

Western Australia

**Fire and Emergency Services Legislation
(Emergency Services Levy) Amendment Act
2002**

As at 11 Nov 2002

No. 42 of 2002

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**Fire and Emergency Services Legislation
(Emergency Services Levy) Amendment Act
2002**

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Amendment Act 2002**

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Western Australia

Fire and Emergency Services Legislation (Emergency Services Levy) Amendment Act 2002

No. 42 of 2002

An Act to amend —

- **the *Fire and Emergency Services Authority of Western Australia Act 1998*; and**
- **the *Fire Brigades Act 1942*,**

to provide for the payment of a levy for the provision of emergency services, to amend and consolidate the financial provisions relating to emergency services, to make consequential amendments to the *Rates and Charges (Rebates and Deferments) Act 1992*, and for related purposes.

[Assented to 11 December 2002]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Fire and Emergency Services Legislation (Emergency Services Levy) Amendment Act 2002*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

**Part 2 — *Fire and Emergency Services Authority of
Western Australia Act 1998***

3. The Act amended

The amendments in this Part are to the *Fire and Emergency Services Authority of Western Australia Act 1998**.

[* *Act No. 41 of 1998.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 135, and Act No. 20 of 2002.]

4. Section 3 amended

Section 3 is amended by inserting the following definitions in the appropriate alphabetical positions —

“

“**annual estimate**”, in relation to expenditure, means an estimate of expenditure for a financial year;

“**assessment notice**” means a notice served under section 36J(1) or 36L(2);

“**Crown land**” has the same meaning as it has in the *Land Administration Act 1997*;

“**ESL category area**” means an area of Western Australia that is declared under section 36F(2);

“**gross rental value**”, in relation to land, has the same meaning as it has in the *Valuation of Land Act 1978*;

“**leviable land**” means land on which the levy is payable;

“**levy**” means the emergency services levy determined under Part 6A and imposed under the *Emergency Services Levy Act 2002*;

“**levy interest**” means interest that has accrued on the levy under section 36S;

“**levy year**”, in relation to the payment of the levy,
means the financial year for which the levy is
payable;

“**owner**”, in relation to land, has the meaning given in
section 3A;

”.

5. Sections 3A and 3B inserted

After section 3 the following sections are inserted in Part 1 —

“

3A. Meaning of owner of land

In this Act —

“**owner**” —

- (a) in relation to Crown land, means —
 - (i) a lessee of the land or another person with a right to occupy the land otherwise than as an owner according to paragraph (b) or (c); or
 - (ii) a person with a right to acquire by purchase or otherwise the fee simple of the land;
- (b) in relation to Crown land that does not have an owner according to paragraph (a) and that —
 - (i) is vested in a person;
 - (ii) is dedicated to a purpose of a person; or
 - (iii) is placed under the control of a person,
means that person or, if applicable, the management body within the meaning of the *Land Administration Act 1997* for the land;

- (c) in relation to Crown land that does not have an owner according to paragraph (a) or (b), means the State;
- (d) in relation to freehold land that is under the operation of the *Transfer of Land Act 1893*, means a proprietor within the meaning of that Act, except a mortgagee who is not a mortgagee in possession of the land;
- (e) in relation to land that is subject to the *Registration of Deeds Act 1856*, means the holder of an interest registered by memorial under that Act, except a mortgagee who is not a mortgagee in possession of the land; or
- (f) means a person who —
 - (i) under the *Mining Act 1978*, holds in respect of the land a mining tenement within the meaning of that Act;
 - (ii) in accordance with the *Mining Act 1978*, holds, occupies, uses, or enjoys in respect of the land a mining tenement within the meaning of the *Mining Act 1904*; or
 - (iii) under the *Petroleum Act 1967*, holds in respect of the land a petroleum production licence or a petroleum exploration permit within the meaning of that Act.

3B. Act binds Crown

This Act binds the Crown.

”.

6. Section 12 amended

After section 12(2)(e) “and” is deleted and the following is inserted —

- “
- (ea) develop and turn to account any technology, software or other intellectual property that relates to a function of the Authority and, for that purpose, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
- ”.

7. Section 15 amended

Section 15(1) is amended after “Acts” by inserting —

“ , except the Minister’s functions under Part 6A ”.

8. Section 18B amended

Section 18B(3)(j) is amended after “roads” by inserting —

“ or any area of water ”.

9. Part 6 heading replaced

The heading to Part 6 is deleted and the following heading is inserted instead —

“

Part 6 — General financial provisions

”.

10. Section 29 amended

Section 29 is amended as follows:

- (a) after paragraph (a) by inserting —
“ and ”;

(b) by deleting paragraphs (b), (c) and (d) and “and” after paragraph (c) and inserting instead —

“

(b) other moneys lawfully provided for the purposes of the emergency services Acts or received by the Authority in the performance of its functions under those Acts.

”.

11. Section 30 amended

(1) Section 30(2)(b) is amended by deleting “or under section 46 of the *Fire Brigades Act 1942*”.

(2) After section 30(2)(b) “and” is deleted and the following is inserted —

“

(ba) the amounts payable to local governments under section 36A(5); and

”.

(3) Section 30(2)(c) is deleted and the following paragraph is inserted instead —

“

(c) subject to subsection (3), all other expenditure lawfully incurred by the Authority in the performance of its functions under the emergency services Acts.

”.

(4) After section 30(2) the following subsection is inserted —

“

(3) The funds that are credited to the Account as a result of payments made to the Authority under Part 6A are not to be expended for services prescribed for the purposes of section 35B(2)(a).

”.

12. Section 33 amended

Section 33(1) is amended as follows:

- (a) by deleting “and without limiting section 46 of the *Fire Brigades Act 1942*,”;
- (b) by deleting “functions.” and inserting instead —
“ functions under the emergency services Acts. ”.

