

South Australia

Emergency Services Funding Act 1998

An Act to impose a levy for the provision of emergency services; to establish the Community Emergency Services Fund; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Emergency Services Funding Act 1998*.

3—Interpretation

(1) In this Act, unless the contrary intention appears—

the area factor means the factor for each of the emergency services areas declared by notice under section 10;

contiguous land—see subsections (2) and (3);

emergency service means—

(a) a service of the kind provided by—

(i) the Country Fire Service;

(ii) the South Australian Metropolitan Fire Service;

(iii) the State Emergency Service South Australia;

(iv) Surf Life Saving South Australia Inc.;

(v) a body or organisation that is a member of Volunteer Marine Rescue S.A. Incorporated; or

(b) a service provided by the South Australian Police Department—

(i) of a kind referred to in paragraph (a); or

(ii) to assist a body or organisation referred to in paragraph (a) in providing such a service; or

(c) a service or other activity incidental or related to a service of a kind referred to in paragraphs (a) or (b);

emergency services area means an area prescribed by or under section 7;

the Fund means the Community Emergency Services Fund established by this Act;

the land use factor means the factor for each of the land uses referred to in section 8(1) declared by notice under section 10;

Motor Accident Commission means the Motor Accident Commission continued in existence by the *Motor Accident Commission Act 1992*;

motor vehicle means a motor vehicle that is required to be registered under the *Motor Vehicles Act 1959*;

owner of land means—

(a) where the land has been granted in fee simple—

(i) in the case of land that is subject to a life estate—the holder of the life estate;

(ii) in any other case—the holder of the estate in fee simple in the land;

(b) in relation to dedicated land within the meaning of the *Crown Lands Act 1929* that has not been granted in fee simple but which is under the care, control and management of a Minister, body or other person—the Minister, body or other person;

(c) in relation to land dedicated by or under any other Act being land that has not been granted in fee simple but which is under the care, control and management of a Minister, body or other person—the Minister, body or other person;

(d) where the land is unalienated land of the Crown—the Crown;

(e) where the land is held from the Crown under lease, licence or agreement to purchase—

(i) if the lease, licence or agreement confers a right to occupy the land—the person entitled to the right of occupation;

(ii) in any other case—the Crown,

and includes any person who has arrogated to himself or herself (whether lawfully or unlawfully) the rights of an owner of the land;

vessel means a vessel that is required to be registered under the *Harbors and Navigation Act 1993*.

(1a) Where unalienated land of the Crown is held from the Crown under a licence, the ownership of the land for the purposes of this Act will be determined in accordance with paragraph (e) of the definition of **owner** in subsection (1) and not in accordance with paragraph (d) of that definition.

- (2) For the purposes of this Act, pieces of land will be taken to be contiguous if they abut one another at any point or if they are separated only by—
 - (a) a street, road, lane, footway, court, railway, thoroughfare or travelling stock route; or
 - (b) a reserve or other similar open space dedicated for public purposes.
- (3) For the purposes of subsection (2) pieces of land will be taken to be separated by intervening land if a line projected at right angles from any point on the boundary of one of them with the intervening land would intersect a boundary of the other with the intervening land.
- (4) A reference in this Act to the use of land is a reference to the predominant use of the land.

Part 3—The emergency services levy

Division 1—Levy in respect of land

5—Land that is subject to the levy

- (1) Subject to this Division, an emergency services levy may be assessed by the Minister against all land in the State in respect of each financial year.
- (2) The levy may be assessed against—
 - (a) any piece or section of land subject to separate ownership or occupation; or
 - (b) any aggregation of contiguous land subject to the same ownership or occupation; or
 - (c) any aggregation of land pursuant to subsection (2a).
- (2a) Where two or more pieces or sections of land or aggregations of contiguous land are not contiguous they may be aggregated for the purposes of subsection (2)(c) if—
 - (a) the owner or occupier of all of the land concerned is the same person; and
 - (b) all of the land is used to carry on the business of primary production and is managed as a single unit for that purpose; and
 - (c) all of the land is either situated in the area of the same council under the *Local Government Act 1934* or is situated in a part of the State that is not in the area of a council.
- (3) Where land that is subject to separate assessment in accordance with subsection (2) is situated partly in one emergency services area and partly in another, the levy may be separately assessed against the parts of the land situated in different areas.
- (4) Where different parts of land that is subject to separate assessment in accordance with subsection (2) are used for different purposes referred to in section 8, the levy may be separately assessed against each of those parts.
- (5) Where land is divided by a strata plan under the *Strata Titles Act 1988*—
 - (a) the levy will be assessed against the units but not against the common property; but

- (b) the equitable interest in the common property that attaches to each unit will be regarded, for the purpose of valuation, as part of the unit.
- (6) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—
- (a) in the case of the division of land by a primary plan—the levy will be assessed against the primary lots that are not divided by a secondary plan and against the development lot or lots (if any);
 - (b) in the case of the division of land by a secondary plan—the levy will be assessed against the secondary lots that are not divided by a tertiary plan and against the development lot or lots (if any);
 - (c) in the case of the division of land by a tertiary plan—the levy will be assessed against the tertiary lots and the development lot or lots (if any).
- (7) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996*—
- (a) in the case of the division of land by a primary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the primary lots, the levy will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, that attaches to each primary lot will be regarded for the purposes of valuation as part of the lot;
 - (b) in the case of the division of land by a secondary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General, reasonably incidental to the use of one or more of the secondary lots, the levy will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary scheme referred to in paragraph (a) (if any)) that attaches to each secondary lot will be regarded for the purposes of valuation as part of the lot;
 - (c) in the case of the division of land by a tertiary plan—where the use of the common property or part of it is, in the opinion of the Valuer-General reasonably incidental to the use of one or more of the tertiary lots, the levy will not be assessed against the common property, or that part of it, but the interest in the common property, or that part of it, (and in the common property of the primary and secondary schemes referred to in paragraphs (a) and (b) (if any)) that attaches to each tertiary lot will be regarded for the purposes of valuation as part of the lot.
- (8) Where land is divided by a primary, secondary or tertiary plan of community division under the *Community Titles Act 1996* and the use of common property or any part of it is not, in the opinion of the Valuer-General, reasonably incidental to the use of any of the community lots, the levy will be assessed against the common property or that part of it and the relevant community corporation is liable for the levy as though it were the owner of the common property.
- (9) If a valuation of land subject to separate assessment under this Act has not been made or adopted by the Valuer-General under the *Valuation of Land Act 1971*, the Valuer-General must make or adopt a valuation of that land under that Act.

