

11 August 2017

Economic Regulation Authority
PO Box 8469
PERTH BC WA 6849

BY ELECTRONIC LODGEMENT

Dear Sir/Madam

**SUBMISSION TO THE ECONOMIC REGULATION AUTHORITY
REVIEW OF EMERGENCY SERVICES LEVY-DRAFT REPORT**

I refer to the draft report prepared by the Economic Regulation Authority (ERA) entitled 'Review of the Emergency Services Levy' and dated 7 July 2017 (ERA Report).

Please now find enclosed my submissions, on behalf of Cascade Scaddan Fire Review Limited (Company) in response to some of the recommendations and content contained in the ERA Report and which are of particular relevance to the Company.

1. **Recommendation 5 - The Office of Emergency Management should be made independent of the Department of Fire and Emergency Services. It should report directly to the Minister for Emergency Services rather than the Fire and Emergency Services Commissioner.**
 - 1.1. The Company agrees with Recommendation 5 of the ERA Report.
 - 1.2. It is the view of the Company that the Office of Emergency Management (OEM) is not able to function autonomously or effectively when it is a part to the Department of Fire and Emergency Services (DFES).
2. **Recommendation 6 – The Office of Emergency Management should oversee how the Department of Fire and Emergency Services (and a rural fire service if established):**
 - (A) allocates ESL funds to stakeholders; and
 - (B) spends its share of ESL Funds
 - 2.2. The Company does not agree with Recommendation 6 of the ERA Report.
 - 2.3. This is because the Company does not consider that DFES should administer the ESL at all.
 - 2.4. There is little doubt that DEFS are in a position of conflict, in regards to the administration and distribution of the Emergency Services Levy (ESL). This is so given that:

-
- (a) DFES are reliant upon the ESL to cover their operating costs;
 - (b) DFES are currently the major recipient of ESL funds; and
 - (c) DFES are currently the body that otherwise distributes the remainder of the ESL funds to other bodies seeking a portion of those funds.
- 2.5. The Company agrees with the position of the ERA that the issue is not only whether DFES has actually taken advantage of its conflict of interest in the administration of the ESL...but also that that DFES could (or could be perceived to) take advantage of its conflict of interest.¹
- 2.6. It is the position of over 18 stakeholders that any conflict of interest would be best managed by ensuring that entities that receive ESL funds do not have a role in the allocation ESL Funds.²
- 2.7. It is the position of DFES that:
- Should the activities currently funded by the ESL remain unchanged, the current model is considered appropriate. DFES has emergency service expertise, financial management experience and adheres to State Government financial controls.³*
- 2.8. We do not consider having financial management experience and adhering to state financial controls are in any way relevant to determining who should administer the ESL.
- 2.9. Further, we consider what is relevant to determining who should administer the ESL is the position of conflict (actual or otherwise) DFES is in when distributing a levy of which they are the primary beneficiary.
- 2.10. The ERA Report concludes that:
- (a) the responsibility for administering the ESL should be transferred from DFES to OEM;⁴
 - (b) OEM should continue to be funded by general government revenue so that it does not have a conflict of interest;⁵ and
 - (c) "the best option is for an organisation other than DFES administer the ESL".⁶
- 2.11. Recommendation 6 of the ERA Report does not reflect the above conclusion.
- 2.12. The Company considers that a new, formal recommendation should be made by the ERA as follows:

¹ Economic Regulation Authority, *Review of the Emergency Services Levy- Draft Report* (7 March 2017) ('ERA Report'), 175

² ERA Report, above n 1, 164

³ Department of Fire and Emergency Services, *Submission to the Emergency Services Levy Review* (10 March 2017) ('DFES Submission') p. 5.

⁴ ERA Report, above n 1, 175

⁵ ERA Report, above n 1, 172

⁶ ERA Report, above n 1, 175

The responsibility of the allocation of the ESL should be transferred from DFES to OEM.