13. Sections 35A and 35B inserted

After section 35 the following sections are inserted —

“

35A. Reserve funds

- (1) The Authority may establish reserve funds to which may be credited —
 - (a) amounts that are provided for in the annual estimates approved under section 35B; and
 - (b) any other amounts approved by the Minister.
- (2) The Authority may from time to time apply any of the moneys in the reserve funds —
 - (a) to purchase, construct, renew, maintain or replace —
 - (i) land, buildings, vehicles, vessels, plant or equipment; or
 - (ii) any other property approved by the Minister;
 - (b) to repay moneys borrowed by the Authority under this Part; or
 - (c) to any other purpose approved by the Minister.

35B. Annual estimates of expenditure by Authority

- (1) The Authority is to cause an annual estimate of its expenditure in relation to the services to be provided under the emergency services Acts to be —
 - (a) prepared in the manner and form approved by the Minister; and
 - (b) submitted for the approval of the Minister by the time determined by the Minister.
- (2) Without limiting subsection (1), an annual estimate of expenditure under this section is to identify the amount of that expenditure that is estimated —
 - (a) to be attributable to prescribed services to be provided under the emergency services Acts; or
 - (b) to comprise the amounts payable to local governments under section 36A(5).
- (3) The Minister may give the approval referred to in subsection (1)(b) or may reject the estimate and require the Authority to prepare and submit an amended estimate for the approval of the Minister by the time determined by the Minister.
- (4) The Authority is to comply with a requirement under subsection (3).

”.

14. Section 36 amended

Section 36 is amended by deleting “section 47 of the *Fire Brigades Act 1942*,” and inserting instead —

“ section 35B, ”.

15. Part 6A inserted

After section 36 the following Part is inserted —

“

Part 6A — Emergency services levy

Division 1 — Annual estimates of expenditure

36A. Annual estimates of expenditure by local governments and payments by Authority

- (1) Subject to subsection (2), a local government is to cause an annual estimate of its expenditure in relation to fire and emergency services to be —
 - (a) prepared in the manner and form approved by the Minister; and
 - (b) submitted for the approval of the Authority by the time determined by the Minister.
- (2) Subsection (1) does not apply to a local government in relation to a particular year if the Minister gives to the local government written notice that an estimate of its expenditure is not required for that year.
- (3) The Authority may give the approval referred to in subsection (1)(b) or may reject the estimate and require the local government to prepare and submit an amended estimate for the approval of the Authority by the time determined by the Minister.
- (4) A local government is to comply with a requirement under subsection (3).
- (5) The Authority is to pay to a local government, by the time, and in accordance with the procedures, determined by the Minister, an amount equal to the expenditure of the local government approved by the Authority under this section.

**Division 2 — Emergency services levy and ESL
category areas**

**36B. Annual levy payable to Authority on land in an ESL
category area**

Except as otherwise provided in this Part, the levy is payable each year to the Authority on all land that is located in an ESL category area.

36C. Record of leviable land

The Authority is to ensure that, for each levy year, a record is compiled, at the time and in the manner approved by the Minister, of all leviable land.

36D. Exemptions may be prescribed

The regulations may —

- (a) provide for kinds of land that are exempt or partially exempt from the levy; and
- (b) specify conditions to which an exemption, or partial exemption, from the levy is subject.

36E. Exemptions in other enactments not to apply

- (1) An enactment passed before the commencement of this section that purports to exempt a person from liability to pay any rate, tax or imposition that could be taken to include the levy does not exempt the person from liability to pay the levy.
- (2) An enactment passed after the commencement of this section that purports to exempt a person from liability to pay —
 - (a) all rates, taxes or impositions under the laws of Western Australia; or

- (b) certain rates, taxes or impositions that could be taken to include the levy,

does not exempt the person from liability to pay the levy.

- (3) Subsection (2) does not apply to an enactment that expressly exempts a person from liability to pay the levy.

36F. Declaration of ESL category areas

- (1) For the purposes of subsection (2), the regulations may prescribe different emergency services categories for different kinds of services that are provided under the emergency services Acts.
- (2) Having regard to the services that are provided under the emergency services Acts in an area of Western Australia, the Minister may, by notice published in the *Gazette* —
 - (a) declare that the area is in a prescribed emergency services category;
 - (b) declare that the area to which a declaration under paragraph (a) applies is in a different prescribed emergency services category; or
 - (c) revoke a declaration under this subsection.
- (3) A notice under subsection (2) cannot have effect in respect of the levy year in which the notice is published.
- (4) Before a notice is published under subsection (2) in relation to an area of Western Australia, the Minister is to consult with each local government whose local government district is, or is proposed to be, located in that area.

Division 3 — Determination and assessment of levy

36G. Minister to determine levy

- (1) Before the relevant day each year, the Minister, by notice published in the *Gazette*, is to determine the emergency services levy that is payable for the next levy year on all land that is located in an ESL category area.
- (2) In subsection (1) —
“the relevant day” means —
 - (a) a day declared by the Minister by notice published in the *Gazette* after consultation with persons who the Minister believes effectively represent the interests of local governments; or
 - (b) if no day is declared under paragraph (a), 31 May.
- (3) The Minister is to determine the levy that is payable for a levy year on land by reference to —
 - (a) the estimate of expenditure for the levy year approved by the Minister under section 35B, from which is to be deducted for the purposes of the determination —
 - (i) the amount of that expenditure identified under section 35B(2)(a); and
 - (ii) moneys appropriated by Parliament for the levy year for the purposes of the services provided under the emergency services Acts;and
 - (b) any other matter the Minister considers relevant to a proper determination of the levy.