- (10) Residential land held from the South Australian Housing Trust under a lease, licence or agreement to purchase is exempt from the imposition of a levy under this Division.

5A—Application for aggregation of non contiguous land

- (1) The owner or occupier of land may apply to the Minister for the aggregation of non contiguous land for the purposes of section 5(2)(c).
- (2) The application must—
- (a) be in writing; and
 - (b) be received by the Minister on or before 31 March immediately preceding the first financial year to which the aggregation of the land will relate (an application in respect of the 1999/2000 financial year must be received on or before 30 November 1999).
- (3) The applicant must provide the Minister with such information and evidence as the Minister reasonably requires to consider the application.
- (4) The Minister must serve notice of his or her decision on the applicant and, if the application is refused, the notice must include the Minister's reasons for refusing the application.
- (5) An applicant may appeal against the Minister's refusal to the Administrative and Disciplinary Division of the District Court.
- (6) The appeal must be made within 28 days after the notice is served on the applicant under subsection (4).
- (7) If the basis on which land is aggregated for assessment purposes under section 5(2)(c) ceases to exist, the owner of the land must immediately inform the Minister of that fact.

Maximum penalty: \$2 500.

6—Basis of levy

- (1) A levy may consist of—
- (a) an amount payable in respect of each dollar of the value of land subject to assessment under this Act; or
 - (b) a fixed charge; or
 - (c) two separate components, one being the amount referred to in paragraph (a) and the other a fixed charge under paragraph (b).
- (2) The value of the land for the purposes of subsection (1) is determined by multiplying its capital value by the area factor and the land use factor for the land.
- (3) The capital value of land for the purposes of subsection (2) is the capital value of the land as at 1 July in the financial year to which the levy relates determined or adopted by the Valuer-General under the *Valuation of Land Act 1971*.

7—Emergency services areas

- (1) The State is divided into the following emergency services areas for the purpose of determining the area factor:
 - (a) "Greater Adelaide" being the combined areas of the councils listed in Schedule 1 comprising Metropolitan Adelaide and the Adelaide hills;
 - (b) "Regional area 1" being the areas of the cities and towns listed in Schedule 1;
 - (c) "Regional area 2" being that part of the State that is within the area of a council but is not part of Greater Adelaide or Regional area 1;
 - (d) "Regional area 3" being that part of the State that is not within the area of a council.
- (2) The Governor may, by proclamation—
 - (a) revoke one or more of the areas into which the State is divided by this section (or by a proclamation under this subsection) and reconstitute the part of the State affected as one or more emergency services areas for the purposes of this Act; or
 - (b) vary the boundaries of two or more emergency services areas.
- (3) For the purposes of determining the amount of the levy payable in respect of land, the land will be taken to be situated in the emergency services area in which it was situated on 1 July in the financial year to which the levy relates.

8—Land uses

- (1) The following land uses are prescribed for the purposes of determining the land use factor:
 - (a) commercial;
 - (b) industrial;
 - (c) residential;
 - (d) rural;
 - (e) all uses other than those referred to in paragraphs (a), (b), (c) or (d).
- (2) Land will be taken to be used for one of the purposes referred to in subsection (1) if, in the opinion of the Valuer-General, it is being predominantly used for that purpose on the relevant day.
- (3) Land (except vacant land) that was not being used on the relevant day will be taken to be used for the purpose for which it was last used on a continuing basis.
- (4) Vacant land that is not used for any purpose and that would not, but for this subsection, fall within paragraph (d) of subsection (1) will be taken to fall within that paragraph whether it is situated in a rural area or in any other part of the State.
- (5) In this section—

commercial use of land means a use of land defined by the Local Government Regulations as *commercial shop*, *commercial office* or *commercial other*;

industrial use of land means a use of land defined by the Local Government Regulations as *industry light* or *industry other*;

the Local Government Regulations means the *Local Government (Land Use) Regulations 1989*;

the relevant day in respect of a financial year specified in a notice under section 10(1) means the day (whether occurring on, before or after the day on which the notice is published in the Gazette) specified in the notice as the relevant day in respect of that year;

residential use of land means a use of land defined by the Local Government Regulations as *residential*;

rural use of land means a use of land defined by the Local Government Regulations as *primary production*.

9—Objection to attribution of use to land

- (1) The owner of land may object to the attribution of a particular use to the land by the Valuer-General.
- (2) The objection must be made to the Minister and must—
 - (a) be in writing; and
 - (b) set out—
 - (i) the grounds of the objection; and
 - (ii) the land use that should, in the objector's opinion, be attributed to the land; and
 - (c) be served on the Minister within 60 days after the objector receives notice under section 16 of the levy payable by him or her.
- (3) The Minister may decide any such objection as he or she thinks fit and must notify the objector in writing of his or her decision and the reasons for it.
- (4) If the objector is dissatisfied with the Minister's decision, he or she may, subject to the relevant rules of the Supreme Court, appeal against the decision to the Land and Valuation Court.
- (5) Except as provided by this section, the attribution of a particular land use to land under this Division cannot be challenged.
- (6) The determination of an objection under this section only affects the attribution of a use to land for the purposes of this Act.

