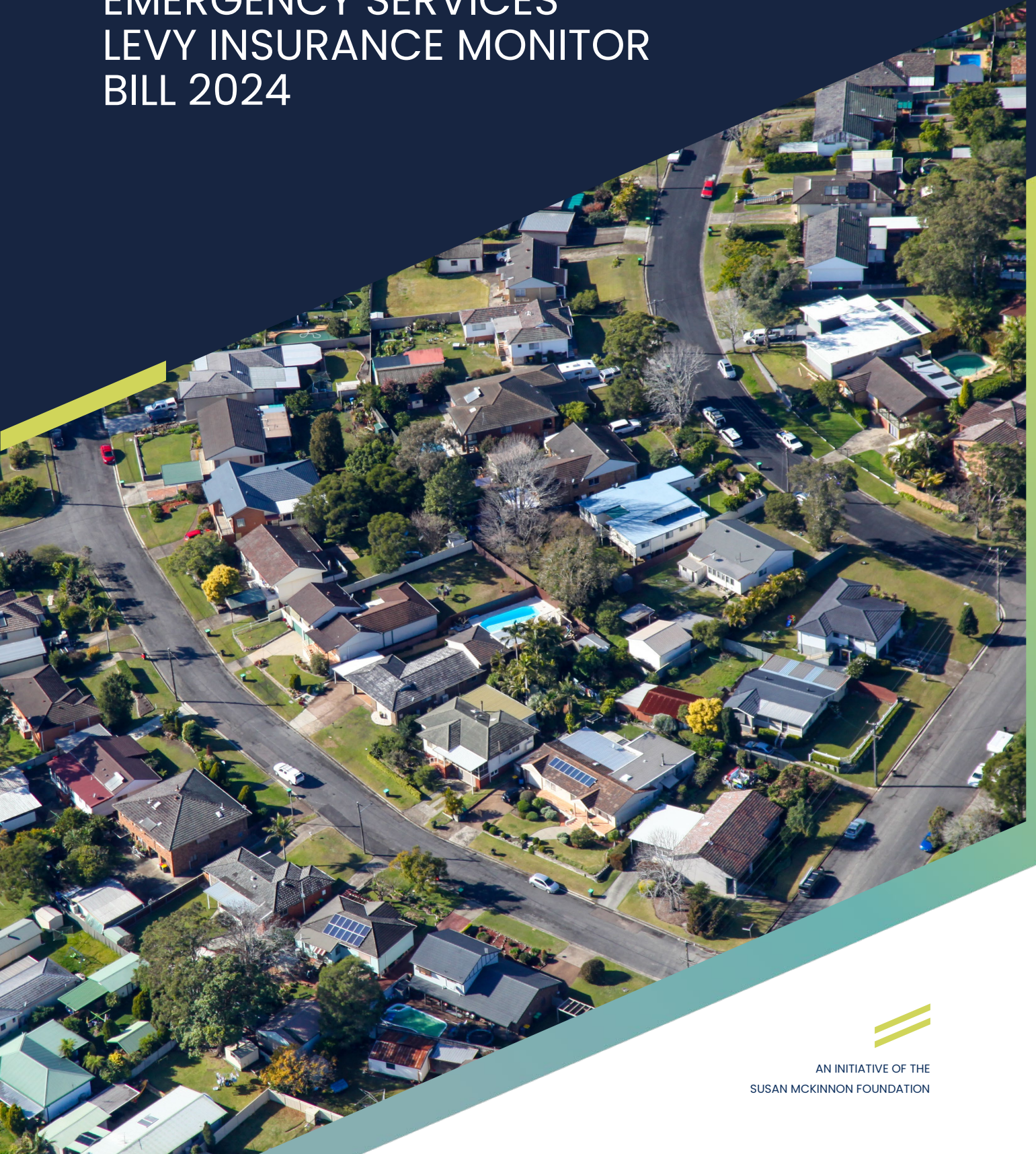




EMERGENCY SERVICES LEVY INSURANCE MONITOR BILL 2024



AN INITIATIVE OF THE
SUSAN MCKINNON FOUNDATION

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WHAT IS THE BILL?

The object of the Emergency Services Insurance Monitor Bill 2024 (NSW) (the Bill) is to establish an Emergency Services Levy Insurance Monitor to oversee the transition of insurance prices and to appoint the Independent Pricing Regulatory Tribunal as the Insurance Monitor.

WHAT IS A SHADOW SPI?