- 2.13. Notwithstanding the above, if it is determined that DFES is still the most appropriate body to be administering the ESL (which the Company does not agree with) then the Company does agree that OEM should oversee how DFES allocates ESL funds to stakeholders and spends its share of ESL funds.
3. **Recommendation 7 – The Office of Emergency Management should be the body of appeal for ESL-related issues, and the Fire and Emergency Services Commissioner's appeal role should be revoked.**
 - 3.1. The Company partially agrees with Recommendation 7 of the ERA Report.
 - 3.2. A similar appeals process to that which applies to Freedom of Information (FOI) appeals should be implemented in regards to ESL appeals.
 - 3.3. Following an FOI decision, the FOI appeals process is as follows:
 - (a) Firstly, an internal review of the original decision is undertaken by the agency who made the decision (**Internal Review**); and
 - (b) Secondly, and in the event the Internal Review outcome is not desirable, an external review of the original decision is undertaken by the FOI Commissioner (**External Review**).
 - 3.4. It is the Company's position that:
 - (a) OEM ought to administer the ESL;
 - (b) Internal Reviews should then be conducted through OEM; however
 - (c) There should be an individual or department outside OEM to whom an External Review can be made.
 - 3.5. It is the position of the Company that any department, organisation or individual in receipt of ESL funds cannot be involved in any administration of the ESL, or any appeals process.
 - 3.6. The appeals process needs to be fully independent and transparent and this cannot occur if the body distributing the ESL is also a recipient of the funds and assesses the appeals.
 - 3.7. If DFES is to remain as the body distributing the ESL (which the Company does not agree with) then the Company agrees that OEM is an appropriate office to hear any ESL distribution appeals.

-
- 4. Recommendation 8 - The Department of Treasury should undertake a review of the Department of Fire and Emergency Services' structure, resources and administration costs to determine whether services are efficiently delivered.**
 - 4.1. The Company agrees with Recommendation 8 of the ERA Report.
 - 4.2. To ensure there is adequate transparency and accountability in how DFES spends ESL revenue, an audit of the department is necessary.
 - 5. Recommendation 9 – The ESL should be used to fund prevention undertaken by the Department of Fire and Emergency Services, bush fire brigades and State Emergency Service units that have community-wide benefits or which involve coordination of prevention across land tenures.**
 - 5.1. The Company partially agrees with Recommendation 9 of the ERA Report.

ESL funds to be allocated to mitigation works

- 5.2. The Company agrees that ESL funds should be utilised for fire prevention measures, including mitigation works.
- 5.3. The use of ESL funds for prevention measures is authorised by the legislation enacting the ESL.⁷
- 5.4. Further, there is a vast amount of research which supports the position that an investment in mitigation significantly reduces the cost associated with bush fires.⁸

DPaW to receive ESL funds for mitigation works

- 5.5. It is the Company's position that DPaW should receive funds from the ESL specifically for the purposes of mitigation.
- 5.6. Various agencies and persons are responsible for mitigation works in Western Australia, including the Department of Parks and Wildlife (DPaW). The Department of Lands (DoL) has entered into a Memorandum of Understanding with each of DPaW (DPaW MOU) and DFES (DFES MOU), delegating portions of its mitigation responsibilities to each agency.
- 5.7. Further to the DPaW MOU, DPaW is responsible for, amongst other things, managing fire on Unallocated Crown Land (UCL) and Unmanaged Reserves (UMR) outside the metropolitan area, regional centres and townsites.⁹

⁷ It was the intention of the Emergency Services Acts that the ESL could be spent on prevention, control and the extinguishment of bush fires, *Bushfires Act WA (1954)*.

⁸ Dr Chris Back, during an address to the Governor General, and following an inquiry by the Productivity Commission into where the Commonwealth Governments' funds could be best spent in mitigation and reduction of fires, stated that:...if the Commonwealth spent its money in prevention and preparation there was a \$9 to \$1 return to the Australian community, but if the Commonwealth did nothing but wait around for what we call the response and recovery—in other words, waiting for the fires to occur and then trying to be involved in combating them and in recovery afterwards—there was scarcely a \$1 for \$1 value

-
- 5.8. The above mitigation responsibilities of DPaW extend to more than 90% of land in Western Australia.
 - 5.9. DPaW however only receives \$360,000 a year from government revenue for fire mitigation.¹⁰
 - 5.10. DPaW says that there are not currently sufficient funds or resources available to widen and maintain buffers across the whole of the UCL interface.¹¹
 - 5.11. DoL (the body with statutory responsibility for mitigation in WA) in their submissions to the ERA note that estimates prepared by KPMG suggest a fully costed fire preparedness and prevention program on UCL and UMR would cost \$5.56 million a year over a ten year period.¹²
 - 5.12. The above figures highlight the substantial discrepancy in funds provided by the government for mitigation works and the funds actually required to undertake effective mitigation works on UCL and UMR.
 - 5.13. The fire that started in Cascade, Esperance on Sunday 15 November 2015, which caused untold economic loss as well as the loss of four lives, started on UCL, which had not been mitigated for over 6 years.
 - 5.14. Given that DPaW is responsible for the largest portion of mitigation works in Western Australia, DPaW should receive distributions from the ESL for mitigation works.