10—Declaring the levy and the area and land use factors

- (1) The Governor may, by notice published in the Gazette on the recommendation of the Minister, declare—
 - (a) the levy; and
 - (b) where the levy, or a component of the levy, is an amount payable in respect of each dollar of the value of land—
 - (i) the area factor for each of the emergency services areas; and
 - (ii) the land use factor for each of the land uses referred to in section 8(1); and
 - (iii) the relevant day for the purposes of section 8,

for the financial year specified in the notice.

- (2) Where the levy, or a component of the levy, is a fixed charge, the amount of the charge must be the same for each piece, section or aggregation of contiguous land subject to separate assessment that is situated in the same emergency services area.
- (3) The notice must be published before the commencement of the financial year to which it relates.
- (4) The Minister must, before making a recommendation to the Governor under subsection (1), determine—
 - (a) the amount that, in the Minister's opinion, needs to be raised by means of the levy under this Division to fund emergency services in the relevant financial year; and
 - (b) the amounts to be expended in that financial year for various kinds of emergency services and the other purposes referred to in section 28(4); and
 - (c) as far as practicable, the extent to which the various parts of the State will benefit from the application of that amount.
- (5) Before making a recommendation to the Governor under subsection (1) as to the amount of the levy and the values of the area factors and the land use factors to be included in the notice published under that subsection and before making the determinations under subsection (4), the Minister must refer to the Economic and Finance Committee of Parliament a written statement setting out the determinations that the Minister proposes making under subsection (4) in respect of the relevant financial year and must not make recommendations to the Governor under subsection (1) or determinations under subsection (4) until the Committee has reported to Parliament or has failed to report within the time required by subsection (5a).
- (5a) It is a function of the Economic and Finance Committee of Parliament to enquire into, consider and report on the Minister's statement within 21 days after it is referred to the Committee under subsection (5).
- (6) A notice published under subsection (1) must—
 - (a) include a statement of the amount determined by the Minister under subsection (4)(a); and
 - (b) include a description of the method used in determining that amount;
- (7) The Minister must, as soon as practicable after the publication of a notice under subsection (1), cause a copy of the notice to be laid before both Houses of Parliament.
- (8) After the first notice declaring a levy under subsection (1) has been published in the Gazette, the Governor must not declare a further levy under that subsection in respect of a subsequent year unless—
 - (a) the amount of the levy is the same as, or less than, the amount of the levy declared by the first notice; or
 - (b) the notice declaring the levy has been authorised by a resolution passed by both Houses of Parliament.

- (9) No proceedings for judicial review or for a declaration, injunction, writ, order or other remedy may be brought before a court, tribunal or other person or body to challenge or question the amount of the levy or the value of the area factor or the land use factor declared in a notice under subsection (1).

12—Minister to keep assessment book

- (1) The Minister must ensure that a record (the *assessment book*) is kept in which is entered—
- (a) —
 - (i) a brief description of each separate piece or section of land or aggregation of contiguous land that is subject to separate assessment for the emergency services levy under this Act; and
 - (ii) the capital value for the time being determined or adopted by the Valuer-General of that land; and
 - (b) the name and address of the owner of the land; and
 - (c) the land use of the land; and
 - (d) such other information as may be prescribed by regulation.
- (2) Notwithstanding subsection (1), where the Minister is satisfied that the inclusion in the assessment book of the name or address of any person would place at risk the personal safety of that person, a member of that person's family or any other person, the Minister may suppress the name or address from the assessment book.
- (3) Where the Minister is satisfied that a person's address is suppressed from the roll under the *Electoral Act 1985*, the Minister may—
- (a) where the person's residential address is included in respect of land that the person owns but does not occupy—suppress the person's residential address from the assessment book;
 - (b) where the person's residential address is land described in the assessment book—suppress the person's name from the assessment book in relation to that land.
- (4) The assessment book may—
- (a) be kept in any form (whether in the form of a book or not) that allows for the accurate recording of information and easy access to that information;
 - (b) be kept in different parts at different places;
 - (c) where the Minister delegates the duty to keep the assessment book—be kept in different parts by different persons.
- (5) The Minister may make any alteration to the assessment book that may be necessary to keep the book in a correct and up to date form.
- (6) The Minister may require a council or any other person who has information that is necessary or useful for—
- (a) the purpose of compiling the assessment book and keeping it in an up to date form; or
 - (b) any other purpose related to the administration of this Act,

to provide that information to the Minister (or to any other person nominated by the Minister) in the form specified by the Minister.

13—Alterations to assessment book

- (1) Application may be made to the Minister for an alteration of the assessment book by an owner of land on the ground that particular information entered in the assessment book is incorrect or has not been recorded in accordance with this Act.
- (2) An application under subsection (1) must be made in a manner and form approved by the Minister.
- (3) A person who is dissatisfied with the decision of the Minister on an application may apply to the Supreme Court for an order for rectification of the assessment book.

14—Inspection of assessment book

A person is entitled, on payment of a fee fixed by the Minister—

- (a) to inspect the assessment book during ordinary office hours; or
- (b) to a copy of an entry made in the assessment book.

15—Liability for the levy

- (1) The person who is the owner of land at 12.01 a.m. on 1 July in the financial year for which a levy has been declared is liable to pay the levy to the Minister.
- (2) Two or more persons who own the same land are jointly and severally liable for the levy in respect of that land and are entitled to contribution between each other in proportion to the value of their respective interests in the land.
- (3) A subsequent owner of land is liable for a levy, or a part of a levy, in respect of that land that has not been paid by the person or persons primarily liable under subsection (1) or (2).
- (4) A subsequent owner who has paid the whole or part of a levy is entitled to recover—
 - (a) the amount paid from the person primarily liable or, if there are two or more such persons, from any one or more of them;
 - (b) a part of the amount paid from his or her co-owner (if any) that is in proportion to the value of their respective interests in the land.
- (5) A subsequent owner who has paid an amount to his or her co-owner under subsection (4)(b) is entitled to recover that amount from the person primarily liable or, if there are two or more such persons, from any one or more of them.
- (6) In this section—

subsequent owner of land includes a person who has ceased to be an owner of the land.

