

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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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Meaning of non-reviewable in relation to certain decisions

### Part 3—The emergency services levy

#### Division 1—Levy in respect of land

##### Subdivision 1—Imposition of levy

- 5 Land that is subject to levy
- 5A Application for aggregation of non contiguous land
- 6 Basis of levy
- 7 Emergency services areas
- 8 Land uses
- 9 Objection to attribution of use to land
- 10 Declaring the levy and the area and land use factors
- 12 Commissioner to keep assessment book
- 13 Alterations to assessment book
- 14 Inspection of assessment book
- 15 Liability for levy
- 16 Notice of levy
- 17 Refund resulting from assessment
- 17A Cancellation of assessment
- 17B Payment of levy into Fund

##### Subdivision 2—Refunds

- 17C Right to apply for refund
- 17D Form of application for refund
- 17E Commissioner may refuse to determine application until information etc provided
- 17F Offset of refund against other liability
- 17G Windfalls—refusal of refund

##### Subdivision 3—Interest and penalty levy

- 17H Definition for Subdivision
- 17I Defaults to which Subdivision applies

- 17J Interest
- 17K Penalty levy
- 17L Amount of penalty levy
- 17M Notification of penalty levy and interest and time for payment

#### Subdivision 4—Collection of levy

- 17N Definition for Subdivision
- 17O Recovery of levy as debt
- 17P Joint and several liability
- 17Q Collection of levy from third parties
- 17R Duties of agents, trustees etc
- 18 Levy first charge on land
- 20 Sale of land for non-payment of levy
- 21 Recovery of levy not affected by objection, review or appeal
- 22 Arrangements for payment of levy
- 22A Decisions non-reviewable
- 22B No statute of limitation to apply

#### Subdivision 5—Investigation

- 22C Power to require information, instruments or records or attendance for examination
- 22D Powers of entry and inspection
- 22E Use and inspection of instruments or records produced or seized
- 22F Self-incrimination
- 22G Hindering or obstructing authorised officers etc

#### Subdivision 6—Secrecy

- 22H Relevant persons
- 22I Prohibition of certain disclosures by relevant persons
- 22J Permitted disclosure in particular circumstances or to particular persons
- 22K Permitted disclosures of general nature
- 22L Prohibition of disclosures by other persons
- 22M Restriction on power of courts to require disclosure

#### Division 2—Levy in respect of vehicles and vessels

- 23 Liability for levy
- 24 Declaring the amount of the levy
- 25 Exemption by Minister
- 26 Objection to classification of vehicle
- 27 Payment of levy into Fund

#### Part 4—The Community Emergency Services Fund

- 28 The Community Emergency Services Fund
- 29 Investment of the Fund
- 30 Accounts

#### Part 5—Miscellaneous

- 31 Delegation
- 31A Evidence
- 32 Service of notices
- 33 Remission of levies by regulation
- 33A Recouping money lost on aggregation of non contiguous land
- 34 Regulations

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## Schedule 1—Emergency services areas

- 1 Greater Adelaide
- 2 Regional Area 1

## Schedule 2—Transitional provisions

- 4 Reimbursement by insurers to policy holders
- 4A Report on changes to insurance premiums
- 5 The Emergency Services Funding Transitional Advisory Committee
- 6 Crown to be taken to be owner of certain land

## Legislative history

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## 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;

*authorised officer* means a person who is an authorised officer for the purposes of the taxation laws under the *Taxation Administration Act 1996*;

*Commissioner* means the person appointed or acting as the Commissioner of State Taxation, and includes a person appointed or acting as a Deputy Commissioner of State Taxation (see Part 9 of the *Taxation Administration Act 1996*);

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

*emergency service* means—

- (a) a service of the kind provided by—
  - (i) the South Australian Country Fire Service;
  - (ii) the South Australian Metropolitan Fire Service;
  - (iii) the South Australian State Emergency Service;
  - (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*;

**non-reviewable decision**—see section 4;

**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.

#### **4—Meaning of non-reviewable in relation to certain decisions**

If a provision of this Act provides that a decision is a *non-reviewable decision*, no court or administrative review body has the jurisdiction or power to entertain any question as to the validity or correctness of the decision.

### **Part 3—The emergency services levy**

#### **Division 1—Levy in respect of land**

##### **Subdivision 1—Imposition of levy**

#### **5—Land that is subject to levy**

- (1) Subject to this Division, an emergency services levy may be assessed by the Commissioner 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 1999* 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.