- (4) Different rates of levy may be determined under subsection (3) according to either or both of the following —
 - (a) the ESL category area in which the land is located;
 - (b) the purpose for which the land is used.
- (5) In determining the purpose for which any land is used for subsection (4)(b) or section 36I(2)(b), the Minister is to have regard to the advice of the Valuer-General and to any matters prescribed by the regulations.

36H. Determination of levy by reference to gross rental value etc.

- (1) Except as otherwise provided in this section and section 36I, the levy payable for a levy year on land is to be determined as a rate in the dollar of the gross rental value of the land in force under the *Valuation of Land Act 1978* as at 1 July in the levy year.
- (2) If during a levy year the gross rental value of land in force under the *Valuation of Land Act 1978* as at 1 July in that year is amended as at that date as a result of —
 - (a) an interim valuation made under that Act;
 - (b) a valuation coming into force under that Act as a result of the amendment of a valuation under that Act; or
 - (c) a new valuation made under that Act in the course of completing a general valuation that has previously come into force,

the gross rental value, as so amended and in force as at 1 July, is the gross rental value of the land for the purposes of subsection (1).

- (3) If, after the required consultation, the Minister considers that it is impracticable or otherwise

inappropriate for the levy to be determined as a rate in the dollar of the gross rental value of any land, the Minister may determine the levy —

- (a) as a rate in the dollar of the gross rental value of a portion of the land; or
 - (b) on any other basis that, after the required consultation, the Minister considers appropriate.
- (4) In subsection (3) —
- “the required consultation”**, in relation to land, means consultation with the Valuer-General and with the local government for the district in which the land is located.

36I. Minimum and maximum amounts of levy

- (1) Despite any other provision of this Part, the Minister may determine —
 - (a) the minimum amount of levy payable on land; and
 - (b) the maximum amount of levy payable on land.
- (2) Different amounts may be determined under subsection (1) according to either or both of the following —
 - (a) the ESL category area in which the land is located;
 - (b) the purpose for which the land is used.

36J. Assessment of levy and assessment notices

- (1) Subject to sections 36L and 36N, a local government is to —
 - (a) assess the amount of levy payable for a levy year by each person who owns leviable land in its local government district; and
 - (b) serve written notice of the assessment on the person.
- (2) The assessment notice is to —
 - (a) state the date the notice was issued and, if section 36G(4)(b) or 36I(2)(b) applies to the determination of the levy payable on the land, the purpose for which the land is used as determined under section 36G(5); and
 - (b) include or be accompanied by any matters prescribed by the regulations.
- (3) If leviable land is owned by 2 or more persons, service of the assessment notice on one of those persons is taken to be service of the notice on each of them.
- (4) The assessment notice is to be given by a local government —
 - (a) as part of the rate notice given under section 6.41 of the *Local Government Act 1995*; or
 - (b) if no rate notice is to be given — as a separate notice.
- (5) Without limiting sections 75 and 76 of the *Interpretation Act 1984*, an assessment notice is taken to have been served on the owner of land if it is posted to the address shown for the owner, at the time of posting, in the rate record kept by the local government under section 6.39 of the *Local Government Act 1995*.

36K. Authority to ensure local governments have information

The Authority is to ensure that a local government is given any information relating to the levy and leviable land that the local government reasonably needs to perform its functions under section 36J.

36L. Assessment of levy payable by the State, local governments and other persons

- (1) The Authority —
 - (a) except as provided in the regulations, is to assess the amount of levy payable for a levy year on land owned by the State, a State agency or instrumentality or a local government; and
 - (b) may assess the amount of levy payable for a levy year on land owned by any other person.
- (2) The Authority is to serve written notice of the assessment on —
 - (a) in the case of levy payable by the State — the Treasurer;
 - (b) in the case of levy payable by a State agency or instrumentality — the Treasurer or the agency or instrumentality, as the Authority considers appropriate; or
 - (c) in the case of levy payable by a local government or another person — the local government or other person.
- (3) Subsections (2), (3) and (5) of section 36J apply to an assessment notice under this section in the same way as they apply to an assessment notice under that section.

36M. When levy becomes due and payable

- (1) The levy becomes due and payable on the date determined by the Minister and stated in the assessment notice subject to —
 - (a) subsection (2);
 - (b) any concession granted under section 36R(1)(b);
 - (c) any agreement made under section 36R(2); and
 - (d) the *Rates and Charges (Rebates and Deferments) Act 1992*.
- (2) The date determined under subsection (1) must not be earlier than 35 days after the date stated in the assessment notice as the date the assessment notice was issued.

36N. Notice and payment of levy payable on State land

Despite any other provision of this Part, the Authority may give notice of the assessment of, and may accept payment of, the levy payable on any land owned by the State, or a State agency or instrumentality, in accordance with arrangements agreed between the Treasurer and the Authority.

Division 4 — Payment of emergency services levy

36O. Levy is a charge on land

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, the levy, together with any costs of proceedings for the recovery of the levy and any levy interest, is a charge on the leviable land.

36P. Liability for levy

- (1) A person who is the owner of leviable land is liable to pay the levy for a levy year.

- (2) The levy is payable —
 - (a) if an assessment notice is served on the person by a local government under section 36J(1) — to the local government; or
 - (b) if an assessment notice is served on the person by the Authority under section 36L(2) — to the Authority.
- (3) If leviable land is owned by 2 or more persons, they are jointly and severally liable to pay the levy.

36Q. Minister may approve payment of levy by instalments

- (1) Subject to subsection (2), the levy is payable by a single payment.
- (2) The Minister may approve —
 - (a) arrangements for the levy to be paid by instalments; and
 - (b) the charges applicable to payment of the levy by instalments.