16—Notice of levy

- (1) The Minister must serve notice of the amount of the levy that is payable in respect of land for a financial year on the person who was the owner of the land at 12.01 a.m. on 1 July in that year.

- (2) The notice must state—
 - (a) the amount of the levy; and
 - (b) the area factor and the land use factor applicable to the land; and
 - (c) the capital value of the land; and
 - (d) the date (being at least 28 days after the notice is served) by which the levy must be paid; and
 - (e) such other information as is required by regulation.
- (3) Where there are two or more owners of land, service of the notice on one of them will be taken to be service on both or all of them.
- (4) The notice required to be served under this section may be served as a separate notice or, with the approval of the Minister, as part of any other notice served by a public authority or other person.
- (5) Where the same person owns two or more pieces, sections or aggregations of contiguous land subject to separate assessment, separate notices or one combined notice may be served on the owner.

17—Interest

- (1) Interest accrues—
 - (a) on an unpaid levy; and
 - (b) on unpaid interest,in accordance with the regulations.
- (2) A person who is liable to pay a levy is also liable to pay interest that accrues, or has accrued, on or in relation to the levy under this section.

18—Levy first charge on land

- (1) An unpaid levy and unpaid interest in relation to the levy are a first charge on the land in relation to which the levy is payable.
- (2) Where a levy is assessed against the common property, or part of the common property, of a community scheme under the *Community Titles Act 1996*, the levy is not a charge on the common property but is, instead, a charge on each of the community lots of the community scheme.

19—Rent etc payable by lessee or licensee

- (1) The Minister may, by written notice to a lessee or licensee of land in respect of which a levy has fallen due, require him or her to pay to the Minister any rent or other consideration payable under the lease or licence in satisfaction of the liability for the levy.
- (2) Where the Minister gives a notice under subsection (1), an additional charge of five per cent of the amount in arrears is payable and recoverable as part of the levy.
- (3) The Minister may remit the charge payable under subsection (2) in whole or in part.
- (4) If—
 - (a) the Minister gives a notice to a lessee or licensee under subsection (1); and

- (b) the Minister, by written notice to the owner of the land, informs the owner of the imposition of the requirement under subsection (1); and
- (c) the lessee or licensee, contrary to the terms of the notice under subsection (1), makes a payment to the owner instead of to the Minister,

the owner, must within one clear business day after receipt of the payment, pay the amount received to the Minister in satisfaction, or partial satisfaction, of the liability for the levy.

Maximum Penalty: \$250.

- (5) Payment by a lessee or licensee of rent or other consideration to the Minister under this section is, to the extent of the payment, in satisfaction of the lessee's or licensee's obligation under the lease or licence.
- (6) In this section—
levy includes unpaid interest in relation to the levy.

20—Sale of land for non-payment of a levy

- (1) Where a levy, or interest in relation to a levy, is a first charge on land and has been unpaid for two years or more, the Minister may sell the land.
- (2) Before the Minister sells land in pursuance of this section, he or she must serve notice on the owner of the land—
 - (a) stating the period for which the levy or interest have been in arrears; and
 - (b) stating the amount of the total liability for the levy and interest presently outstanding and charged on the land; and
 - (c) stating that if that amount is not paid in full within one month of service of the notice (or such longer time as the Minister may allow), the Minister intends to sell the land for non-payment of the levy or interest.
- (3) A copy of a notice must be served on the registered mortgagee or encumbrancee of the land (if any).
- (4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Minister may proceed to sell the land.
- (5) The sale will be by public auction (and the Minister may set a reserve price for the purposes of the auction).
- (6) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.
- (7) If, before the date of the auction, the outstanding amount and the costs incurred by the Minister in proceeding under this section are paid to the Minister, the Minister must withdraw the land from auction.
- (8) If an auction fails, the Minister may sell the land by private contract for the best price that he or she can reasonably obtain.
- (9) Any money received by the Minister in respect of the sale of land under this section will be applied as follows:
 - (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;

- (b) secondly—in discharging the liability for the levy and interest and any other liabilities to the Minister in respect of the land;
 - (c) thirdly—in discharging any liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land);
 - (d) fourthly—in discharging any liability to a council for rates or any other liability to a council in respect of the land;
 - (e) fifthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
 - (f) sixthly—in discharging any other mortgages, encumbrances and charges of which the Minister has notice;
 - (g) seventhly—in payment to the former owner of the land.
- (10) If the former owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the former owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (11) Where land is sold by the Minister in pursuance of this section, an instrument of transfer executed by the Minister will operate to vest title to the land in the purchaser.
- (12) The title vested in a purchaser under subsection (11) will be free of all mortgages, encumbrances and charges and all leases and licences.
- (13) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the Chief Executive of the Department of Justice stating that the requirements of this section in relation to the sale of the land have been observed.
- (14) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer notwithstanding the non-production of the duplicate, but in that event he or she must cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.