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- (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 Commissioner 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 Commissioner on or before 31 March immediately preceding the first financial year to which the aggregation of the land will relate.
- (3) The applicant must provide the Commissioner with such information and evidence as the Commissioner reasonably requires to consider the application.
- (4) The Commissioner must serve notice of his or her decision on the applicant and, if the application is refused, the notice must include the Commissioner's reasons for refusing the application.
- (5) An applicant may appeal against the Commissioner'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 Commissioner 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*;

*Local Government Regulations* means the *Local Government (General) Regulations 1999*;

*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.

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- (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—Commissioner to keep assessment book

- (1) The Commissioner 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 Commissioner 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 Commissioner may suppress the name or address from the assessment book.
- (3) Where the Commissioner is satisfied that a person's address is suppressed from the roll under the *Electoral Act 1985*, the Commissioner 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 Commissioner delegates the duty to keep the assessment book—be kept in different parts by different persons.

- (5) The Commissioner 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 Commissioner 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 Commissioner (or to any other person nominated by the Commissioner) in the form specified by the Commissioner.

### **13—Alterations to assessment book**

- (1) Application may be made to the Commissioner 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 Commissioner.
- (3) A person who is dissatisfied with the decision of the Commissioner 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 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 Commissioner.
- (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 Commissioner 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
  - (da) if the person liable to pay the levy is also liable to pay interest or a penalty levy under Subdivision 3—the amount of the interest or penalty levy; 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 Commissioner, 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—Refund resulting from assessment**

If the result of an assessment of a person's liability to pay a levy or other amount under this Division is that the person has made an overpayment, the Commissioner must, subject to Subdivision 2, refund the amount overpaid.

### **17A—Cancellation of assessment**

If the Commissioner is satisfied that—

- (a) an assessment of a person's liability to pay a levy or other amount under this Division has been made in error; and
  - (b) no amount has been paid as required under the assessment,
- the Commissioner may cancel the assessment.

### **17B—Payment of levy into Fund**

- (1) Subject to subsection (2), the Commissioner must pay money received in payment of the levy, a penalty levy or interest under this Division into the Fund.

- (2) Money received in payment of the levy, a penalty levy or interest may, instead of being paid into the Fund, be applied towards payment of any refund required to be paid under this Division.

## **Subdivision 2—Refunds**

### **17C—Right to apply for refund**

- (1) A person may make application for a refund of an amount that has been overpaid by the person under this Division.
- (2) An application for a refund cannot be made under this section more than 5 years after the person made the payment to the Commissioner in respect of which the refund is sought.
- (3) A determination under this section as to whether there has been an overpayment, or as to the amount of an overpayment, is to be made in accordance with the legal interpretations and assessment practices generally applied by the Commissioner in relation to matters of the kind in question at the time the person made the payment in respect of which the refund is sought except to the extent that any departure from those interpretations and practices is required by legislative change made after the payment.
- (4) If the result of determination of an application under this section is that the applicant has made an overpayment, the Commissioner must, subject to the other provisions of this Subdivision, refund the amount overpaid.

### **17D—Form of application for refund**

An application for a refund must be made to the Commissioner in a form approved by the Commissioner.

### **17E—Commissioner may refuse to determine application until information etc provided**

- (1) If the Commissioner has, under Subdivision 5, made a requirement of an applicant for a refund for the purposes of determining the application, the Commissioner may refuse to determine the application until the applicant complies with the requirement.
- (2) A refusal under subsection (1) is a non-reviewable decision.

### **17F—Offset of refund against other liability**

- (1) The Commissioner may apply the whole or part of an amount that would otherwise be required to be refunded to meet any amount payable by the applicant under this Division.
- (2) The whole or part of an amount that would otherwise be required to be refunded may be credited towards a person's future liability under this Division, but only with the person's consent.
- (3) A decision under this section is a non-reviewable decision.

**17G—Windfalls—refusal of refund**

- (1) The Commissioner may refuse to make a refund if—
  - (a) the amount of the levy, penalty levy or interest to be refunded has been passed on to another person; and
  - (b) the applicant has not reimbursed that other person in an amount equivalent to the amount passed on to that other person.
- (2) A decision under subsection (1) is a non-reviewable decision.