36R. Discounts, concessions and agreements

- (1) Without limiting the *Rates and Charges (Rebates and Deferments) Act 1992*, the Minister may —
 - (a) when determining the levy, grant a discount or other incentive for the early payment of the levy; or
 - (b) when determining the levy or at a later date, waive the levy or grant other concessions in relation to the levy.
- (2) A local government may accept payment of the levy that is due and payable by a person in accordance with

an agreement made between the local government and the person.

36S. Accrual of interest on overdue levy

- (1) Subject to subsection (5), interest accrues on the levy, or an instalment of the levy, that is not paid to a local government or the Authority, as the case requires, from the time it becomes due and payable.
- (2) For the purposes of this section, the Minister may, by notice published in the *Gazette* —
 - (a) declare a rate of interest that applies to any unpaid levy, or to any unpaid levy on land in one or more local government districts, as specified in the notice; or
 - (b) change or revoke a rate of interest declared under paragraph (a).
- (3) Different rates of interest may be declared under subsection (2) in relation to different local government districts.
- (4) For the purpose of its recovery, levy interest is taken to be an amount of levy that is due and payable.
- (5) No interest is to accrue on the levy, or an instalment of the levy, payable by —
 - (a) a person entitled under the *Rates and Charges (Rebates and Deferments) Act 1992* to a rebate or deferment in respect of the levy; or
 - (b) a person of a kind prescribed by the regulations.

36T. Levy may be apportioned

- (1) The levy payable for a levy year on land —
 - (a) is apportionable between successive owners of the land in respect of time as if the levy accrued from day to day during the levy year; and
 - (b) is apportionable between owners of several portions of the land according to the respective values of the portions.
- (2) If any part of the levy payable on any land has been paid by a person other than the owner of the land, whether during or after the levy year, the owner is liable, if there is no agreement between them to the contrary, to reimburse that person the amount paid.
- (3) This section does not affect the liability of a person to pay the levy to a local government or to the Authority.
- (4) An unsatisfied judgment or order of a court for the recovery of the levy from a person is not a bar to the recovery of the levy from another person liable under this Part to pay it.

Division 5 — Local governments

36U. Local government may credit levy to municipal fund or trust fund

- (1) A local government may credit to its municipal fund or trust fund amounts of levy and levy interest paid to the local government.
- (2) Despite section 6.9(3) of the *Local Government Act 1995*, a local government may retain interest earned from investing amounts of levy and levy interest credited to its trust fund.

- (3) Subsection (2) has effect despite section 6.9(3)(a) of the *Local Government Act 1995*.

36V. Local government to pay levy and other amounts to Authority

A local government is to pay to the Authority at the times, and in accordance with the procedures, determined by the Minister after consultation with the local government —

- (a) the amounts of levy and levy interest paid to the local government; and
- (b) the amount of levy payable by the local government on any leviable land it owns.

36W. Local governments to be paid certain fees

- (1) The Minister is to determine —
 - (a) the fees to be paid by the Authority to a local government for the local government's performance of functions under this Part in relation to the assessment, collection and recovery of the levy and levy interest; and
 - (b) times and procedures for the payment of those fees.
- (2) In making a determination under subsection (1), the Minister may —
 - (a) have regard to the costs reasonably incurred by the local government in making any administrative or other preparations necessary to perform the functions referred to in subsection (1)(a); and
 - (b) consult with persons who the Minister believes effectively represent the interests of local governments.

36X. Interest payable on amounts not paid by due date to Authority

- (1) Interest accrues on an amount of levy or levy interest that is received by a local government and not paid to the Authority from the time it becomes due and payable as determined under section 36V.
- (2) For the purposes of this section, the Minister may, by notice published in the *Gazette* —
 - (a) declare a rate of interest that applies to any unpaid amount of levy or levy interest; or
 - (b) change or revoke a rate of interest declared under paragraph (a).
- (3) An unpaid amount of levy or levy interest, and interest payable on that amount, may be recovered from a local government in a court of competent jurisdiction as a debt due to the Authority.

36Y. Ministerial guidelines

- (1) The Minister may, for the assistance of the Authority and local governments, issue guidelines, not inconsistent with this Part, setting out the times and procedures that are determined by the Minister for the purposes of this Part.
- (2) The Minister may amend the guidelines or revoke them and issue new guidelines.
- (3) Before the Minister issues or amends guidelines that apply to functions performed by local governments, the Minister is to consult with persons who the Minister believes effectively represent the interests of local governments.
- (4) The Minister is to ensure that guidelines issued or amended under this section are given to the Authority

and to each local government that performs functions to which the guidelines apply.

Division 6 — Recovery of unpaid levy

36Z. Recovery of unpaid levy

- (1) Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, the levy that is payable for a levy year on land is recoverable by the local government for the district in which the land is located or by the Authority from —
 - (a) the owner of the land on the date the assessment notice was served; or
 - (b) a person who becomes the owner of the land while the levy is unpaid.
- (2) If the levy remains unpaid after it becomes due and payable, the local government or the Authority may recover it and any levy interest, as well as any costs of proceedings for that recovery, in a court of competent jurisdiction.
- (3) This section applies —
 - (a) to a local government, if the assessment notice was served by the local government; and
 - (b) to the Authority, whether the assessment notice was served by the Authority or by a local government.

36ZA. Question of title to land not to affect jurisdiction

A jurisdiction otherwise competent to entertain proceedings to recover the levy, or consequent on the recovery of the levy, or to hear an appeal relating to the payment of the levy is not affected on the ground that a question of title to land is raised in the proceedings or

appeal, but an order or judgment in the proceedings or appeal is not evidence of title.