21—Recovery of levy not affected by an objection, review or appeal

- (1) The right of the Minister to recover a levy is not suspended by—
- (a) an objection, review or appeal in respect of a valuation made or adopted under the *Valuation of Land Act 1971*; or
 - (b) an objection or appeal in respect of the attribution of a particular land use to land.
- (2) If an objection, review or appeal results in the alteration of a valuation or a decision to attribute a different land use to land, a due adjustment must be made and—
- (a) any amount overpaid must be refunded;
 - (b) any additional amount payable on account of an alteration of the valuation or decision may be recovered as an unpaid levy (but action to recover any such amount must not be taken until at least 30 days have expired from the date on which notification of the alteration is given to the person who initiated the objection, review or appeal);

- (c) interest accrues on an amount to be refunded under paragraph (a) and on an unpaid amount referred to in paragraph (b) in accordance with the regulations.

22—Payment of the levy into the Fund

The Minister must pay money received in payment of the levy into the Fund.

Division 2—Levy in respect of vehicles and vessels

23—Liability for the levy

- (1) A person who wishes to register, or renew the registration of, a motor vehicle under the *Motor Vehicles Act 1959* must pay the emergency services levy imposed under this Division to the Registrar of Motor Vehicles when applying for the registration or the renewal of the registration.
- (2) A person who wishes to register, or renew the registration of, a vessel under the *Harbors and Navigation Act 1993* must pay the emergency services levy imposed under this Division to the Chief Executive of the department or administrative unit for the time being administering that Act when applying for the registration or the renewal of the registration.
- (3) Despite the provisions of the *Motor Vehicles Act 1959* or the *Harbors and Navigation Act 1993*, the registration of a motor vehicle or a vessel must not be granted or renewed under the relevant Act unless the emergency services levy has been paid.

24—Declaring the amount of the levy

- (1) The Governor may, by notice published in the Gazette on the recommendation of the Minister, declare the amount of the levy.
- (2) The notice must—
 - (a) divide motor vehicles into the same classes as the Premium Class Code published by the Motor Accident Commission (as in force at the time of publication of the notice) and must specify the amount of the levy in respect of each class; and
 - (b) specify the amount of the levy in respect of vessels; and
 - (c) specify the financial year or financial years in relation to which the notice applies.
- (2a) The amount of the levy specified in the notice in respect of a particular class of motor vehicle will be the amount of the levy for the financial year or financial years in relation to which the notice applies despite any change in motor vehicle classifications under the Premium Class Code referred to in subsection (2)(a).
- (3) The notice may declare the amount of the levy in respect of one, or two or more, financial years specified in the notice.
- (4) The notice must be published before the commencement of the financial year or financial years in relation to which it will apply.
- (5) Where the period of registration in relation to which the levy is payable is the whole of a particular financial year, the amount payable is the amount of the levy for that year.

- (6) Where the period of registration in relation to which the levy is payable falls wholly within, but is less than, the period of a financial year, the amount payable is the appropriate proportion of the levy for that year.
- (7) Where the period of registration in relation to which the levy is payable falls partly in one financial year and partly in a subsequent financial year or years, the levy will be made up of the appropriate proportion of the levy payable in respect of each year (the amount payable on registration will be determined on the assumption that the amount of the levy to be declared in respect of a subsequent year or years will be the same as the levy declared in respect of the year in which the period of registration commences).
- (8) After the first notice declaring a levy under subsection (1) has been published in the Gazette, the Governor must not declare a further levy under that subsection in respect of a subsequent year or years unless—
 - (a) the amount of the levy declared in respect of each class of motor vehicle and in respect of vessels is the same as, or less than, the amount of the levy declared by the first notice; or
 - (b) the notice declaring the levy has been authorised by a resolution passed by both Houses of Parliament.

25—Exemption by Minister

- (1) The Minister may, by notice published in the Gazette, exempt motor vehicles or vessels of a class specified in the notice from the imposition of a levy under this Division.
- (2) A notice under subsection (1) may be varied or revoked by the Minister by subsequent notice published in the Gazette.

26—Objection to classification of vehicle

- (1) A person who is liable to pay a levy in respect of a vehicle may object to the classification of the vehicle by the Minister.
- (2) The objection must—
 - (a) be in writing; and
 - (b) set out—
 - (i) the grounds of the objection; and
 - (ii) the classification that is, in the objector's opinion, the correct classification of the vehicle; and
 - (c) be served on the Minister.
- (3) The Minister may decide any such objection as he or she thinks fit and must notify the objector in writing of his or her decision and the reasons for it.
- (4) If the objector is dissatisfied with the Minister's decision, he or she may appeal against the decision to the Administrative and Disciplinary Division of the District Court.
- (5) Except as provided by this section, the classification of a vehicle under this Division cannot be challenged.

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- (6) An objection under this section does not affect the requirement that the levy must be paid at the time of the application for the registration, or renewal of registration, of the vehicle.
 - (7) If an objection has been served on the Minister before the application for registration or renewal of registration is made and the objection results in the alteration of the classification of the vehicle—
 - (a) any amount overpaid must be refunded;
 - (b) any additional amount payable on account of the reclassification may be recovered as unpaid levy (but action to recover any such amount must not be taken until at least 30 days have expired from the date on which notification of the alteration is given to the person who initiated the objection);
 - (c) interest accrues on an amount to be refunded under paragraph (a) and on an unpaid amount referred to in paragraph (b) in accordance with the regulations.

27—Payment of the levy into the Fund

The Registrar of Motor Vehicles and the Chief Executive of the department or administrative unit for the time being administering the *Harbors and Navigation Act 1993* must pay money received in payment of the levy into the Fund.