Allocation of ESL funds to DFES for mitigation

- 5.15. DFES support the view that additional funding towards mitigation would be highly beneficial for the Western Australian community, however do not consider themselves a body responsible for mitigation activities.¹³
- 5.16. Despite DFES having a legislated role under the *Fire and Emergency Services Act 1998* (WA) to focus on shared responsibilities for the prevention and mitigation of hazards it appears they have become a "response only" organisation.¹⁴
- 5.17. The FES Commissioner stated in an interview conducted following the 2015 Yarloop fire, that "the issue of prescribed burning is a matter for DPaW".¹⁵
- 5.18. It is the Company's position that DFES do have an obligation to mitigate on land they manage.

⁹ Department for Planning and Infrastructure, *Memorandum of Understanding between the Department of Conservation and Land Management and the Department for Planning and Infrastructure in relation to the Administration and Management of Unallocated Crown Land and Unmanaged Reserves outside the Metropolitan Area, Regional Centres and Townsites (2004)* 6

¹⁰ ERA Report, above n 1, 57

¹¹ Nous Group, Submission to the Department of Fire and Emergency Services, *Major Incident Review of the Esperance District Fires*, 8 March 2016, 50

¹² Department of Lands, *Submission to the Emergency Services Levy Review*, 14 March 2014, p. 3

¹³ DFES Submission, above n 3, 2.

¹⁴ Government of Western Australia, *Report of the Special Inquiry into the January 2016 Waroona Fire* (2016), 98

¹⁵ De Ceglie, A., *WA bushfires: Fire Commissioner Wayne Gregson has 'no regrets' of handling of South West fires*, 17 January 2016, at <http://www.perthnow.com.au/news/western-australia/wa-bushfires-fire-commissioner-wayne-gregson-has-no-regrets-over-handling-of-south-west-fires/news-story/e97a5003c45093f60a40bc5db7c58503>

5.19. If DFES do not accept their responsibility to mitigate then DFES should not be receiving funds from the ESL to fund prevention activities.

6. **Recommendation 13 – the ESL should be used to fund the administration costs of the Department of Fire and Emergency Services.**

6.1. The Company y disagrees with Recommendation 13 of the ERA Report.

Expenditure of ESL funds on administrative costs of DFES

6.2. The ERA Report confirms that “stakeholders perceive that increases in the levy are used to supplement the administrative costs of DFES, rather than funding frontline services”.¹⁶

6.3. The ESL currently funds, amongst other things, the following costs of DFES:

- (a) Administration;
- (b) Advertising and promotion;
- (c) Communications;
- (d) Consultants and contractors;
- (e) Electricity and water expenses;
- (f) Insurance premiums and claims;
- (g) Leases;
- (h) Maintenance; and
- (i) Travel.¹⁷

6.4. In the 2015/2016 year, the above DFES expenses cost \$112 million dollars. This represents one third of the total ESL collected for that period.¹⁸

6.5. When the ESL legislation was introduced, it was warned ferociously that the government could not be trusted and would dip into ESL proceeds, “We need to make sure that the government does not use the system to save itself expenditure by using the ESL to cover costs that it would normally cover itself”.¹⁹

6.6. On 9 September 2015 the then member for Girrawheen, Ms. Margaret Quirk moved to the Legislative Assembly her concern that the current manner of administration and distribution of the ESL is that ESL funds are not being used solely for frontline

¹⁶ ERA Report, above n 1, 12

¹⁷ Department of Fire and Emergency Services, ‘2014 - 2015 Annual Report’ (2015) <<https://www.dfes.wa.gov.au/publications/pages/annualreports.aspx>>.

¹⁸ Department of Fire and Emergency Services, ‘2015 - 2016 Annual Report’ (2015) <<https://www.dfes.wa.gov.au/publications/pages/annualreports.aspx>>

¹⁹ Western Australia, Parliamentary Debates, Legislative Assembly, 2 October 2002, (M.P Omodei).

services but are being used for administrative and other costs that should be funded out of consolidated revenue.²⁰

- 6.7. By way of example, Ms. Quirk noted that:
 - (a) in 2008/2009, \$154m was collected under the ESL;
 - (b) in 2015/2016, \$321m was collected by the ESL; and
 - (c) during the same period, the government's contribution to DFES decreased from \$27.6m to \$15.2m, being a decrease of 55%.
- 6.8. DFES appears to be using the increases in the ESL to fund its own operating costs.
- 6.9. The state government appears to be using the increases in the ESL as an excuse to decrease the funds it contributes to DFES from its budget.
- 6.10. This is exactly the result that was feared at the time that the ESL was introduced.