Division 7 — Sale of land if levy is unpaid

36ZB. Definition

In this Division —

“levy” includes levy interest.

36ZC. Application for order for sale of land

- (1) If an amount of levy that is due and payable on any land has been unpaid for 3 years or more, the Authority may apply to the Supreme Court for an order for the sale of the land, or part of the land, so that the proceeds of sale may be applied towards satisfaction of the outstanding amount of levy.
- (2) At least 6 months before the Authority makes an application to the Supreme Court under this section, the Authority is to —
 - (a) have notice of the intended application published in 2 newspapers —
 - (i) one circulating generally throughout the State; and
 - (ii) one circulating generally throughout Australia;
 - (b) if the whereabouts of the owner of the land is known to the Authority — give written notice of the intended application to that person; and
 - (c) give written notice of the intended application to the holder of any registered encumbrance over the land whose whereabouts is known to the Authority.

- (3) On an application under this section, the Supreme Court may order the sale of the land and make incidental orders —
 - (a) about how the sale is to be conducted;
 - (b) authorising an officer of the Court to execute documents, and to do anything else necessary, for the sale and transfer or conveyance of the land;
 - (c) authorising the Registrar of Titles to do anything necessary to register the purchaser's title despite a duplicate certificate of title or other document not being produced;
 - (d) directing, subject to subsection (4), how the proceeds of sale are to be dealt with; and
 - (e) dealing with the costs of the proceedings and other matters.
- (4) A sale by order of the Supreme Court discharges the land from any mortgage or other encumbrance securing a monetary obligation, but the land remains subject to any lease, easement or other encumbrance.
- (5) The proceeds of sale are to be applied —
 - (a) firstly, in payment of the costs of the sale;
 - (b) secondly, in payment of the costs of the proceedings so far as those costs are, by order of the Court, to be paid out of the proceeds of sale;
 - (c) thirdly, in payment of the outstanding amount of levy; and

- (d) fourthly, in discharging any outstanding monetary liability secured, immediately before the sale, by a mortgage or encumbrance referred to in subsection (4),

and any remaining balance is to be applied as directed by the Court.

36ZD. Authority has interest in land on which levy is due and payable

If the levy that is due and payable on any land is unpaid, the Authority has an interest in the land in respect of which it may lodge a caveat to preclude dealings in relation to the land, and the Authority may withdraw a caveat so lodged.

Division 8 — Objections and appeals

36ZE. Objection to determination of use of land

- (1) If section 36G(4)(b) or 36I(2)(b) applies to the determination of the levy payable on any land, the owner of the land may object to the determination under section 36G(5) of the purpose for which the land is used.
- (2) An objection is to be made to the Minister and is to —
 - (a) be in writing;
 - (b) identify the leviable land;
 - (c) set out fully and in detail the grounds of the objection, including particulars of the purpose for which, in the opinion of the person making the objection, the land is used; and
 - (d) be served on the Minister within 60 days after the date the assessment notice was served.

- (3) The Minister may, on an application by a person proposing to make an objection, and whether or not the time for doing so has expired, extend the time for making the objection for any period the Minister thinks fit.
- (4) The Minister is to consider an objection and may determine either to disallow it or allow it.
- (5) After making a determination on the objection, the Minister is to give the person who made the objection written notice of the Minister's determination and a statement of the reasons for that determination.

36ZF. Appeal against determination of Minister on objection

A person who is dissatisfied with the determination of the Minister on an objection by the person under section 36ZE may, within 60 days (or any further period that the Minister, for reasonable cause shown by the person, allows) after the date the notice of the determination was served, serve on the Minister a written notice requiring the Minister to treat the objection as an appeal against the determination under section 36G(5) of the purpose for which the land is used.

36ZG. Referral of appeal to Tribunal

- (1) On receiving a notice under section 36ZF, the Minister is to refer the objection to a Land Valuation Tribunal as an appeal.

- (2) In subsection (1) —

“Land Valuation Tribunal” means a Land Valuation Tribunal under the *Land Valuation Tribunals Act 1978*.

36ZH. Liability to pay levy not affected by objection or appeal

- (1) Pending determination of the objection or appeal, the liability to pay the levy on any land is not affected by —
 - (a) an objection to, or an appeal against, the valuation of the land under the *Valuation of Land Act 1978*; or
 - (b) an objection or appeal under this Division.
- (2) If an objection or appeal referred to in subsection (1) results in an amendment of the valuation of the land or a determination of the purpose for which the land is used that is different from the determination of that purpose that was the subject of the objection or appeal, the Minister —
 - (a) is to make any necessary adjustment of the levy payable on the land; and
 - (b) is to give written notice of the adjusted levy to the person by whom it is payable.
- (3) If the levy is adjusted —
 - (a) an amount by which, because of its adjustment, the levy was overpaid is to be refunded;
 - (b) an amount by which, because of its adjustment, the levy was underpaid is recoverable under section 36Z, but no action to recover that amount is to be taken until at least 30 days after the notice referred to in subsection (2) is given to the person by whom the amount is payable; and
 - (c) interest accrues on an amount to be refunded under paragraph (a), or recoverable in accordance with paragraph (b), as prescribed by the regulations.

Division 9 — ESL agreements

36ZI. Definitions

In this Division —

“**ESL agreement**” means an agreement entered into under section 36ZJ;

“**leviable land**” does not include leviable land in relation to which the Authority serves or gives a notice under section 36L(2) or 36N.