Part 4—The Community Emergency Services Fund

28—The Community Emergency Services Fund

- (1) The Community Emergency Services Fund is established.
- (2) The Fund is subject to the management and control of the Minister.
- (3) The Fund consists of—
 - (a) the emergency services levy paid into the Fund under Part 3; and
 - (ab) money to be paid into the Fund by the Treasurer pursuant to this Act; and
 - (b) interest and accretions arising from investment of the Fund.
- (4) The Minister may only apply the Fund in one or more of the following ways:
 - (a) in payment to—
 - (i) the Country Fire Service; or
 - (ii) the South Australian Metropolitan Fire Service; or
 - (iii) the State Emergency Service South Australia; or
 - (iv) the Surf Life Saving Association of South Australia Incorporated; or
 - (v) a body or organisation that is a member of Volunteer Marine Rescue S.A. Incorporated; or
 - (vi) any other person or organisation (whether an agency or instrumentality of the Crown or not),
for the provision of emergency services;

- (b) for any purpose for, or relating to, the prevention of circumstances in which emergency services are likely to be required;
- (c) without limiting paragraph (b), for any purpose of or relating to education as to, or research into—
 - (i) the prevention of circumstances in which emergency services are likely to be required; or
 - (ii) the strategies and procedures for dealing with emergencies when they arise and for dealing with the harmful effects of emergencies; or
 - (iii) the factors that give rise to emergencies;
- (d) in payment of the costs of, or relating to, the administration of this Act.

29—Investment of the Fund

The Minister may invest any of the money of the Fund that is not immediately required for the purposes of this Act in such manner as is approved by the Treasurer.

30—Accounts

The Minister must keep proper accounts of receipts and payments in relation to the Fund.

Part 5—Miscellaneous

31—Minister may delegate

- (1) The Minister may delegate any of his or her functions, powers or duties under this Act (except this power of delegation) to any person or body.
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the Minister to act in any matter; and
 - (d) is revocable at will by the Minister.

32—Service of notices

- (1) Where this Act requires or authorises a notice to be served on the Minister, the notice may—
 - (a) be left for the Minister at his or her office with a person apparently over the age of 16 years; or
 - (b) be sent by post or facsimile transmission to the Minister at his or her office.
- (2) Where this Act requires or authorises a notice to be served on, or given to, any other person, the notice may—
 - (a) be served on, or given to, the person or an agent of the person; or
 - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or

- (c) be sent by post to the person or an agent of the person at his or her last known address; or
 - (d) be sent to the person by any form of electronic transmission (including facsimile transmission) indicated by the person as being an available means of service; or
 - (e) be left in a conspicuous place on the land to which the notice relates.
- (3) If the notice is to be served on or given to a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, the notice may be served on that company or registered body in accordance with section 109X or 601CX of that Act, as the case requires.

33—Remission of levies by regulation

- (1) The Governor may, on the recommendation of the Minister, make regulations for a remission or remissions in respect of one or both of the levies, or part of one or both of the levies, imposed under this Act for the benefit of—
- (a) persons who are entitled to pensions, benefits, allowances or other payments under the *Social Security Act 1991* of the Commonwealth; or
 - (b) charitable organisations; or
 - (c) persons who are suffering financial hardship; or
 - (d) other persons or bodies of a class prescribed by the regulations.
- (2) The Minister must in each year, before making a recommendation to the Governor as to the levies to be declared under this Act, consider whether he or she should make a recommendation to the Governor under subsection (1) as to the making or varying of regulations under this section.
- (3) A regulation under this section may be brought into operation on a date specified in the regulation that is earlier than the date of its publication in the Gazette.
- (4) The Minister must determine the aggregate amount of the levy remitted under this section in respect of each financial year.
- (5) The Treasurer must pay in accordance with the regulations from the Consolidated Account (which is appropriated to the necessary extent) for the purpose of remissions under this section an amount equivalent to the amount determined under subsection (4).

33A—Recouping money lost on aggregation of non contiguous land

- (1) The Minister must, in respect of each financial year, determine the amount by which money received in payment of the levy under Part 3 Division 1 is reduced as a result of the aggregation of land for the purposes of section 5(2)(c).
- (2) The Treasurer must pay into the Fund in each financial year from the Consolidated Account (which is appropriated to the necessary extent) an amount equivalent to the amount determined under subsection (1) in respect of that year.

34—Regulations

The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Schedule 1—Emergency services areas

1—Greater Adelaide

Greater Adelaide is the combined areas of the following councils:

- Corporation of the City of Adelaide
- Adelaide Hills Council
- Alexandrina Council
- The Barossa Council
- Corporation of the City of Burnside
- Corporation of the City of Campbelltown
- City of Charles Sturt
- Corporation of the Town of Gawler
- City of Holdfast Bay
- Corporation of the City of Marion
- Corporation of the City of Mitcham
- District Council of Mount Barker
- City of Norwood, Payneham and St. Peters
- City of Onkaparinga
- City of Playford
- City of Port Adelaide Enfield
- Corporation of the City of Prospect
- Corporation of the City of Salisbury
- Corporation of the City of Tea Tree Gully
- Corporation of the City of Unley
- District Council of Victor Harbor
- Corporation of the Town of Walkerville
- City of West Torrens
- District Council of Yankalilla

2—Regional Area 1

Regional area 1 is comprised of the following cities and towns:

- Berri
- Ceduna
- Clare
- Kadina

Loxton
Millicent
Mt Gambier
Murray Bridge
Naracoorte
Port Augusta
Port Lincoln
Port Pirie
Renmark
Whyalla

Schedule 2—Transitional provisions

4—Reimbursement by insurers to policy holders

- (1) Subject to subclause (2), any amount that an insurer receives or recovers from a policy holder in respect of the insurer's purported liability under Part 3 of the *Country Fires Act 1989* or Part 6 of the *South Australian Metropolitan Fire Service Act 1936* for a period occurring after 30 June 1999 must be reimbursed by the insurer to the policy holder.
- (2) Subclause (1) does not apply to an amount that is less than ten dollars.
- (3) The amounts that an insurer does not reimburse to policy holders by reason of subclause (2) must be paid by the insurer into the Community Emergency Services Fund.
- (4) A policy holder may recover an amount due by an insurer under this clause as a debt.
- (5) In this clause—
insurer means—
 - (a) in relation to the *Country Fires Act 1989*—an insurer for the purposes of Part 3 of that Act;
 - (b) in relation to the *South Australian Metropolitan Fire Service Act 1936*—an insurance company for the purposes of Part 6 of that Act.