The Shadow SPI is a new initiative of the Susan McKinnon Foundation that builds upon the work of the Evidence Based Policy Research Project. It seeks to support parliamentarians in the Legislative Council of NSW during the legislative consideration and voting process, to inform decision making and robust parliamentary debate. It is also intended to improve the quality of tabled SPIs and their usefulness, and to shine a light on the importance of transparency in policy making. Each Shadow SPI is collectively developed by a collaborative team from two ideologically differentiated think tanks (Per Capita and Blueprint Institute) and is intended to be utilised as a companion to the tabled Government Statement of Public Interest in the Legislative Council of NSW. The Shadow SPIs aim to demonstrate a comprehensively answered SPI, within the constraints of time and publicly available information.

This Shadow SPI was developed by Per Capita and reviewed by Blueprint Institute.

Need: Why is the policy needed based on factual evidence and stakeholder input?

In November 2023, the NSW Government announced its commitment to pursue emergency services funding reform to establish a fairer and more sustainable system for funding the State's emergency services.ⁱ The reform will involve moving the point of payment from insurance premiums to a replacement levy spread across property owners. NSW remains the only jurisdiction to utilise a purely insurance-funded emergency service levy (ESL).ⁱⁱ

Recent years have seen a rise in devastating natural disasters in NSW. Treasury projections indicate a significant escalation in the economic cost of natural disasters in the coming years, from \$7 billion in 2020-21 to up to \$24 billion by 2070-71.ⁱⁱⁱ

Presently 73.7% of emergency services funding is provided by the ESL on insurance companies, which is collected as part of customer premiums. This increases insurance premiums in NSW by about 18% for residential properties and 34% for commercial properties and results in increased cost of living pressures, leading to underinsurance, and increasing the number of properties, households and businesses left at risk.^{iv} High insurance costs have already led to alarming rates of non-insurance across NSW. Property owners in NSW have the highest proportion of buildings without insurance and are likely to have the highest level of underinsurance compared with other states.^v

The Government's commitment to pursue emergency services funding reform is needed to alleviate financial strain on households, businesses, and the State; and to ensure all people in NSW can benefit from fully funded, well-resourced, and well-prepared emergency services. This Bill is one step on the way to implementing broader ESL reform. It is needed to appoint an Insurance Monitor, who will oversee a consumer protection regime to ensure insurers pass on savings from the ESL removal to consumers in the form of lower premiums during the transition period between the ESL and the replacement levy.

Under the former Government's attempts to reform the ESL, a consumer protection regime was put into place. The Emergency Service Levy Insurance Monitor Act 2016 (NSW), repealed on 1 July 2020,^{vi} provided for the appointment of an Emergency Services Levy Insurance Monitor responsible for 'ensuring that insurers pass on the benefits of abolishing the ESL to households and businesses in the form of lower insurance premiums'.^{vii} This Insurance Monitor had powers, consistent with the Insurance Monitor set up for emergency services funding reform in Victoria, to monitor prices of regulated insurance contracts and take action against prohibited conduct, including seeking court-ordered penalties for those engaged in price exploitation or false or misleading conduct.^{viii} During its four-year term, almost \$15 million in over-collected ESL by insurance companies was recovered by the office of the Emergency Services Levy Insurance Monitor, established under the 2016 Act.^{ix}

The Legislative Council Portfolio Committee No 4 (Legal Affairs NSW) recognised in its 2017-18 Inquiry into the Fire and Emergency Services Levy (FESL), 'that the Insurance Monitor plays an important role in holding insurance companies to account,' and acknowledged 'that if the current ESL is removed from insurance premiums there is no guarantee that the premiums will reduce accordingly'.^x They noted that the role would 'need to continue if the FESL is re-introduced' and recommended that the NSW Government 'revisit the role and funding arrangements for the Emergency Services Levy Insurance Monitor'.^{xi}

The Independent Pricing and Regulatory Tribunal (IPART) will be appointed as the Insurance Monitor under this Bill.^{xii}

COMMENT

The Government SPI outlines the purpose of the policy: to establish a consumer protection regime and to appoint an Insurance Monitor like that established under previous attempts to reform the ESL. It places this policy in the context of the wider ESL reforms announced in November 2023, and identifies the stakeholders and parties affected: consumers and IPART.

The Government SPI identifies the need for the policy: to ensure that insurers pass on savings from the removal of the ESL from insurance policies to consumers in the form of lower insurance premiums during a transition period between the current ESL on insurers and a replacement levy.