36ZJ. Authority may enter into agreements with local governments

- (1) The Authority may, with the approval of the Minister, enter into a written agreement with a local government that provides for the local government to pay to the Authority an amount equal to the total amount of levy payable for a levy year on all leviable land in the local government’s district.
- (2) An ESL agreement may provide for the amount that is to be paid to the Authority under the agreement to be paid by instalments.
- (3) If an amount (including an instalment) remains unpaid after it becomes due and payable under an ESL agreement, the Authority may recover the amount, and interest on the amount at the rate prescribed by the regulations, as well as any costs of proceedings for that recovery, in a court of competent jurisdiction.

36ZK. Modification of operation of Part 6A

If a local government enters into an ESL agreement this Part is to be read, for the purposes of the levy payable on leviable land in the local government’s district for the levy year to which the agreement applies, as if the provisions mentioned in column 1 of

Schedule 1A were amended or repealed as set out in column 2 of that Schedule.

Division 10 — Fees and charges

36ZL. Emergency service fees and charges in certain cases

- (1) Subject to subsection (2), the fees and charges prescribed by the regulations are payable to the Authority for the provision of services under the emergency services Acts that consist of —
 - (a) services provided in respect of land that, under regulations referred to in section 36D, is exempt or partially exempt from the levy;
 - (b) services provided in respect of a vessel in a port;
 - (c) services provided in respect of confining or ending a hazardous material incident and rendering the site of the incident safe; or
 - (d) an attendance in response to a false alarm by —
 - (i) a permanent fire brigade, or a volunteer fire brigade, within the meaning of the *Fire Brigades Act 1942*; or
 - (ii) a bush fire brigade within the meaning of the *Bush Fires Act 1954*.
- (2) A fee or charge for a service referred to in subsection (1) provided in respect of land is payable —
 - (a) by the owner or occupier of the land; but
 - (b) only if the Authority serves the owner or occupier with written notice of the fee or charge within 21 days after the service is provided.

- (3) In subsection (2) —
 “occupier”, in relation to land, means the person in or entitled to possession of the land.
- (4) A fee or charge for a service referred to in subsection (1) provided otherwise than in respect of land is payable as prescribed by the regulations.
- (5) A notice under subsection (2) is to —
 - (a) state the date on which the service was provided;
 - (b) give details of the service provided; and
 - (c) specify when payment of the fee or charge for the service is due and payable.
- (6) A fee or charge payable under this section, notice of which has been given under subsection (2) if that subsection applies, may be recovered in a court of competent jurisdiction as a debt due to the Authority.

”.

16. Section 38A amended

Section 38A(1) is amended by deleting “Part 3A or 3B.” and inserting instead —

“ Part 3A, 3B or 3C. ”.

17. Schedule 1A inserted

After Schedule 1 the following Schedule is inserted —

“

Schedule 1A — Modification of operation of Part 6A

[s. 36ZK]

column 1: provision	column 2: amendment or repeal
s. 36P	Subsection (2) is repealed and the following subsection is inserted instead — “ (2) The levy is payable to the local government for the district in which the leviable land is located. ”.
s. 36S(1)	“or the Authority, as the case requires,” is deleted.
s. 36T(3)	“or to the Authority” is deleted.
s. 36U	The section is repealed.
s. 36V	The section is repealed.
s. 36X	The section is repealed.
s. 36Z(1)	“or by the Authority” is deleted.
s. 36Z(2)	“or the Authority” is deleted.
s. 36Z	Subsection (3) is repealed and the following subsection is inserted instead — “ (3) In subsection (1) — “ land ” has the same meaning as “leviable land” has in Division 9. ”.
s. 36ZB	The following definitions are inserted in the appropriate alphabetical positions — “ “ land ” has the same meaning as “leviable land” has in Division 9;

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Amendment Act 2002**

Part 2 Fire and Emergency Services Authority of Western Australia

s. 17

column 1: provision	column 2: amendment or repeal
	“the local government” , in relation to land, means the local government for the district in which the land is located. ”.
s. 36ZC(1) and (2)	“Authority” is deleted in each place where it occurs and the following is inserted instead — “ local government ”.
s. 36ZD	“Authority” is deleted in both places where it occurs and the following is inserted instead — “ local government ”.
s. 36ZH(2)(b)	After “payable” the following is inserted — “ and to the local government ”. ”.

Part 3 — *Fire Brigades Act 1942*

18. The Act amended

The amendments in this Part are to the *Fire Brigades Act 1942**.

[* *Reprinted as at 18 February 2000.*

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 137-8 and Gazette 28 March 2002 p. 1761-2 and 6 September 2002 p. 4487-8.]

19. Section 4 amended

Section 4(1) is amended as follows:

- (a) by deleting the definitions of “insurance company” and “policy of insurance”;
- (b) by deleting the semicolon at the end of the definition of “volunteer fire brigade” and inserting a full stop instead;
- (c) by deleting the definition of “year”.

20. Section 26A amended

- (1) Section 26A(2)(e) is deleted.
- (2) Section 26A(2)(j) is amended by deleting subparagraphs (ii) and (iii) and “and” after subparagraph (ii) and inserting instead —

“
and
(ii) the carrying out of rescue operations;
”.

21. Section 35 amended

Section 35 is amended as follows:

- (a) by deleting “The Governor may make regulations for all or any of the following purposes: — ” and inserting instead —

s. 22

“

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1), regulations may be made for all or any of the following purposes —

”;

- (b) in paragraph (pa) by deleting “section 26A(c),” and inserting instead —
“ section 26A(2)(j), ”;
- (c) by deleting paragraph (q);
- (d) in paragraph (v) after “fees” by inserting —
“ and charges ”;
- (e) after paragraph (x) by inserting —
“ and ”;
- (f) at the end of paragraph (y) by deleting “; and” and inserting a full stop instead;
- (g) by deleting paragraph (z).