4A—Report on changes to insurance premiums

- (1) The Commissioner for Consumer Affairs must, on or before 30 September 2000, forward to the Minister a report on the effect that the enactment of this Act has had on insurance premiums in the State in respect of the 1999/2000 financial year with particular reference to the extent to which savings afforded to insurers through the enactment of this Act have been passed on to policy holders.
- (2) The Minister must, within six sitting days after receiving the report required under subclause (1), have copies of the report laid before both Houses of Parliament.

5—The Emergency Services Funding Transitional Advisory Committee

- (1) The Emergency Services Funding Transitional Advisory Committee is established.

- (2) The Committee consists of six members appointed by the Minister of whom three have been nominated by the Local Government Association of South Australia.
- (3) The Minister will designate one of the members to preside at meetings of the Committee.
- (4) The term of office of members of the Committee is until the dissolution of the committee (see subclause (15)).
- (5) The Minister—
 - (a) may remove a member of the Committee who was not appointed on the nomination of the Local Government Association of South Australia on any ground that the Minister considers sufficient;
 - (b) must remove a member of the Committee appointed on the nomination of the Local Government Association of South Australia if requested to do so by the association.
- (6) The Local Government Association of South Australia may request the Minister to remove a member of the Committee appointed on its nomination on any ground that the association considers sufficient.
- (7) The office of a member of the Committee becomes vacant if the member—
 - (a) dies; or
 - (b) resigns by written notice to the Minister; or
 - (c) is removed from office by the Minister under subclause (5).
- (8) On the occurrence of a vacancy in the membership of the Committee, a person will be appointed in accordance with this clause to the vacant office, but the validity of acts and proceedings of the Committee is not affected by the existence of a vacancy or vacancies in its membership.
- (9) A meeting of the Committee will be chaired by the member appointed to preside, or, in the absence of that member, a member chosen by those present.
- (10) A quorum of the Committee consists of four members of the Committee.
- (11) A decision carried by a majority of the votes of the members present at a meeting of the Committee is a decision of the Committee.
- (12) Each member present at a meeting of the Committee is entitled to one vote on any matter arising for decision at that meeting and, if the votes are equal, the person chairing the meeting is entitled to a second or casting vote.
- (13) The functions of the Committee are—
 - (a) to advise the Minister, at his or her request, on questions and arrangements relating to the transition from the previous method of funding emergency services to the funding of those services by means of levies under this Act; and
 - (b) such other functions as are determined by the Minister or are prescribed by regulation.
- (14) A member of the Committee is entitled to such fees and allowances as may be determined by the Governor.

(15) The Committee is dissolved at the expiration of 30 June 2001.

6—Crown to be taken to be owner of certain land

- (1) The following provisions apply in relation to land referred to in subclause (2) during the period from the commencement of this Act up to and including 30 June 2001:
- (a) the Crown will be taken to be the owner of the land for the purposes of this Act; and
 - (b) section 11(1) relates to the land as though it were referred to in subsection (2) of that section.
- (2) Subclause (1) applies to land if—
- (a) the land is under the care, control and management of a council; and
 - (b) the land is—
 - (i) dedicated land within the meaning of the *Crown Lands Act 1929* that has not been granted in fee simple; or
 - (ii) dedicated land within the meaning of the *Crown Lands Act 1929* that has been granted in fee simple in trust for the purposes for which the land was dedicated; or
 - (iii) land comprising—
 - park lands; or
 - a cemetery; or
 - a coastal reserve; or
 - a road reserve; and
 - (c) the land—
 - (i) is not used predominantly by the council for its operations; or
 - (ii) is not subject to one or more leases or licences granted by the council to another person for a rent or fee (except a nominal rent or fee) the term (or the aggregate of the terms) of which exceeds six months in any period of 12 months.

(3) In this clause—

coastal reserve means land reserved or set apart for any purpose if any part of the land is within 50 metres of the sea at high water;

park lands means—

- (a) public parks and park lands including the park lands in the area of the corporation of the City of Adelaide; and
- (b) all other land declared or set apart as a park or reserve for the use and enjoyment of the public.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Emergency Services Funding Act 1998* amended the following:

Country Fires Act 1989

South Australian Metropolitan Fire Service Act 1936

Valuation of Land Act 1971

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|------|----|---|------------|--|
| 1998 | 63 | <i>Emergency Services Funding Act 1998</i> | 10.9.1998 | 13.5.1999 except ss 3—9, 11—22, 26—34 and Schs 1 & 2—30.6.1999 (<i>Gazette 13.5.1999 p2502</i>) |
| 1999 | 61 | <i>Emergency Services Funding (Miscellaneous) Amendment Act 1999</i> | 19.8.1999 | 30.6.1999 except ss 4 and 9(b)—(e)—19.8.1999: s 2 |
| 2000 | 4 | <i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i> | 20.4.2000 | Sch 1 (cl 13)—1.6.2000 (<i>Gazette 18.5.2000 p2554</i>) |
| 2001 | 23 | <i>Statutes Amendment (Corporations) Act 2001</i> | 14.6.2001 | Pt 14 (s 73)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette No. S 285</i> , 13 July 2001 (<i>Gazette 21.6.2001 p2270</i>) |
| 2003 | 44 | <i>Statute Law Revision Act 2003</i> | 23.10.2003 | Sch 1—24.11.2003 (<i>Gazette 13.11.2003 p4048</i>) |
| 2003 | 45 | <i>Emergency Services Funding (Validation of Levy on Vehicles and Vessels) Act 2003</i> | 30.10.2003 | 30.10.2003 |
| 2005 | 40 | <i>Fire and Emergency Services Act 2005</i> | 14.7.2005 | Sch 6 (c11 6 & 7)—uncommenced |