In the Government SPI, the need for this policy is supported by evidence in reference to recommendations and findings made by the Legislative Council Portfolio Committee No 4, and previous government measures. Additionally, information about the success of the previous Insurance Monitor in recouping almost \$15 million in over collected ESL during its four years of operation, and a statement about the previous Insurance Monitor ceasing its role in 2020, would have provided further evidence in support for the need of this Bill.

Whilst this policy is just one of the steps being taken towards broader ESL reforms and does not introduce ESL reforms themselves, the Government SPI contains detail on why broader emergency service funding reform is needed, supported by evidence regarding the impact of the ESL on households (residential properties) and businesses (commercial properties). This is useful context and supports the argument for the need of this policy and Bill.

We note that the Government SPI provides further argument for the need for this policy, as opposed to an alternative policy, in the options and analysis sections, where it outlines the pros and cons of alternative policy options.

Objective: What is the policy's objective couched in terms of the public interest?

The policy aims to protect insurance policy holders, including households and businesses, by ensuring that insurers pass on the savings arising from the removal of the ESL from insurance premiums. The decision to remove the ESL from insurance policies is a crucial step in easing the cost-of-living pressures faced by households and businesses. It is in the public interest to ensure that consumers receive the intended savings from the removal of the ESL on insurance premiums.

High insurance costs increase the number of households and businesses that underinsure or do not insure their property. The broader reforms of removing the ESL should reduce property insurance premiums and lower the number of uninsured and underinsured households, helping to improve household financial resilience when hazards occur. By establishing the Insurance Monitor to oversee the transition from ESL to a replacement levy, the policy addresses the need to ensure that consumers are the recipients of lower insurance premiums.

The policy is also part of the broader reform of the way emergency services are funded, which seeks to establish a fairer and more sustainable system for funding the State's emergency services. The NSW emergency services agencies serve everyone in NSW, and there is a collective benefit in having these agencies fully funded, well prepared, and well resourced. This policy serves the public interest by ensuring that the additional consumer savings benefits of ESL reforms are experienced by individuals, households and businesses and that intended savings from the reforms are passed onto consumers.

IPART is an independent 'well-regarded government agency that has core price monitoring functions and executives with extensive insurance industry experience'.^{xiii} The Bill identifies IPART as the appointed Insurance Monitor and provides that the Insurance Monitor 'is not subject to the control or direction of a Minister in relation to the exercise of the Monitor's functions under the Act... [nor] in relation to a specific matter or complaint'.^{xiv} Establishing an independent statutory body to act as the Insurance Monitor ensures impartiality, transparency, accountability, and consistency in regulatory oversight, which serves the public interest by promoting public trust and confidence in government.

COMMENT

The Government SPI provides an exemplary response to this section. It explains the policy objectives, intended outcomes and affected parties, links these to the need for the policy (to ensure that consumers receive the intended savings from the removal of the ESL on insurance premiums), and couches them in terms of the public interest. It specifically refers to how this policy is in the public interest, both in relation to this policy and to broader ESL reforms. Our Shadow SPI is mostly identical to the Government SPI with some additional text regarding the public interest in the Insurance Monitor being an independent statutory body.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The legislation establishing the previous Insurance Monitor has been repealed. Presently, there is no existing consumer protection regime that would be able to provide adequate assurance that ESL reform savings will be passed on to policyholders. Thus, legislation is required to establish a new Insurance Monitor.

The Government has considered the alternative *do nothing* option; proceeding with its plans of replacing the ESL on insurers with a levy spread across property owners without legislating an Insurance Monitor. However, this option would not provide confidence to insurance customers that ESL reform savings will be passed on from insurers in the form of lower insurance premiums. Insurance premiums change from year-to-year due to a variety of factors, and customers may find it difficult to determine if savings have been passed on without the assurance from an Insurance Monitor if they have been.

COMMENT

The Government SPI explains why legislative reform is needed to implement this policy, noting there is no existing consumer protection regime currently in place that would be able to provide adequate assurances that ESL reform savings will be passed on to policyholders.

It explains that the Government has given consideration to an alternative do nothing option; a non-legislative option which leaves it to insurance companies to pass on savings without regulatory oversight and explains that this would not be able to provide confidence that ESL reform savings will be passed on.

The Government SPI explains why this Bill has been put forward as the preferred option, noting that the successful reform of emergency services funding will rely on insurers passing on savings and consumers having confidence that this has occurred. This position is supported by the Government SPI's response in the next section where pros and cons of each option are discussed in further detail.

The Government SPI provides an exemplary response to this section of the SPI, clearly outlining policy options and providing justification for proceeding with the policy provided by this Bill.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The Government has considered the options of taking action, and not taking action, in establishing an Insurance Monitor in the lead up to broader ESL reforms.