22. Section 35A replaced

Section 35A is repealed and the following section is inserted instead —

“

35A. Minister may declare permanent brigade districts

The Minister may, by notice published in the *Gazette* —

- (a) declare any district to be a district served by a permanent fire brigade; and
- (b) vary or revoke a notice published under paragraph (a).

”.

- 23. Part IX repealed**
Part IX is repealed.
- 24. Section 62 repealed**
Section 62 is repealed.
- 25. Section 65 repealed**
Section 65 is repealed.
- 26. Section 68 repealed**
Section 68 is repealed.
- 27. Section 69 repealed**
Section 69 is repealed.
- 28. Section 70 repealed**
Section 70 is repealed.
- 29. Fourth Schedule repealed**
The Fourth Schedule is repealed.

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

30. The Act amended

The amendments in this Part are to the *Rates and Charges (Rebates and Deferments) Act 1992**.

[* Reprinted as at 19 May 2000.

For subsequent amendments see 2001 Index to Legislation of Western Australia, Table 1, p. 316.]

31. Section 3 amended

- (1) Section 3(1) is amended in the definition of “administrative authority” after “means” by inserting —

“ , subject to subsection (1a), ”.

- (2) Section 3(1) is amended after the definition of “eligible senior” by inserting the following definition —

“

“**emergency services levy**” means the levy determined under Part 6A of the *Fire and Emergency Services Authority of Western Australia Act 1998* and imposed under the *Emergency Services Levy Act 2002*;

”.

- (3) Section 3(1) is amended by deleting the definition of “prescribed charge” and inserting the following definition instead —

“

“**prescribed charge**” means —

- (a) a charge, by way of rates, made under —
- (i) the *Local Government Act 1995*; or
 - (ii) the *Soil and Land Conservation Act 1945*;

- (b) a charge for the provision of water supply, sewerage or drainage, not being a charge assessed by reference to the quantity of water or wastewater concerned, made under —
 - (i) the *Water Boards Act 1904*;
 - (ii) the *Water Agencies (Powers) Act 1984*;
 - (iii) the *Health Act 1911*; or
 - (iv) the *Local Government Act 1995*;
- (c) a charge by way of the emergency services levy; or
- (d) a charge prescribed by regulations made under this Act.

”.

- (4) After section 3(1) the following subsection is inserted —

“

- (1a) The administrative authority for the emergency services levy that is the subject of an assessment notice under section 36J of the *Fire and Emergency Services Authority of Western Australia Act 1998* is the local government that serves the notice.

”.

32. Section 17 amended

- (1) Section 17(1a) is amended after “to be paid” by inserting —
“ , subject to subsection (1b), ”.

- (2) After section 17(1a) the following subsections are inserted —

“

- (1b) If an amount —
 - (a) to be reimbursed to a local government under subsection (1); or

- (b) to be paid to a local government under subsection (1a),

relates to the emergency services levy, the Minister is to reimburse or pay the amount to the Fire and Emergency Services Authority of Western Australia established by section 4 of the *Fire and Emergency Services Authority of Western Australia Act 1998*.

- (1c) Subsection (1b) does not apply to an amount to be reimbursed or paid to a local government in respect of which there is in force an ESL agreement entered into under section 36ZJ of the *Fire and Emergency Services Authority of Western Australia Act 1998*.

”.

33. Section 32 amended, and transitional

- (1) After section 32(1) the following subsection is inserted —

“

- (1a) An application under subsection (1) for registration of an entitlement as regards land to a local government, in relation to a prescribed charge by way of rates, is to be taken to include an application for registration of an entitlement as regards the land to the local government, in relation to the emergency services levy.

”.

- (2) The operation of section 32(1a) of the *Rates and Charges (Rebates and Deferments) Act 1992*, as inserted by subsection (1), extends to an application for registration of an entitlement as regards land to a local government, in relation to a prescribed charge by way of rates, made before the commencement of this section if the application has not yet been determined on that commencement.
- (3) If the registration by a local government of an entitlement as regards land, in relation to a prescribed charge by way of rates, has effect on the commencement of this section, that registration

is taken to include the registration by the local government of an entitlement as regards the land, in relation to the emergency services levy.

- (4) Words and expressions used in subsections (2) and (3) have the same meanings as they have in the *Rates and Charges (Rebates and Deferments) Act 1992*.

34. Section 40 amended

Section 40(9)(a) and (b) are amended after “by way of” by inserting —

“ the emergency services levy or ”.

35. Section 42 amended

Section 42(3)(a) and (4)(a) are amended after “by way of” by inserting —

“ the emergency services levy or ”.

Part 5 — Miscellaneous

36. Transitional provisions

Schedule 1 has effect.

Schedule 1 — Transitional provisions

[s. 36]

Division 1 — Definitions

1. Definitions

In this Division —

“**Authority**” means the Fire and Emergency Services Authority of Western Australia established by section 4 of the *Fire and Emergency Services Authority of Western Australia Act 1998*;

“**commencement day**” means the day on which this Schedule comes into operation;

“**FESA Account**” means the Fire and Emergency Services Authority Account established under section 30 of the *Fire and Emergency Services Authority of Western Australia Act 1998*;

“**insurance company**” has the same meaning as it has in the FB Act;

“**levy**” means the emergency services levy determined under Part 6A of the FESA Act and imposed under the *Emergency Services Levy Act 2002*;

“**Minister**” has the same meaning as it has in the FESA Act;

“**the FB Act**” means the *Fire Brigades Act 1942*, as in force immediately before the commencement day;

“**the FESA Act**” means the *Fire and Emergency Services Authority of Western Australia Act 1998*, as amended by this Act;

“**the ICA**” means the Insurance Council of Australia Limited;

“**the 2003 period**” means the period that begins on the commencement day and ends on 30 June 2003;

“**the 2004 year**” means the year that ends on 30 June 2004.

