**

This clause amends section 3 of:

- qualify the definition of “administrative authority” with a reference to new section 3(1a);
- provide a definition for “emergency services levy”;
- amend the existing definition of “prescribed charge to include a reference to the emergency services levy”; and
- add section 3(1a) to clarify that the “administrative authority” for the emergency services levy is the local government that serves the assessment notice.

**Clause 31 Explanation**    **Section 17 amended**

Sections 16 and 17 of the *Rates and Charges (Rebates and Deferments) Act 1992* cover procedural matters under which “administrative authorities” such as local governments allow rebates and deferments in respect of “prescribed charges” such as council rates, and then seek reimbursement from Treasury.

These arrangements are also to apply in relation to the levy, except that reimbursements in relation to the levy will be paid directly from Treasury to FESA. This will assist local governments by reducing administrative arrangements that would otherwise require them

to receive the reimbursement from Treasury and then forward it to FESA.

Specifically, clause 31 amends section 17 to qualify section 17(1a) with a reference to new section 17(1b). Section 17(1a) deals with claims by local governments in relation to deferments, and empowers Treasury to pay interest to local governments on the aggregate of the amounts they have allowed to be deferred in a financial year. The reference to section 17(1b) inserted into section 17(1a) recognises that interest payments in relation to levy deferments are to be made direct to FESA.

New section 17(1b) stipulates that payment of claims for levy rebates and levy deferment interest claims are to be made directly to FESA.

**Clause 32 Explanation**     **Section 32 amended, and transitional**

This clause stipulates that an application for registration for entitlements in relation to rates is to be taken as an application for entitlements in relation to the emergency services levy. (This will save persons from having to make two separate applications for entitlements.)

**Clause 33 Explanation**     **Section 40 amended**

Section 40 covers “rebates to registered persons”.

This clause amends the references to ‘rates’ in section 40(9)(a) and (b) to “the emergency services levy or rates”.

**Clause 34 Explanation**     **Section 42 amended**

Section 42 covers ‘charges for periods preceding, or for improvements made or services provided subsequent to, registration’.

This clause amends the references to “rates” in sections 42(3)(a) and (4)(a) to “emergency services levy”.

## **Part 5 - Miscellaneous**

### **Clause 35 Explanation    Transitional provisions**

The transitional provisions in relation to this Bill are specified in Schedule 1.

<b><u>Schedule 1 – Transitional provisions</u></b>
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### **Division 1 - Definitions**

#### **Schedule 1, Clause 1 Explanation    Definitions**

This clause provides the definitions necessary for the Transitional provisions.

### **Division 2 – Savings and transitional provisions relating to Part IX of the Fire Brigades Act 1942**

#### **Schedule 1, Clause 2 Explanation    Application**

The savings and transitional provisions set out in this division will have effect despite the repeal of Part IX of the *Fire Brigades Act 1942*.

#### **Schedule 1, Clause 3 Explanation    Section 36**

Section 36, 'Annual estimate of expenditure', of the *Fire Brigades Act 1942* will have effect until 30 June 2003.

#### **Schedule 1, Clause 4 Explanation    Section 37**

- (1) Section 37, 'Contributions towards expenditure', of the *Fire Brigades Act 1942* will have effect until 30 June 2003.
- (2) Section 37 will also apply in financial year 2003/04 but only in respect of the contributions by insurance companies to the cost of each district served by a permanent fire brigade. Insurance companies' contributions will be 37.5% of the amount of the estimated expenditure for such districts.
- (3) The insurance companies' contributions referred to in (2) above are to be paid in two equal instalments no later than 1 July 2003 and 1 October 2003.

**Schedule 1, Clause 5 Explanation      Section 38**

Section 38, 'Contributions of local governments, how raised', of the *Fire Brigades Act 1942* will have effect until 30 June 2003.

**Schedule 1, Clause 6 Explanation      Section 39**

Section 39, 'Returns by insurance companies', of the *Fire Brigades Act 1942* will have effect until 30 June 2003. This will require insurance companies to give to FESA not later than 31 March 2003 a return and a declaration in respect of the year that ends on 31 December 2002. Insurance companies' contributions for the financial year 2003/04 will be calculated on the basis of the information so provided.