**Subdivision 3—Interest and penalty levy****17H—Definition for Subdivision**

In this Subdivision—

*deliberate default* means a default to which this Subdivision applies that wholly or partly consists of or results from a deliberate act or omission by the person liable to pay the levy or a person acting on his or her behalf and includes a default to which this Subdivision applies where the person liable to pay the levy, or a person acting on his or her behalf, deliberately failed to provide information to the Commissioner, or deliberately misinformed or misled the Commissioner, in relation to the person's liability to pay the levy in contravention of this Act.

**17I—Defaults to which Subdivision applies**

This Subdivision applies to a default consisting of a failure by a person to pay, in accordance with this Act, the whole or part of a levy that the person is liable to pay under this Division.

**17J—Interest**

- (1) If—
  - (a) a default to which this Subdivision applies occurs; or
  - (b) a person fails to pay, in accordance with this Act, the whole or part of a penalty levy payable in respect of a default to which this Subdivision applies,the person in default is liable to pay interest on the amount of the levy or penalty levy unpaid at the interest rate from time to time applying under this section.
- (2) Interest is not payable under subsection (1) in respect of a failure to pay interest under this section.
- (3) Subject to subsection (4), interest accrues on a daily basis—
  - (a) on the amount of a levy unpaid—from the date stated for payment of the levy in the notice under section 16; and
  - (b) on the amount of a penalty levy unpaid—from the date stated for payment of the penalty levy in the notice under section 17M.
- (4) If the amount of interest payable for the time being would, apart from this subsection, be less than \$20, no interest is payable.

- (5) If judgment is given by or entered in a court for an amount that represents or includes the whole or part of an unpaid levy or an unpaid penalty levy, the interest rate applying under this section continues to apply in relation to the amount of the levy or penalty levy unpaid, while it remains unpaid, to the exclusion of any other interest rate.
- (6) The Commissioner may, at the Commissioner's discretion, remit interest otherwise payable by any amount.
- (7) A decision under subsection (6) is a non-reviewable decision.
- (8) The interest rate that applies under this section is the sum of—
  - (a) the market rate (within the meaning of section 26 of the *Taxation Administration Act 1996*); and
  - (b) 8% per annum.

### **17K—Penalty levy**

- (1) If a default to which this Subdivision applies occurs, the person in default is liable to pay a penalty levy in addition to the amount of the unpaid levy.
- (2) However, if the Commissioner is satisfied that the default was not a deliberate default and did not result, wholly or partly, from a failure by the person, or a person acting on his or her behalf, to take reasonable care to comply with the requirements of this Act, a penalty levy is not payable.
- (3) If the amount of a penalty levy payable in respect of the default would, apart from this subsection, be less than \$20, no penalty levy is payable in respect of the default.
- (4) The Commissioner may, at the Commissioner's discretion, remit a penalty levy otherwise payable by any amount.
- (5) A decision under subsection (4) is a non-reviewable decision.
- (6) A penalty levy imposed under this Subdivision is in addition to interest.

### **17L—Amount of penalty levy**

The amount of a penalty levy payable in respect of a default to which this Subdivision applies is—

- (a) in the case of a deliberate default—75% of the amount of the levy unpaid; or
- (b) in any other case—25% of the amount of the levy unpaid.

### **17M—Notification of penalty levy and interest and time for payment**

- (1) The Commissioner must serve notice of any interest accrued and penalty levy payable in respect of a default to which this Subdivision applies on the person liable to pay the interest or penalty levy.
- (2) A penalty levy must be paid by the person within the period specified for that purpose in the notice under subsection (1).
- (3) If the person fails to pay the whole or a part of a penalty levy within the specified period, the Commissioner may serve on the person notice of any interest accrued in respect of the failure.



## **Subdivision 4—Collection of levy**

### **17N—Definition for Subdivision**

In this Subdivision—

*levy* includes—

- (a) a penalty levy; and
- (b) interest in relation to the levy or a penalty levy.

### **17O—Recovery of levy as debt**

The Commissioner may recover the amount of an unpaid levy as a debt from the person liable to pay the amount under this Division.

### **17P—Joint and several liability**

- (1) If 2 or more persons are jointly or severally liable to pay a levy under this Division, the Commissioner may recover the whole of the levy from them, or any of them, or any 1 of them.
- (2) Nothing in this Act prevents a person who—
  - (a) is jointly or severally liable to pay an amount under this Division; and
  - (b) pays the amount to the Commissioner,

from recovering a contribution from another person who is liable to pay the whole or part of that amount.