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

2. Application

This Division has effect despite the repeal by section 23 of Part IX of the *Fire Brigades Act 1942*.

Schedule 1 Transitional provisions

3. Section 36

Section 36 of the FB Act continues to have effect for the 2003 period.

4. Section 37

(1) Section 37 of the FB Act continues to have effect for the 2003 period.

(2) Section 37 of the FB Act also continues to have effect for the 2004 year as if —

(a) after “in respect of each district” in subsection (1) were inserted —

“ served by a permanent fire brigade ”;

(b) subsection (1)(a) and (b) of that section were deleted;

(c) subsection (2) of that section were repealed and the following subsections inserted instead —

“

(2) For the purposes of subsection (1), the insurance companies shall contribute the specified percentage of the amount of the estimated expenditure for the year ending 30 June 2004.

(2aa) In subsection (2) —

“**the specified percentage**” means the percentage specified by the Minister by notice published in the *Gazette*.

”;

(d) subsections (4) and (5) of that section were repealed.

(3) Despite subsection (3) of section 37 of the FB Act, the contributions in relation to the year that ends on 30 June 2004 required from insurance companies under that section, as continued by this clause, are to be paid at the times, and in the instalments, specified by the Minister by notice published in the *Gazette*.

5. Section 38

Section 38 of the FB Act continues to have effect for the 2003 period.

6. Section 39

Section 39 of the FB Act continues to have effect for the 2003 period for the purposes of requiring insurance companies to give to the Authority not later than 31 March 2003 a return and a declaration, within the meaning of that section, in respect of the year that ends on 31 December 2002.

7. Section 40

Section 40 of the FB Act continues to have effect for the period that begins on the commencement day and ends on 30 June 2004.

8. Section 42

Section 42 of the FB Act continues to have effect for the 2003 period for the purposes of the return and the declaration referred to in clause 6.

9. Section 43

- (1) Section 43 of the FB Act continues to have effect for the 2003 period.
- (2) Section 43 of the FB Act also continues to have effect for the 2004 year as if that section were amended —
 - (a) by deleting each reference to “local government”;
 - (b) by making any other modification necessary for the purposes of paragraph (a).

10. Section 44

Section 44 of the FB Act continues to have effect for the 2003 period.

11. Section 45

- (1) Subject to subclause (2), section 45 of the FB Act continues to have effect for the purposes of the amount of the contributions, within the meaning of that section, received by the Authority for the year that ends on 30 June 2003.

Schedule 1 Transitional provisions

- (2) If, for that year, there is a deficit or excess, within the meaning of that section, in respect of the contributions of a local government or the Treasurer —
 - (a) an amount equal to the deficit is to be paid to the Authority by the local government or the Treasurer, as the case requires, not later than 31 December 2003; or
 - (b) an amount equal to the excess is to be paid by the Authority to the local government or the Treasurer, as the case requires, not later than 31 December 2003.
- (3) Subject to subclause (4), section 45 of the FB Act also continues to have effect for the purposes of the amount of the contributions, within the meaning of that section, received by the Authority for the 2004 year from insurance companies.
- (4) If, for that year, there is a deficit or excess, within the meaning of that section, in respect of the contributions of an insurance company —
 - (a) an amount equal to the deficit is to be paid to the Authority by the insurance company not later than 31 December 2004; or
 - (b) an amount equal to the excess is to be paid by the Authority to the insurance company not later than 31 December 2004.

12. Section 46

Moneys borrowed by the Authority under section 46 of the FB Act and not repaid before the commencement day are taken to have been borrowed under Part 6 of the FESA Act.

13. Section 46A

Amounts that, immediately before the commencement day, are standing to the credit of a replacement fund established under section 46A of the FB Act are taken to be amounts standing to the credit of a reserve fund established under section 35A of the FESA Act.

Division 3 — Arrangements with insurance companies

14. Arrangements with insurance companies

- (1) The Minister, after consultation with the ICA, is to take all reasonable steps to enter into arrangements with insurance companies that provide for the Minister to be given sufficient information by the companies to satisfy the Minister that, as a result of the introduction of the levy, the companies have appropriately reduced, or have given appropriate refunds in relation to, the premiums payable for policies of insurance.
- (2) In subclause (1) —
“policies of insurance” means policies of insurance within the meaning of the FB Act.

15. Report by Minister

- (1) Within 18 months after the commencement day, the Minister is to prepare a report on the arrangements referred to in clause 14 and the information given to the Minister in accordance with those arrangements.
- (2) The Minister may omit from the report any matter that the Minister considers to be of a commercially sensitive nature.
- (3) As soon as practicable after the report is prepared the Minister is to cause it to be laid before each House of Parliament.

Division 4 — Regulations

16. Further transitional regulations may be made

- (1) If there is no sufficient provision in this Schedule for any matter or thing necessary or convenient to give effect to the purposes of this Schedule, that provision may be made by regulations under section 40 of the FESA Act.
- (2) Without limiting subclause (1), regulations referred to in that subclause may provide for any matter or thing necessary or convenient —
 - (a) to assist the Minister to enter into the arrangements referred to in clause 14; or

Schedule 1 Transitional provisions

- (b) to give effect to the purposes of entering into those arrangements.
- (3) Any such regulation may be made so as to have effect on or after the day on which this clause comes into operation.
- (4) To the extent that any such regulation has effect on a day that is earlier than the day of its publication in the *Gazette*, the regulation does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State or the Authority), the rights of that person existing before the day of its publication; or
 - (b) to impose liabilities on any person (other than the State or the Authority), in respect of anything done or omitted to be done before the day of its publication.

=====