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Subject Emergency Services and Volunteers Funding Levy

- Questions**
1. When the *Fire Services Property Levy Amendment (Emergency Services and Volunteers Fund) Bill 2025 (the Bill)* becomes law and commences to operate, will councils be obliged to collect the Emergency Services and Volunteers Funding Levy (**the Levy**)?
 2. If a ratepayer pays less than the aggregate of a council's rates and charges and the Levy, must a council allocate a proportion of what has been paid towards payment of the Levy? Does it make any difference if the ratepayer explicitly says that they are refusing to pay the Levy?
 3. Can a council collect the Levy through a separate invoice or must the notice levying payment form part of the Rates Notice sent by the council?
 4. If there is an error in the calculation of the Levy, is the relevant council responsible for correcting the error?
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Summary of advice *Below is a summary of our advice. Please read it in conjunction with the detailed advice that follows.*

1. When the Bill becomes law and commences to operate, councils *will* be obliged to collect the Levy.

Although a council is not exposed to a penalty for failing to perform its duty, the Victorian Government could obtain an order in the nature of Mandamus to compel a council to perform its legislative duty. In any event, the Victorian Government has a number of extra-legal options available to it to punish a council that does not collect the Levy.
2. If a ratepayer pays less than the aggregate of a council's rates and charges and the Levy, a council *must* proportionally allocate some of the amount paid towards the Levy. This is so irrespective of whether the ratepayer has expressly indicated that they do not wish to pay any part of the Levy.

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3. A council *cannot* use a separate invoice to collect the Levy. Rather, the Levy must appear on a council's Rates Notice.

That said, it is open to a council to create a very distinct part of its Rates Notice devoted to the Levy. Equally, a council could make provision for the Levy on a separate page of its Rates Notice as long as it could be said that both pages constituted a single Rates Notice.

4. If there is an error in the calculation of the Levy, a council is liable for its correction. It must withdraw the assessment notice previously given and give the ratepayer another assessment notice.
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Detailed analysis

Background

The Victorian Parliament recently passed the Bill. The Bill will soon receive Royal Assent. Upon that occurring, what will then be the *Fire Services Property Levy Amendment (Emergency Services and Volunteers Fund) Act 2025* will commence its operation on 1 July this year.

From 1 July, therefore, what has been known as the *Fire Services Property Levy Act 2012* will become the *Emergency Services and Volunteers Fund Act 2012 (the Act)*. It will provide for the imposition of the Levy. The Levy is in the nature of a charge, and will replace the Fire Service Property Levy. It will be assessed by reference to land value¹ and the classification of each parcel of assessable land.

We have been asked a series of questions about the Levy.² The questions anticipate the operation of the Act post-1 July. Our answers to the questions assume that the Act is operative.

Legal analysis

1. ***When the Bill becomes law and commences to operate, will councils be obliged to collect the Levy?***

1.1 Under the Act each council is 'appointed as a collection agency in respect of land in its municipal district'.³ A collection agency is conferred with a number of functions.⁴

The functions are:

- (a) to assess the amount of levy payable in a levy year by an owner of leviable land in the municipal district of the collection agency;
- (b) to collect the levy payable in respect of leviable land in the municipal district of the collection agency;
- (c) to keep records of a kind specified in section 24(1)(a)(i) in respect of leviable land in its municipal district;
- (d) any other function conferred on a collection agency by or under this Act.⁵

1.2 The Act does not expressly impose a duty on a council. Rather it refers to functions that a council has in its collection agency capacity.

Frequently, an Act contains duties, functions and powers. Duties are imposed and functions and powers are conferred on a body.⁶ In such cases, the functions may not need to be performed. That is, although a duty must be performed a function can be performed if the relevant body chooses to perform it.

Ultimately, however, the text, context and purpose of a statute determines whether something that is expressed to be a function must be performed as if it is a duty or

¹ A fixed charge also applies.

² See email from the Association's Director Corporate Services to us, sent on 22 May 2025.

³ See s 21(1).

⁴ See s 21(3).

⁵ Ibid.

⁶ The *Local Government Act 2020* is an example of such an Act.

1.3 Here the text, context and purpose of the Act suggests tat councils must perform their functions as collection agencies. Effectively, then, they are under a duty to collect the Levy.

The Act would be rendered nugatory if s 21 was construed as giving councils a discretion as to whether to perform the functions set out in that section. Further, subsequent provisions use mandatory language. So, s 25(1) provides that a collection agency 'must' give a written notice of assessment to a person who is liable to pay the Levy. It is not as though the obligation imposed by s 25(1) is expressed to be conditional upon a collection agency electing to perform the functions of a collection agency.

1.4 It follows that a council has no choice but to be a collection agency and to collect the Levy. It will be in breach of the Act if it does not.