Service Principal justification

- 6.11. The ERA Report discusses an "expectation of service principal" (Principal) on which the ESL was based and further on which DFES is relying on to justify using ESL funds to pay for its administration costs.²¹
- 6.12. As noted in the ERA Report

The Expectation of Service Principle indicates that, if the society expects to benefit from emergency management in any geographic location, then society needs to pay for the cost. Most of the costs is in having the standby capacity to respond when a disaster occurs. So society needs to contribute to the base capacity, and not just the additional cost of responding (such as call-out costs).²²
- 6.13. It is the Company's position that:
 - (a) The ESL was not based on the Principal; and
 - (b) Even if you accept that the ESL was based on the Principal, it was intended that society would pay for the costs of frontline firefighting services and mitigation works, not administration costs.
- 6.14. The Company submits that the provision of emergency services is no different to the provision of health care and / or education which is not funded by any form of levy.
- 6.15. Society expects to benefit from education, health and emergency services in exchange for the monies that it is required to pay in the form of taxes.

²⁰ Western Australia, Parliamentary Debates, Legislative Assembly, 9 September 2015, 6029 (M.M Quirk).

²¹ ERA Report, above n 1, 69

²² ERA Report, above n 1, 63

-
- 6.16. The Department of Health received \$4.9 billion from government revenue in the 2015/2016 period.
 - 6.17. The Department of Education received \$3.9 billion from government revenue during the same 2015/2016 period.²³
 - 6.18. DFES however only received \$50 million from government revenue in the same period.

Conclusion

- 6.19. The conclusion reached in the ERA Report was that the ESL should fund the administration costs of DFES.
- 6.20. The majority of the information provided in the ERA Report however did not support this conclusion.
- 6.21. The only reference used in the ERA Report to support DFES continuing to pay for its administration costs is a DFES publication.²⁴
- 6.22. The Company considers that the conclusion which should have been reached by the ERA is that DFES should not fund their administration costs from the ESL.
- 6.23. A new, formal recommendation should be included in the ERA Report reflecting the position of the majority of stakeholders as follows:

DFES should not fund their administration costs from the ESL.

- 7. **Recommendation 14 – the ESL should be used to fund the full costs of the Community Emergency Services Managers in local government. However, it should not be used to fund the broader emergency service and management responsibilities of local government, or the administration costs linked to bush fire brigades and State Emergency Service units.**

- 7.1. The Company partially agrees with Recommendation 14 of the ERA Report.
- 7.2. Provided that the role of the Community Services Emergency Managers in local government is to

contribute to the management and support of frontline services, of preparation, preparedness and response, including those of bush fire brigades and State Emergency Service units.²⁵

the Company agrees that ESL funds should be used to fund the full costs of this position.

²³ Department of Health, '2015 - 2016 Annual Report' <<http://www.health.gov.au/internet/main/publishing.nsf/Content/annual-report-1516-toc>>. Department of Education, '2015-2016 Annual Report' <<https://www.education.wa.edu.au/documents/2548175/2664299/Annual+Report+2015-16++Final++Corrected+-+Reduced+%281%29.pdf/15c619c0-3bbb-45fb-b49f-bfb9d95937c2>>

²⁴ Fire and Emergency Services Authority, A replacement funding system for emergency services, Perth, Government of Western Australia, 2002, pp. 17-18.

²⁵ ERA Report, above n 1, 65

-
- 7.3. The ERA Report states that the ESL should be allocated to local government to fund the full costs of bush fire brigades and State Emergency Service units for response activities, prevention activities and preparedness activities, which all have community wide benefits.²⁶
 - 7.4. It is the Company's submission that Recommendation 14 does not accurately reflect the position articulated in the ERA Report.
 - 7.5. The Company submits that Recommendation 14 should be amended as follows:

The ESL should be used to fund the full costs of the Community Emergency Services Managers in local government. The ESL should be allocated to local government to fund the full costs of bush fire brigades and State Emergency Service units for response activities, prevention activities and preparedness activities, which all have community wide benefits. However, it should not be used to fund the administration costs linked to bush fire brigades and State Emergency Service units.