### **17Q—Collection of levy from third parties**

- (1) The Commissioner may require any of the following persons instead of the person in default to pay a levy that is payable under this Division but remains unpaid (including a judgment debt and costs in respect of such an amount):
  - (a) a person from whom money is due or accruing or may become due to the person in default;
  - (b) a person who holds or may subsequently hold money for or on account of the person in default;
  - (c) a person who holds or may subsequently hold money on account of some other person for payment to the person in default;
  - (d) a person having authority from some other person to pay money to the person in default.
- (2) The Commissioner's requirement is to be made by written notice served on the person.
- (3) A copy of the notice must also be served on the person in default.
- (4) The amount that the person is required by the notice to pay to the Commissioner is so much of the money referred to in subsection (1) as is sufficient to pay the levy remaining unpaid, or, if the money is insufficient, all of it.
- (5) The money must be paid to the Commissioner on receipt of the notice, or when the money is held by the person, or after such period (if any) as may be specified by the Commissioner, whichever is the later or latest.

- (6) A person subject to a requirement of the Commissioner under this section must comply with the requirement.  
Maximum penalty: \$10 000.
- (7) A person who makes a payment in accordance with this section is to be taken to be acting under the authority of the person in default and of all other persons concerned and is entitled to indemnity from the person in default in respect of the payment.
- (8) If, after a person is given a notice under this section by the Commissioner, the whole or a part of the amount that the person is required by the notice to pay to the Commissioner is paid by another person, the Commissioner must, by written notice, advise the person of the payment and cancel the prior notice or amend it accordingly.
- (9) An amount that is required to be paid by a person under this section but remains unpaid may be recovered by the Commissioner from the person as a debt.

### **17R—Duties of agents, trustees etc**

- (1) If—
  - (a) a person has possession, control or management of a business or property of another person as an agent or trustee or in any other capacity; and
  - (b) obligations under this Division (whether as to the payment of a levy or otherwise) remain undischarged by the other person or will arise in relation to the business or property,

the following provisions apply:

- (c) the person must, as soon as and so far as is practicable, ensure that the obligations of the other person under this Division that remain undischarged are discharged;
- (d) the person must, as soon as and so far as is practicable, ensure that all further obligations that arise under this Division in relation to the business or property are discharged while the person continues to have possession, control or management of the business or property;
- (e) for those purposes the person must set aside (and, so far as necessary, liquidate) assets of the other person (or the other person's estate) to the value of any levy that has become or becomes payable and employ those assets in payment of the levy;
- (f) if the person fails, without the Commissioner's written permission, to set aside, liquidate and employ sufficient assets for that purpose, the Commissioner may recover from the person as a debt the whole or a part of an amount that is assessed as being payable under this Division in relation to the business or property and remains unpaid, but the person will not otherwise be personally liable for the payment of the levy;
- (g) the person is entitled to be indemnified by the other person (or out of the other person's estate) in respect of payments made or action taken under this section;

- (h) nothing prevents the making of a payment to the person out of the assets, in priority to a levy, of any reasonable remuneration, charges and expenses to which the person would, apart from this section, be entitled in respect of the performance of the person's functions.
- (2) A person who contravenes a provision of subsection (1) is guilty of an offence.  
Maximum penalty: \$10 000.

### **18—Levy first charge on land**

- (1) An unpaid levy is 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.

### **20—Sale of land for non-payment of levy**

- (1) Where a levy is a first charge on land and has been unpaid for two years or more, the Commissioner may sell the land.
- (2) Before the Commissioner 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 Commissioner may allow), the Commissioner 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 Commissioner may proceed to sell the land.
- (5) The sale will be by public auction (and the Commissioner 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 Commissioner in proceeding under this section are paid to the Commissioner, the Commissioner must withdraw the land from auction.
- (8) If an auction fails, the Commissioner may sell the land by private contract for the best price that he or she can reasonably obtain.
- (9) Any money received by the Commissioner 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 Commissioner 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 Commissioner 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 Commissioner in pursuance of this section, an instrument of transfer executed by the Commissioner 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 administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act stating that the requirements of this section in relation to the sale of the land have been observed.