Option one (legislative): establishing an Insurance Monitor

Pros/benefits: The option of establishing an Insurance Monitor with IPART in that role, as put forward in the Bill, would help protect insurance policy holders, including households and businesses, by monitoring the prices charged across the insurance industry and overseeing the conduct of insurance companies. Policy holders would be able to submit complaints to the Insurance Monitor who will have the power to investigate those activities and institute proceedings in respect of prohibited conduct. Having an Insurance Monitor should increase confidence in the broader community that savings in the form of lower premiums from the removal of ESL would be passed on by insurance companies.

Cons/costs: This option requires the NSW Government to fund the costs relating to IPART in its capacity as the Insurance Monitor. It also places an increased regulatory burden on insurance companies that will need to regularly provide information to the Insurance Monitor and incur increased compliance costs from the monitoring activities.

Option two (non-legislative): not establishing an Insurance Monitor

Pros/benefits: This option would avoid the NSW Government incurring the financial costs of establishing and operating an Insurance Monitor. Furthermore, not having an insurance monitor could reduce the regulatory burden that would otherwise be placed on the insurance industry.

Cons/costs: This option would mean not having a consumer protection regime covering the transition from an ESL to a replacement levy. As the then Legislative Council Portfolio Committee No. 4 recognised, if the ESL were to be removed, there would be no guarantee that premiums would reduce accordingly. This option therefore risks consumers not receiving savings from the removal of the ESL and risks undermining, during the transition period, the reform's objective of a fairer and more sustainable system for funding the State's emergency services. The avoided financial costs that have been mentioned above would be partially offset by any costs incurred in increased complaint handling being borne by the NSW Government.

COMMENT

Our shadow SPI response is identical to the Government SPI which provides an exemplary response to this question clearly setting out the pros and cons of each option considered. This precisely meets the stated intention and purpose of producing an SPI: to provide Members with information that will assist them to make an informed decision as to how to deal with the bill, and to demonstrate sound policymaking.

The analysis is supported by qualitative evidence, referencing the Legislative Council Portfolio Committee No. 4 who recognised that if the ESL were to be removed, there would be no guarantee that premiums would reduce accordingly.

Explanation as to why the choice to implement this policy through the Bill, as opposed to taking no action, is set out in the options section of the Government SPI. The Government SPI analysis section supports the Government's argument for reform by clearly identifying the merits and demerits of each option and identifying the key stakeholders affected by each option. The Government SPI plainly outlines potentially competing interests: protecting insurance policy holders, and reducing costs incurred by the Government

(and thus by the public). In doing so, the Government SPI provides a thorough analysis for Members to consider when making an informed decision as to how to deal with the Bill.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

Upon assent of this Bill, IPART will be appointed the Insurance Monitor and will have the functions set out in Division 2 of the Act. The Bill provides for the Act to be repealed at the end of the monitoring period which will end on a date prescribed by *Regulation*.^{xv}

The Government envisages that the monitoring period will last 18 months after the ESL on insurers is completely removed. The Government is yet to commit to a transitional path or timing for the removal of the ESL, therefore, prescribing the end of the monitoring period by *Regulation* provides flexibility. The Government is currently undertaking a public consultation on emergency services funding reform and is seeking feedback on a broad range of issues, including how the transition should take place.^{xvi} The envisaged 18-month period is consistent with the intention for the Insurance Monitor that was established in 2016 for the FESL reform.^{xvii}

COMMENT

The pathway for implementation of this Bill and who will administer it is clearly outlined in the Government SPI. In addition, it informs Members of the Government's intention that the monitoring period will last 18 months after the ESL on insurers is completely removed. Our Shadow SPI is mostly identical with the addition of information about other consultation processes currently underway. This would provide further rationale for the decision to prescribe the period by *Regulation*.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

Stakeholder views, where relevant to this legislation, were considered in developing this policy. IPART, the Insurance Monitor to be appointed under this legislation, was also consulted for their input in the development of this policy and Bill.

