



ESF Reform team
NSW Treasury
52 Martin Place
SYDNEY NSW 2000

By online submission

To whom it may concern,

Thank you for the opportunity to provide feedback on the consultation paper, *“Reforming the emergency services funding system”*. The NSW Small Business Commissioner (“the Commission”) is an independent statutory office of the NSW Government. It provides advice, advocacy and affordable dispute resolution services to small businesses across NSW.

It is timely to consider the impact and efficiency costs of the Emergency Services Levy (ESL). Feedback from our engagement activities and the Commission’s Momentum Survey regularly cite insurance costs as a factor weighing down small business confidence. The Commission’s 2022 report *Small business insurance: contemporary challenges and experiences*, considered the impact of the ESL on insurance affordability and recommended for taxes and levies on insurance to be reduced, with revenue foregone replaced with more efficient sources.¹

The proposal to remove the current ESL on insurance will encourage more small businesses to adequately insure their assets and has the potential to reduce additional costs of doing business in NSW. However, these benefits must be weighed against anticipated risks highlighted in this submission to ensure the outcome of the policy will not make small business worse off under any new system.

Drawbacks with current and prior contribution levies

The current ESL uses an insurance-based model, where not all users of fire and emergency services contribute to the levy. The Commission welcomes the acknowledgment of the need to reform the ESL and that insurance costs are a significant concern for small businesses. However, for this much needed reform to endure, it is essential to provide adequate protections to ensure attempts to secure fairer funding arrangements do not give rise to new inequities.

The previously deferred Fire and Emergency Services levy (“FESL”) aimed to redistribute the levy burden across all members of the community. While the FESL promised a fairer distribution of costs across users of emergency services, in some cases it involved significant increases in the contributions of some property owners. These concerns were particularly evident for commercial landholders in high land value areas. For example, under the previously proposed FESL, some businesses reported an increase from \$490 to more than \$3,700 a year.²

¹ <https://www.smallbusiness.nsw.gov.au/sites/default/files/2023-07/NSW%20SBC%20Report%20-%20Small%20business%20insurance%20August%202022.pdf>.

² See: <https://www.smh.com.au/national/nsw/its-a-shambles-cabinet-considering-fire-levy-changes-amid-furore-20170524-gwbyax.html>.

Potential base model risks

In assessing viable policy options, it is important to exercise caution, weighing up all perceived benefits against the costs of proposed reforms.

Features to align FESL contribution to the users of services (such as different ad valorem rates) and other features intended to improve the efficiency of the revenue base (such as rates based on the unimproved value of land) had the effect of interacting to create some perverse effects. For example, high ad-valorem rates for industrial land, which was much higher than for other land types, would have resulted in much higher levies for industrial land holders in higher land value areas. This cannot be justified on the basis of the user pays principle. Equally, taxing certain land uses at a higher rate than others gives rise to distortions about how land can be optimally used.

There are several matters to consider that may impact on small business when deliberating the most effective model. One of the main factors contributing to the significant increase in the levy rate for the deferred FESL was the use of unimproved land values. This created an inequitable situation where owners of buildings that significantly differed in size and nature on adjoining land would have paid exactly the same amount of the levy due to similar, if not equal, unimproved land values. This resulted in some landowners cross-subsidising others.

As improvements on the land are most at risk from fire and hazards, a levy based on capital improved land values would establish a direct connection between a property's risk and its contribution to the levy. An assessment of land value based on this model would ensure small businesses are not contributing a disproportionate amount to the levy compared to businesses using significantly sized assets. While unimproved land values are often preferred as a tax base for efficiency reasons, further analysis is warranted to determine whether capital improved values are better aligned with use of emergency services.

A further imbalance identified in the proposed FESL was the intention that the same ad valorem rate be applied to all land within each respective property sector, regardless of the location. Costs of emergency services responding to a situation in heavily congested or densely populated areas, such as inner-city locations would be much greater than sparsely populated, more accessible suburban properties. Consideration should be given to the calculation of different rate classes for different land regions, such as Metropolitan and Regional or Rural areas. Levy schemes applied in Western Australia and Queensland categorise properties not only on their use but other relevant factors. The calculation of the levy rate in Western Australia takes into account the availability of fire and emergency services. Whilst Queensland factors in the size and risk of commercial and industrial properties. Consideration of these elements will help align the levy to its policy objective which is a 'user-pays' levy linked to risks and services.