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

- (1) The right of the Commissioner 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 a daily basis on an amount to be refunded under paragraph (a) from the day on which the levy to which the objection, review or appeal relates was assessed as being payable or from the day on which the levy was paid, whichever is the later, until the day the amount is refunded or otherwise applied;
- (d) interest accrues on an unpaid amount referred to in paragraph (b) from the expiration of 30 days from the day on which notification of the alteration or decision referred to in paragraph (b) was given to the person who initiated the objection, review or appeal until the day the amount is paid;
- (e) the interest rates that apply under this subsection are—
  - (i) for the purposes of paragraph (c)—the market rate (within the meaning of section 26 of the *Taxation Administration Act 1996*); and
  - (ii) for the purposes of paragraph (d)—the interest rate applying for the time being under section 17J.

## **22—Arrangements for payment of levy**

- (1) The Commissioner may extend the time for payment of a levy and may accept the payment of a levy by instalments.
- (2) A decision of the Commissioner under this section may be made subject to conditions (for example, as to the payment of interest) determined by the Commissioner.

## **22A—Decisions non-reviewable**

A decision under this Subdivision is a non-reviewable decision.

## **22B—No statute of limitation to apply**

No statute of limitation bars or affects any action or remedy for recovery by the Commissioner of an amount assessed as being payable under this Division.

## **Subdivision 5—Investigation**

### **22C—Power to require information, instruments or records or attendance for examination**

- (1) The Commissioner may, for a purpose related to the administration or enforcement of this Division, by written notice served on a person, require the person—
  - (a) to provide to the Commissioner (either orally or in writing) information that is described in the notice; or
  - (b) to attend and give evidence before the Commissioner or an authorised officer; or
  - (c) to produce to the Commissioner an instrument or record in the person's custody or control that is described in the notice.
- (2) The Commissioner must, if the requirement is made of a person to determine that person's liability to pay a levy under this Division, indicate in the notice that the requirement is made for that purpose, but the Commissioner is not otherwise required to identify a person in relation to whom any information, evidence, instrument or record is required under this section.

- (3) The Commissioner may require that information or evidence be provided or given under this section on oath, or in the form of, or verified by, a statutory declaration.
- (4) If a person, without reasonable excuse, refuses or fails—
  - (a) to comply with the requirements of a notice under this section within the period specified in the notice or a further period allowed by the Commissioner; or
  - (b) to comply with any other requirement of the Commissioner as to the giving of evidence or the manner in which information or evidence is to be provided or given under this section,

the person is guilty of an offence.

Maximum penalty: \$10 000.

- (5) A requirement under this section is a non-reviewable decision.

## **22D—Powers of entry and inspection**

- (1) An authorised officer may, for a purpose related to the administration or enforcement of this Division—
  - (a) enter and remain on premises; and
  - (b) require any person on the premises to answer questions or otherwise furnish information; and
  - (c) require any person on the premises to produce any instrument or record in the person's custody or control (including a written record that reproduces in an understandable form information stored by computer, microfilm or other means or process); and
  - (d) require the owner or occupier of the premises to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise powers under this Subdivision; and
  - (e) seize and remove any instrument or record on behalf of the Commissioner.
- (2) Entry may be made at any reasonable time.
- (3) An authorised officer must, at the request of a person in relation to whom the authorised officer intends to exercise powers under this section, produce the officer's identity card for the inspection of the person.

## **22E—Use and inspection of instruments or records produced or seized**

- (1) This section applies to an instrument or record that has been produced to the Commissioner or seized and removed by an authorised officer.
- (2) An instrument or record to which this section applies may be retained for the purpose of enabling the instrument or record to be inspected and enabling copies of, or extracts or notes from, the instrument or record to be made or taken by or on behalf of the Commissioner.
- (3) However, if the instrument or record is required by the Commissioner as evidence for the purposes of legal proceedings, the instrument or record may be retained until the proceedings are finally determined.

- (4) The Commissioner must permit a person who would be entitled to inspect the instrument or record if it were not in the possession of the Commissioner to inspect the instrument or record at any reasonable time.
- (5) Nothing in this section prejudices a lien a person has on the instrument or record.
- (6) A decision under subsection (2) or (3) is a non-reviewable decision.