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|------------------|---|--|
| Long title | amended by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| Pt 1 | | |
| s 2 | <i>deleted by 44/2003 s 3(1) (Sch 1)</i> | <i>24.11.2003</i> |
| s 3 | | |
| s 3(1) | | |
| owner | amended by 61/1999 s 3(a) | 30.6.1999 |
| s 3(1a) | inserted by 61/1999 s 3(b) | 30.6.1999 |
| Pt 2 | <i>deleted by 61/1999 s 4</i> | <i>19.8.1999</i> |
| Pt 3 | | |
| s 5 | | |
| s 5(2) | amended by 61/1999 s 5(a) | 30.6.1999 |
| s 5(2a) | inserted by 61/1999 s 5(b) | 30.6.1999 |
| s 5(10) | inserted by 61/1999 s 5(c) | 30.6.1999 |
| s 5A | inserted by 61/1999 s 6 | 30.6.1999 |
| s 8 | | |
| s 8(5) | | |
| the relevant day | substituted by 61/1999 s 7 | 30.6.1999 |
| s 9 | | |
| s 9(2) | amended by 61/1999 s 8 | 30.6.1999 |
| s 10 | | |
| s 10(1) | amended by 61/1999 s 9(a) | 30.6.1999 |
| s 10(5) | amended by 61/1999 s 9(b) | 19.8.1999 |
| s 10(5a) | inserted by 61/1999 s 9(c) | 19.8.1999 |
| s 10(6) | (c) deleted by 61/1999 s 9(d) | 19.8.1999 |
| s 10(7) | amended by 61/1999 s 9(e) | 19.8.1999 |
| s 10(8) | amended by 61/1999 s 9(f) | 30.6.1999 |
| s 11 | <i>amended by 61/1999 s 10</i> <i>expired: s 11(5)—omitted under Legislation Revision and Publication Act 2002</i> | <i>30.6.1999</i> <i>(30.6.2002)</i> |
| s 12 | | |
| s 12(3) | amended by 61/1999 s 11 | 30.6.1999 |
| s 14 | substituted by 61/1999 s 12 | 30.6.1999 |
| s 15 | | |
| s 15(1) | amended by 61/1999 s 13 | 30.6.1999 |
| s 16 | | |
| s 16(1) | amended by 61/1999 s 14 | 30.6.1999 |
| s 24 | | |
| s 24(2) | amended by 45/2003 s 2(1) | 30.10.2003 |

Emergency Services Funding Act 1998—24.11.2003 to 30.9.2005

Legislative history

| | | |
|-------------------------------|---|-------------------|
| s 24(2a) | inserted by 45/2003 s 2(2) | 30.10.2003 |
| s 24(7) | amended by 61/1999 s 15(a), (b) | 30.6.1999 |
| s 24(8) | amended by 61/1999 s 15(c) | 30.6.1999 |
| s 26 | | |
| s 26(4) | amended by 4/2000 s 9(1) (Sch 1 cl 13) | 1.6.2000 |
| Pt 4 | | |
| s 28 | | |
| s 28(3) | amended by 61/1999 s 16 | 30.6.1999 |
| Pt 5 | | |
| s 32 | | |
| s 32(2) | amended by 61/1999 s 17 | 30.6.1999 |
| s 32(3) | substituted by 23/2001 s 73 | 15.7.2001 |
| s 33 | | |
| s 33(1) | amended by 61/1999 s 18(a), (b) | 30.6.1999 |
| s 33(3)—(5) | inserted by 61/1999 s 18(c) | 30.6.1999 |
| s 33A | inserted by 61/1999 s 19 | 30.6.1999 |
| Sch 1 | designated as cll 1 and 2 by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| Sch 2 | heading amended by 44/2003 s 3(1) (Sch 1) | 24.11.2003 |
| <i>heading preceding cl 1</i> | <i>deleted by 44/2003 s 3(1) (Sch 1)</i> | <i>24.11.2003</i> |
| <i>cl 1—3</i> | <i>deleted by 44/2003 s 3(1) (Sch 1)</i> | <i>24.11.2003</i> |
| <i>heading preceding cl 4</i> | <i>deleted by 44/2003 s 3(1) (Sch 1)</i> | <i>24.11.2003</i> |
| cl 4A | inserted by 61/1999 s 20 | 30.6.1999 |

Transitional etc provisions associated with Act or amendments

Emergency Services Funding (Validation of Levy on Vehicles and Vessels) Act 2003

2—Interpretation

In this Act, unless the contrary intention appears—

Act means the *Emergency Services Funding Act 1998*;

levy means the levy under Part 3 Division 2 of the Act;

notice means the notice under section 24 of the Act, published in the Gazette on 2 June 1999, declaring the amount of the levy (*Gazette 30.10.2003 p2917*);

relevant financial years means the 2001/2002, 2002/2003 and 2003/2004 financial years.

3—Validation of certain administrative acts and payments

- (1) Despite the terms of the notice and any provision of the Act, the notice applies in all respects, and will be taken to have always so applied, in relation to the relevant financial years as if the relevant financial years were specified in the notice as financial years in relation to which the notice applies.

(2) Anything done or omitted to be done prior to the commencement of this section in or with respect to—

- (a) the declaration under section 24 of the Act of the amount of the levy; or
- (b) the collection and payment of the levy,

is, to the extent of any invalidity that would arise but for this section, to be taken to have been validly done or validly omitted to be done, as the case may require.

Historical versions

Reprint No 1—19.8.1999

Reprint No 2—1.6.2000

Reprint No 3—15.7.2001