It is true that a failure to perform the functions of a collection agency does not amount to an offence. Put another way, a council does not commit an offence and expose itself to a penalty if it does not do that which the Act compels it to do.

That said, the Victorian Government has remedies available to it if a council declines to collect the Levy. It could obtain an order in the nature of Mandamus from the Victorian Supreme Court. An order in the nature of Mandamus compels a public body to perform a statutory duty. A public body (such as a council) that does not comply with such an order would be in contempt of court.

Alternatively, the Victorian Government could look to have Councillors suspended or even dismissed from office if the duty to collect the Levy was not performed. And then there is a range of extra-legal measures available to it. We could imagine critical funding being withheld from a council if it refused to collect the Levy.

2. If a ratepayer pays less than the aggregate of a council's rates and charges and the Levy, must a council allocate a proportion of what has been paid towards payment of the Levy? Does it make any difference if the ratepayer explicitly says that they are refusing to pay the Levy?

2.1 It is conceivable that a person on whom the Levy is imposed pays something less than the aggregate of the relevant council's rates and charges and the Levy. This could reflect the person's financial circumstances or be the result of the person conscientiously objecting to paying the Levy.

Regardless of the reason for the reduced payment, s 25(5) of the Act applies. According to this provision, the payment must be divided between the council's rates and charges and the quantum of the Levy proportionally.

2.2 Section 25(5) takes the following form:

Despite anything to the contrary in the **Local Government Act 1989**, if an amount (being an amount less than the instalment amount or lump sum amount payable) is paid in respect of rateable leviable land in accordance with a notice given under subsection (4)(a), that amount must be divided proportionally towards the payment of the rates or charges owed under Part 8 of the **Local Government Act 1989** and the levy owed under this Act.

Section 25(6) then provides that:

⁷ [2015] FCAFC 145.

⁸ [2018] VSC 565.

It is to be noted that s 25(5) does not look to the motive of the person who made the payment. It operates irrespective of whether that person had limited capacity to pay or expressly said that none of the amount paid should be regarded as a part payment of the Levy.

A council has no option but to divide the payment proportionally between its rates and charges and the Levy.

3.1 In order to collect the Levy, a council must – as a collection agency – send to the person liable to pay an ‘assessment notice’.⁹ The assessment notice must specify a number of details.¹⁰

if the notice is in respect of leviable land other than non-rateable leviable land—be specified **on** the notice of the general rates, municipal charges, service rates and service charges under section 158 of the **Local Government Act 1989** sent by the collection agency to an owner or specified person, in its capacity as a Council...¹¹

So, the Levy's details must be specified 'on' the Rates Notice. They are not to be specified on a notice sent 'with' the Rates Notice.

Again, a council does not commit an offence by failing to comply with s 25(4)(a). But the Victorian Government could obtain an order in the nature of Mandamus or take other action designed to disadvantage a council that chose to issue an assessment notice in the form of a separate invoice (eg withhold funding or not allocate new funding for the council's projects or activities).

4.1 An assessment may be erroneous and the quantum of the Levy therefore incorrect. This could, for example, be due to a mathematical error or to a mistake in the land use classification.

¹³ In that case, the separate page would need to clearly reference the preceding page(s) or be in a form that indicated unambiguously that the separate page was still part of the Rates Notice.

As a collection agency, a council is given the power to cancel an assessment if it is satisfied that an assessment has been made in error.¹⁴ That the power of cancellation must be exercised – that the relevant council must correct the error – is clear from s 38(2).

Section 38(2) provides that:

If a collection agency has made an assessment in error under subsection (1), the collection agency *must*—

- (a) if the collection agency determines that an assessment should not have been issued—issue a withdrawal notice;
- (b) if the collection agency determines that a fresh assessment in respect of the leviable land should be issued—give the person another assessment notice under section 25;
- (c) if the person paid any of the levy amount specified in an assessment referred to in subsection (1)—
 - (i) refund the amount paid; or
 - (ii) if a fresh assessment has been made under paragraph (b), apply the amount paid to any levy amount owed under the fresh assessment.¹⁵

These are in the nature of obligations imposed on a council.

4.2 The responsibility for the correction of errors therefore lies with a council (as a collection agency). It is the council – and *not* the State Revenue Office – that must take remedial action.

Again, there is no direct legal consequence for not doing the things required by s 38. But if the error came to the attention of the Victorian Government we can imagine a council being strongly encouraged to cancel the assessment notice and issue a new one so that the State Revenue Office receives the correct Levy proceeds.¹⁶

Contact

Please contact Mark Hayes on 03 9258 3533 or email mark.hayes@maddocks.com.au if you have any other queries.

¹⁴ See s 38(1).

¹⁵ Emphasis added.

¹⁶ Under s 48(b) of the Act, the Commissioner of State Revenue has the power to monitor a council's discharge of its responsibilities.