### **22F—Self-incrimination**

- (1) A person is not excused from answering a question, providing information or producing an instrument or record, when required to do so under this Subdivision, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person objects to answering the question, providing the information or producing the instrument or record on that ground, the answer, information, instrument or record is not admissible against the person in criminal proceedings other than—
  - (a) proceedings for an offence with respect to false or misleading statements, information or records; or
  - (b) proceedings for an offence in the nature of perjury.

### **22G—Hindering or obstructing authorised officers etc**

- (1) A person who—
  - (a) hinders or obstructs an authorised officer in the exercise of a power under this Subdivision; or
  - (b) without reasonable excuse, refuses or fails to comply with a requirement of an authorised officer under this Subdivision,is guilty of an offence.  
Maximum penalty: \$10 000.
- (2) A person is not guilty of an offence under this section arising from the entry of an authorised officer onto premises unless it is established that, at the material time, the authorised officer—
  - (a) identified himself or herself as an authorised officer; and
  - (b) warned the person that a refusal or failure to comply with the requirement constituted an offence.

### **Subdivision 6—Secrecy**

#### **22H—Relevant persons**

In this Subdivision—

*relevant person* means a person who is or has been engaged (whether as an officer or employee or otherwise) in the administration or enforcement of this Division.

## **22I—Prohibition of certain disclosures by relevant persons**

A relevant person must not disclose information obtained under or in relation to the administration or enforcement of this Division, except as permitted by this Subdivision.

Maximum penalty: \$10 000.

## **22J—Permitted disclosure in particular circumstances or to particular persons**

A relevant person may disclose information obtained under or in relation to the administration or enforcement of this Division—

- (a) with the consent of the person to whom the information relates or at the request of a person acting on behalf of the person to whom the information relates; or
- (b) in connection with the administration or enforcement of this Division, a taxation law (within the meaning of the *Taxation Administration Act 1996*), the *Petroleum Products Regulation Act 1995*, the *First Home Owner Grant Act 2000* or a law of another Australian jurisdiction relating to taxation; or
- (c) for the purposes of legal proceedings under a law referred to in paragraph (b) or reports of such proceedings; or
- (d) to the holder of an office or a body prescribed for the purposes of section 78(d) of the *Taxation Administration Act 1996*.

## **22K—Permitted disclosures of general nature**

The Commissioner may disclose information obtained under or in relation to the administration or enforcement of this Division that does not directly or indirectly identify a particular person.

## **22L—Prohibition of disclosures by other persons**

A person other than a relevant person must not disclose information that—

- (a) has been obtained (whether properly or improperly and whether directly or indirectly) from a relevant person; and
- (b) the relevant person obtained under or in relation to this Division,

unless—

- (c) the disclosure is of a kind that a person engaged (whether as an officer or employee or otherwise) in the administration or enforcement of this Act would be permitted to make under this Subdivision; or
- (d) if the person is the holder of an office or a body prescribed for the purposes of section 78(d) of the *Taxation Administration Act 1996*—the disclosure is made in connection with the performance of functions conferred or imposed on the person under a law of this jurisdiction or another Australian jurisdiction (including for the purposes of legal proceedings connected with the performance of such functions); or
- (e) the disclosure is made with the consent of the Commissioner.

Maximum penalty: \$10 000.



**22M—Restriction on power of courts to require disclosure**

A court does not have power to require a disclosure of information contrary to this Subdivision.

**Division 2—Levy in respect of vehicles and vessels****23—Liability for 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 administrative unit of the Public Service that is, under a Minister, responsible for the administration of 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 levy into Fund**

- (1) Subject to subsection (2), the Registrar of Motor Vehicles and the Chief Executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Harbors and Navigation Act 1993* must pay money received in payment of the levy under this Division into the Fund.
- (2) Money received in payment of the levy may, instead of being paid into the Fund, be applied towards payment of any refund required to be paid under this Division.

## **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 South Australian Country Fire Service; or
    - (ii) the South Australian Metropolitan Fire Service; or
    - (iii) the South Australian State Emergency Service; 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;
- (ab) in payment to the South Australian Fire and Emergency Services Commission;
- (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—Delegation**

- (1) The Minister or the Commissioner may delegate a power, function or duty vested in or conferred on the Minister or the Commissioner (as the case may be) under this Act—
  - (a) to a particular person or body; or
  - (b) to the person for the time being occupying a particular office or position.
- (2) A power, function or duty delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (3) A delegation—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in a matter; and
  - (d) is revocable at will by the delegator.