**Schedule 1, Clause 7 Explanation      Section 40**

Section 34, 'Amount of contribution by individual insurance companies, how to be ascertained', of the *Fire Brigades Act 1942* will have effect until 30 June 2004.

**Schedule 1, Clause 8 Explanation      Section 42**

Section 42, 'Insurance companies to permit books to be inspected', of the *Fire Brigades Act 1942* will have effect until 30 June 2003. For the purposes of verifying the returns and declarations referred to in clause 6.

**Schedule 1, Clause 9 Explanation      Section 43**

- (1) Section 43, 'Recovery of contributions and further contribution for delay in payment', of the *Fire Brigades Act 1942* will have effect until 30 June 2003. This section relates to contributions by local government and insurance companies and prescribes penalties for failure to make any payment within 28 days after it becomes due.
- (2) Section 43 will also apply in financial year 2003/04 but only in respect of the contributions by insurance companies.

**Schedule 1, Clause 10 Explanation      Section 44**

Section 44, 'Insurance companies to contribute in certain cases', of the *Fire Brigades Act 1942* will have effect until 30 June 2003.

**Schedule 1, Clause 11 Explanation      Section 45**

- (1) Subject to subclause (2), section 45, 'Supply of deficit in any year and appropriation of any surplus', of the *Fire Brigades Act 1942* will have effect until 30 June 2003.
- (2) If, for the year ending on 30 June 2003 there is a deficit or excess, within in the meaning of section 45, in respect of the contributions of a local government or the

Treasurer -

- (a) an amount equal to the deficit is to be paid to FESA by the local government or by the Treasurer respectively, not later than 31 December 2003; or
  - (b) an amount equal to the excess is to be paid by FESA to the local government or to the Treasurer respectively, not later than 31 December 2003.
- (3) Subject to subclause (4), section 45 also continues to apply for the purposes of the amount of the contributions received by FESA from insurance companies for the financial year 2003/04.
- (4) If for the financial year 2003/04 there is a deficit or excess within in the meaning of section 45 in respect of the contributions of an insurance company -
- (a) an amount equal to the deficit is to be paid to FESA by the insurance company, not later than 31 December 2004; or
  - (b) an amount equal to the excess is to be paid by FESA to the insurance company, not later than 31 December 2004.

**Schedule 1, Clause 12 Explanation     Section 46**

Monies borrowed by FESA under section 46, 'Borrowing powers', of the *Fire Brigades Act 1942* and not repaid before the commencement day are taken to have been borrowed under Part 6 of the FESA Act.

**Schedule 1, Clause 13 Explanation     Section 46A**

Amounts that, immediately before the commencement day, are standing to the credit of a replacement fund established under section 46A 'Establishment of Replacement Funds', of the *Fire Brigades Act 1942* are taken to be amounts standing to the credit of a reserve fund established under section 35A of the FESA Act.

**Division 3 – Arrangements with insurance companies**

**Schedule 1, Clause 14 Explanation     Arrangements with insurance companies**

The Minister, after consultation with the Insurance Council of Australia is to take all reasonable steps to enter into arrangements with insurance companies that provide for the Minister to be given sufficient information by the companies to satisfy the Minister that, as a result of the introduction of the levy, the companies have appropriately reduced or have given appropriate refunds in relation to, the premiums payable for policies of insurance.

**Schedule 1, Clause 15 Explanation     Report by Minister**

Within 18 months of the commencement day, the Minister is to prepare a report on the arrangements referred to in clause 14 and the information given to the Minister in accordance with those arrangements.

The Minister may omit from the report any matter considered to be of a commercially sensitive nature.

The Minister's report is to be tabled in each House of Parliament as soon as practicable.

#### **Division 4 – Regulations**

**Schedule 1, Clause 16 Explanation**    ***Further transitional regulations may be made***

If required, further transitional regulations may be made under section 40 of the FESA Act.