- 7.6. Further to the Company's view that ESL funding ought to be provided to local government for prevention, response and preparedness, it is also the Company's view that local government personnel should be authorised to approve expenditure in line with the financial delegations given to DFES officials during an emergency. This would result in resources being more efficiently dispatched, as local personnel have the knowledge in relation to locally available resources.
- 8. **Recommendation 17 – New emergency services legislation should clarify the extent to which the Department of Fire and Emergency Services and local government are obliged to undertake prevention activities, and whether these activities may be funded from the ESL.**
 - 8.1. The Company agrees with Recommendation 17 of the ERA Report.
 - 8.2. There are currently two streams of legislation that govern bush fires in Western Australia and which run concurrently; the Emergency Services Acts and the Emergency Management Act 2005 (WA).
 - 8.3. The legislation identifies that a number of persons and bodies are responsible for mitigation, preparation and response to bush fires in Western Australia.
 - 8.4. To determine the roles and responsibilities of all relevant parties, the legislation and subsidiary policies must all be read together and there is confusion around which parties are responsible for which roles.
 - 8.5. The current legislative framework governing the preparation for, mitigation of, and response to bush fires in Western Australia needs to be simplified, with a focus on plain English and consistency.
- 9. **Recommendation 31 – The Department of Fire and Emergency Services (and a rural fire service if established) should provide a report to the Office of**

²⁶ ERA Report, Chapter 3.4.2

Emergency Management explaining how it has spent ESL funds and the rationale for the expenditure.

- 9.1. The Company agrees with Recommendation 31.
- 9.2. Whilst it is the Company's position that DFES should not administer the ESL, should it be found that DFES is still in the best position to administer the ESL, then DFES should provide details to OEM on how they spend the ESL to ensure transparency and accountability.
10. **Recommendation 32 – The Office of Emergency Management should prepare and publish an annual report on the ESL.**
 - 10.1. The Company agrees with Recommendation 32 of the ERA Report.
11. **Recommendation 33 – The Office of Emergency Management should prepare a brochure on the ESL and provide it to local governments to distribute with rates notices. The brochure should explain the purpose of the ESL and that it is a State Government levy, and describe how ESL revenue is raised and spent.**
 - 11.1. The Company agrees with Recommendation 33 of the ERA Report.
 - 11.2. It is the position of the Company that further efforts to educate the community about the purpose of the ESL are beneficial.
12. **Recommendation 34 – The Office of Emergency Management should prepare annual estimates of the funding required by the Department of Lands and the Department of Parks and Wildlife to conduct prevention activities on their estates. These estimates should be published in the annual report of each agency, along with the amount of funding provided by the State Government.**
 - 12.1. The Company agrees with Recommendation 34 of the ERA Report.
 - 12.2. The Company also re-confirms its position that DPaW should be allocated funds from the ESL for mitigation activities (see part 5 of these submissions).
13. **Recommendation 36 – The Office of Bushfire Risk Management should require local governments to publish their bushfire risk management plans and treatment strategies.**
 - 13.1. The Company agrees with Recommendation 36 of the ERA Report.
 - 13.2. These plans will improve transparency and accountability amongst all land owners for bushfire risk planning in Western Australia.

14. Recommendation 37 – the Department of Fire and Emergency Services should publish a capital grants manual for volunteer organisations it manages (for example the Volunteer Fire and Rescue Service).

- 14.1. The Company partially agrees with Recommendation 37 of the ERA Report.**
- 14.2. The Company confirms its position that DFES should not be in charge of administering the ESL and as a result, capital grants.**
- 14.3. Irrespective of which body is administering the ESL, a grants manual will be beneficial to volunteer organisations to provide clarity on how and for what, these grants can be applied for.**

15. Conclusion

The Company reiterates its position stated above that:

- (a) **DFES should not be the body in charge of administering the ESL;**
- (b) **More funds should be allocated from the ESL to fund mitigation works and in particular should be allocated to DPaW;**
- (c) **The ESL should not be used to fund the administration costs of DFES;**
- (d) **ESL funds should be provided to local governments specifically for prevention, response and preparedness activities; and**
- (e) **New emergency services legislation should be enacted to clarify the roles and responsibilities of the relevant emergency management bodies in WA.**

Should you have any queries or wish to discuss my submissions, I would be more than agreeable. My best contact number is _____ and my email address is _____

Yours faithfully

Dan Sanderson
Director
Cascade Scaddan Fire Review Limited