### 31A—Evidence

Section 115 of the *Taxation Administration Act 1996* applies for the purposes of this Act as if—

- (a) this Act were a taxation law for the purposes of that Act; and
- (b) an assessment under this Act of a person's liability to pay a levy (including interest and a penalty levy under Part 3 Division 1) were an assessment by the Commissioner under that Act of the tax liability of a person; and
- (c) a reference in that section to the Commissioner included a reference to the Minister.

### 32—Service of notices

- (1) Where this Act requires or authorises a notice to be served on the Minister or the Commissioner, the notice may—
  - (a) be left at the office of the Minister or the Commissioner (as required) with a person apparently over the age of 16 years; or
  - (b) be sent by post or facsimile transmission to the office of the Minister or the Commissioner (as required).
- (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 Commissioner 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](http://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</i> No. S 285, 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)—1.10.2005 ( <i>Gazette 29.9.2005 p3547</i> )
2008	38	<i>Statutes Amendment and Repeal (Taxation Administration) Act 2008</i>	23.10.2008	Pt 2 (ss 4—23)—1.7.2009 ( <i>Gazette 11.12.2008 p5475</i> )

**Emergency Services Funding Act 1998—4.7.2016 to 13.12.2017**

## Legislative history

2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 55 (ss 112—114)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2016</b>	<b>29</b>	<b><i>Real Property (Electronic Conveyancing) Amendment Act 2016</i></b>	<b>16.6.2016</b>	<b>Sch 2—4.7.2016 (<i>Gazette 30.6.2016 p2761</i>)</b>
2017	51	<i>Statutes Amendment (SACAT No 2) Act 2017</i>	28.11.2017	Pt 13 (ss 70 to 76)—14.12.2017 ( <i>Gazette 12.12.2017 p4960</i> )

**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)		
authorised officer	inserted by 38/2008 s 4(1)	1.7.2009
Commissioner	inserted by 38/2008 s 4(1)	1.7.2009
emergency service	amended by 40/2005 Sch 6 cl 6(1), (2)	1.10.2005
non-reviewable decision	inserted by 38/2008 s 4(2)	1.7.2009
owner	amended by 61/1999 s 3(a)	30.6.1999
s 3(1a)	inserted by 61/1999 s 3(b)	30.6.1999
s 4	inserted by 38/2008 s 5	1.7.2009
Pt 2	<i>deleted by 61/1999 s 4</i>	<i>19.8.1999</i>
Pt 3		
Pt 3 Div 1		
Pt 3 Div 1 Subdiv 1		
heading	inserted by 38/2008 s 6	1.7.2009
s 5		
s 5(1)	amended by 38/2008 s 7(1)	1.7.2009
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
	amended by 38/2008 s 7(2)	1.7.2009
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 5A(1)	amended by 38/2008 s 8(1)	1.7.2009
s 5A(2)	amended by 38/2008 s 8(1), (3)	1.7.2009
s 5A(3)	amended by 38/2008 s 8(1)	1.7.2009
s 5A(4)	amended by 38/2008 s 8(1), (2)	1.7.2009
s 5A(5)	amended by 38/2008 s 8(2)	1.7.2009
s 5A(7)	amended by 38/2008 s 8(1)	1.7.2009
s 8		

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s 8(5)		
<i>the Local Government Regulations</i>	<i>deleted by 38/2008 s 9</i>	1.7.2009
Local Government Regulations	inserted by 38/2008 s 9	1.7.2009
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>	30.6.1999
	<i>expired: s 11(5)—omitted under Legislation Revision and Publication Act 2002</i>	(30.6.2002)
s 12		
s 12(1) and (2)	amended by 38/2008 s 10	1.7.2009
s 12(3)	amended by 61/1999 s 11	30.6.1999
	amended by 38/2008 s 10	1.7.2009
s 12(4)—(6)	amended by 38/2008 s 10	1.7.2009
s 13		
s 13(1)—(3)	amended by 38/2008 s 11	1.7.2009
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
	amended by 38/2008 s 12	1.7.2009
s 16		
s 16(1)	amended by 61/1999 s 14	30.6.1999
	amended by 38/2008 s 13(1)	1.7.2009
s 16(2)	amended by 38/2008 s 13(2)	1.7.2009
s 16(4)	amended by 38/2008 s 13(1)	1.7.2009
s 17	substituted by 38/2008 s 14	1.7.2009
ss 17A and 17B	inserted by 38/2008 s 14	1.7.2009
Pt 3 Div 1 Subdiv 2	inserted by 38/2008 s 14	1.7.2009
Pt 3 Div 1 Subdiv 3	inserted by 38/2008 s 14	1.7.2009
Pt 3 Div 1 Subdiv 4		
heading	inserted by 38/2008 s 14	1.7.2009
ss 17N—17R	inserted by 38/2008 s 14	1.7.2009
s 18		
s 18(1)	amended by 38/2008 s 15	1.7.2009