An additional area of concern when using property values as a revenue base is the exposure of certain commercial properties to fluctuations in valuations. Higher valued properties could be more sensitive to land valuation movements. This is particularly the case with shopping centres, where many tenants are small businesses. Any marked increase in the valuation would increase outgoings with landlords recovering these from their tenants. For this reason, a maximum cap should be considered on any levy increases to mitigate exposure to fluctuations in land valuation. Cap increases could be set at Consumer Price Index ("CPI") or pegged to the forward estimates of revenue expected from the levy.

Collection of replacement levy

Revenue NSW is the State's primary revenue collection and debt recovery agency. Utilising Revenue NSW and its established systems and processes for revenue collection and debt recovery would reduce any further implementation and ongoing costs. Levy payers may also have multiple properties across various Local Government Area's. Dealing with one centralised agency will make the system simpler and cost effective, particularly in circumstances where assessments are challenged.

Transitional arrangements

Transitional arrangements need to be considered to ensure that double contributions do not occur where a levy payer has contributed under the insurance-based levy and then again under the replacement levy. The establishment of an insurance monitor is an appropriate step to ensure consumer protection over the transitional period. Having an independent authority responsible for auditing and monitoring insurance companies will ensure savings are passed onto policy holders from the removal of the levy in the form of lower premiums.

The NSW Government has confirmed the levy will move to a property base. In taking this approach the Commission encourages consideration of the tax incidence of new policy options, including where the costs are passed onto small business tenants. Under standard commercial leases, lessors will typically shift the financial liability onto tenants in the form of lessors' outgoings payable under a lease. Transition arrangements may be required in circumstances where lessees are to be held liable for new outgoings (with the lessor potentially benefiting from a windfall gain associated with any reduction in the ESL contribution to their insurance costs).

Continued consultation

The Commission recommends continued consultation and direct engagement with small business to assess the impacts and estimate costs any change will have. Changes in the operating environment can disproportionately affect small business due to their limited capacity to mitigate against fluctuations. Direct engagement will ensure that the unique needs and full impacts on small business are identified and addressed.

Other matters relating to uptake of property insurance

The decline in the affordability and accessibility of insurance is a growing concern for small businesses and households. The Commission has previously proposed measures and policies aimed at improving data and addressing barriers to insurance uptake and affordability.

The NSW Government and the Commonwealth currently provide joint funding, underpinned by the Disaster Recovery Funding Arrangements, to support property owners affected by natural disasters. Typically, they do not provide financial support to property owners who have insurance. However, they may offer financial assistance for equivalent losses to those without insurance, even if those losses were insurable. Over time, acute affordability and availability challenges in some areas have led to an increasing reliance and expectation that the government will act as a default insurer. In some instances, this may incentivise underinsurance and exacerbate current challenges related to insurance availability. The Commission maintains that assistance programs should be suitably designed to ensure they do not discourage small businesses from taking up insurance and relying on future or potential government financial assistance.

The Commission has also previously advocated for improved data collection and the establishment of an insurance database to provide valuable insights into insurance trends and affordability. The Commission

sees an opportunity to deliver enhanced insights through the establishment of a commercial property insurance database. This database would maintain data on insurance policies held against industrial or commercially zoned properties as well as residential. A database of this kind could assist in identifying insurance trends relating to cost and availability, as well as provide insights about geographic areas and planning decisions. It could also be used to confirm that businesses qualify for support grants offered in the event of a natural disaster. The National Claims and Policies Database established by the Australian Prudential Regulation Authority (APRA) provides an example of where this approach has been utilised to produce greater visibility over trends relating to public liability, professional indemnity policies, and claims.

Thank you for the opportunity to make a submission. If you require further information, please contact my Executive Officer Megan Bennett, at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

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