Alongside this Bill, other steps are being taken by the Government to tackle ESL reform, informed by stakeholder views. The Treasurer has led industry consultation on the reform, including the formation of a Stakeholder Reference Group, comprising representatives or individuals associated with:

- Insurance Council of Australia;
- Local Government NSW;
- Property Council of Australia;
- Real Estate Institute of New South Wales;
- Shopping Centre Council of Australia;
- NSW Rural Fire Service;
- Fire Brigade Employees Union;
- United Services Union;
- Tweed Shire Council;
- Business NSW;
- Public Service Association; and
- Former Commissioner of Marine Rescue NSW.^{xviii}

In addition, a public consultation process that seeks to provide a range of stakeholder views from those affected by, or involved in, implementing future reforms has commenced. A Consultation Paper on reforming emergency services funding has been produced and the public consultation is open until 22 May 2024.^{xix}

COMMENT

The Government SPI notes that stakeholder views were considered in the development of this policy, and names key stakeholders.

The Government SPI includes details about industry consultations on the broader reforms and names key stakeholders involved in the Stakeholder Reference Group. This includes representatives with potentially conflicting interests from industry bodies, unions and government.

ASSESSMENT

PER CAPITA COMMENT:

The Government SPI is exemplary. It provides a need for the policy supported with factual evidence, couches it in terms of public interest and places it in the wider context of future ESL reform. It provides a detailed analysis of policy options outlining pros/cons and costs/benefits. It outlines the timetable for implementation and notes affected parties and key stakeholders whose views were considered in the making of the policy, and who are informing the broader ESL reforms.

Much of our shadow SPI is identical to the Government SPI with only minor additions. This Government SPI meets the intended purpose of the SPI process. It provides Members with comprehensive information that will assist them to make an informed decision as to how to deal with the Bill, as well as demonstrating sound policymaking.

BLUEPRINT INSTITUTE COMMENT:

We agree with Per Capita’s assessment of this Government SPI as exemplary in providing a compelling case for the need for the Bill and why the chosen policy is most suitable to addressing the need and serving the public interest. In particular, we found the clear delineation of the different options and the explicit cost-benefit analysis of each to indicate excellent policy-making processes in the creation of this Bill.

Assessment of the tabled Statement of Public Interest

Insufficient	Good Practice	Adequate	Insufficient
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- ⁱ Sky News Australia, 'Chris Minns Outlines Vision for Sydney at Bradfield Oration' (YouTube, 16 November 2023) 00:18:32–00:25:09
- ⁱⁱ Diane Leow 2020, 'A State-by State Guide to Fire Levies', *Urban.com.au*
- ⁱⁱⁱ Treasury, New South Wales Government, *Reforming the Emergency Service Funding System* (Consultation Paper, 10 April 2024) 11.
- ^{iv} *Ibid* 5.
- ^v *Ibid* 9–10.
- ^{vi} *Emergency Services Levy Monitor Act 2016* (NSW) s 79.
- ^{vii} New South Wales, *Parliamentary Debates*, Legislative Assembly, 3 May 2016, 35 (Gladys Berejiklian, Treasurer).
- ^{viii} See, *Fire Service Levy Monitor Act 2012* (Vic) part 4; *Emergency Services Levy Monitor Act 2016* (NSW) part 3 div 1.
- ^{ix} Mirage News 2020, '\$15 Million Recovered from Insurers by ESL Insurance Monitor Prof Fels', *Mirage News*
- ^x Legislative Council Portfolio Committee No 4 – Legal Affairs (NSW), Parliament of New South Wales, *Inquiry into the Fire and Emergency Services Levy* (Report No 37, November 2018) 65.
- ^{xi} *Ibid*. See also Recommendation 6.
- ^{xii} *Emergency Services Levy Insurance Monitor Bill 2024* (NSW) s 5(2).
- ^{xiii} New South Wales, *Parliamentary Debates*, Legislative Council, 9 May 2024, 32 (Daniel Mookhey, Treasurer).
- ^{xiv} *Emergency Services Levy Insurance Monitor Bill 2024* (NSW) s 5(2)–6(1)–(2).
- ^{xv} *Emergency Services Levy Insurance Monitor Bill 2024* (NSW) s 89, sch 2 (definition of 'monitoring period').
- ^{xvi} New South Wales, *Parliamentary Debates*, Legislative Council, 9 May 2024, 32 (Daniel Mookhey, Treasurer).
- ^{xvii} New South Wales, *Parliamentary Debates*, Legislative Assembly, 3 May 2016, 35 (Gladys Berejiklian, Treasurer).
- ^{xviii} NSW Government 2024, 'Expert Panel to Guide Emergency Services Levy Reform' (Media Release, NSW Treasurer, 5 March 2024)
- ^{xix} New South Wales, *Parliamentary Debates*, Legislative Council, 9 May 2024, 32 (Daniel Mookhey, Treasurer); Treasury, New South Wales Government, *Reforming the Emergency Service Funding System* (Consultation Paper, 10 April 2024).