**Emergency Services Funding Act 1998—4.7.2016 to 13.12.2017**

## Legislative history

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<i>s 19</i>	<i>deleted by 38/2008 s 16</i>	<i>1.7.2009</i>
<i>s 20</i>		
<i>s 20(1)</i>	amended by 38/2008 s 17(1), (2)	1.7.2009
<i>s 20(2), (4), (5), (7)—(9), (11)</i>	amended by 38/2008 s 17(1)	1.7.2009
<i>s 20(13)</i>	amended by 84/2009 s 112	1.2.2010
<i><b>s 20(14)</b></i>	<i><b>deleted by 29/2016 Sch 2</b></i>	<i><b>4.7.2016</b></i>
<i>s 21</i>		
<i>s 21(1)</i>	amended by 38/2008 s 18(1)	1.7.2009
<i>s 21(2)</i>	amended by 38/2008 s 18(2)	1.7.2009
<i>s 22</i>	substituted by 38/2008 s 19	1.7.2009
<i>ss 22A and 22B</i>	inserted by 38/2008 s 19	1.7.2009
<i>Pt 3 Div 1 Subdiv 5</i>	inserted by 38/2008 s 19	1.7.2009
<i>Pt 3 Div 1 Subdiv 6</i>	inserted by 38/2008 s 19	1.7.2009
<i>Pt 3 Div 2</i>		
<i>s 23</i>		
<i>s 23(2)</i>	amended by 84/2009 s 113	1.2.2010
<i>s 24</i>		
<i>s 24(2)</i>	amended by 45/2003 s 2(1)	30.10.2003
<i>s 24(2a)</i>	inserted by 45/2003 s 2(2)	30.10.2003
<i>s 24(7)</i>	amended by 61/1999 s 15(a), (b)	30.6.1999
<i>s 24(8)</i>	amended by 61/1999 s 15(c)	30.6.1999
<i>s 26</i>		
<i>s 26(4)</i>	amended by 4/2000 s 9(1) (Sch 1 cl 13)	1.6.2000
<i>s 27</i>		
<i>s 27(1)</i>	<i>s 27 amended and redesignated as s 27(1) by 38/2008 s 20(1)—(3)</i>	1.7.2009
	amended by 84/2009 s 114	1.2.2010
<i>s 27(2)</i>	inserted by 38/2008 s 20(3)	1.7.2009
<i>Pt 4</i>		
<i>s 28</i>		
<i>s 28(3)</i>	amended by 61/1999 s 16	30.6.1999
<i>s 28(4)</i>	amended by 40/2005 Sch 6 cl 7(1)—(3)	1.10.2005
<i>Pt 5</i>		
<i>s 31</i>	substituted by 38/2008 s 21	1.7.2009
<i>s 31A</i>	inserted by 38/2008 s 21	1.7.2009
<i>s 32</i>		
<i>s 32(1)</i>	amended by 38/2008 s 22(1)—(3)	1.7.2009
<i>s 32(2)</i>	amended by 61/1999 s 17	30.6.1999
<i>s 32(3)</i>	substituted by 23/2001 s 73	15.7.2001
<i>s 33</i>		
<i>s 33(1)</i>	amended by 61/1999 s 18(a), (b)	30.6.1999
<i>s 33(3)—(5)</i>	inserted by 61/1999 s 18(c)	30.6.1999

s 33A	inserted by 61/1999 s 19	30.6.1999
s 33A(1)	amended by 38/2008 s 23	1.7.2009
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 deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
	<i>cll 1—3 deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
	<i>heading preceding cl 4 deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
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

Reprint No 4—24.11.2003

1.10.2005

1.7.2009

1.2.2010