

2 August 2016

By email: enquiries@eslinsurancemonitor.nsw.gov.au

Emergency Services Levy Insurance Monitor
PO Box 972
PARAMATTA NSW 2124

Dear Sir/Madam

Emergency Service Levy Monitor – price exploitation and false conduct draft guidelines

Consumer Action Law Centre (**Consumer Action**) is pleased to comment on the *Emergency Services Levy Insurance Monitor Act 2016 Draft Guidelines on the prohibition against price exploitation* and *Draft Guidelines on the prohibition on engaging in false or misleading conduct in relation to the emergency services levy reform*, published by the Emergency Services Levy Monitor (the **Monitor**).

This submission reflects our experience with the Office of the Fire Services Levy Monitor (**OFSLM**) which operated in Victoria between 2012 and 2014. The OFSLM operated under a similar legislative scheme.

Consumer Action also endorses the submission of Financial Rights Legal Centre NSW (**Financial Rights**). Our comments are detailed more fully below.

About Consumer Action

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

Draft Guidelines on the prohibition against price exploitation

Consumer Action supports the abovementioned guidelines as published in draft. In particular, we strongly support guideline 4 that insurance companies should not anticipate the removal of the emergency services levy (**ESL**) by increasing base premiums prior to 30 June 2017, and guideline 9 which states that a base premium should not increase at the same time as the

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abolition of the emergency services levy. These are important guidelines that protect against the purpose of the legislative scheme being avoided.

We also strongly support guideline 14 that requires insurers to provide the Monitor with sufficient information to justify their pricing decisions for contracts of insurance. It is only if the Monitor is provided with sufficient information is it able to conduct its role pursuant to the legislation. Insurers should be obliged to be transparent around any changes to pricing allocations and methodologies, to the satisfaction of the Monitor. In this respect, we support guideline 11 which should assist insurers minimise risk of contravention of the legislation.

Consumer Action also strongly supports guideline 6 which provides that any over-recovery of statutory contributions will be required to be dispersed in a manner approved by the Monitor. In our view, any over-recovery should be considered policy holders' money, given that the cost of emergency services will be fully recovered under the new Emergency Services Property Levy from 1 July 2017. If over-recovery is returned to Government for the purposes of paying for emergency services, then this will mean that consumers will have paid twice—once in relation to insurance, and once in relation to property rates. It is fairer and more appropriate for over-recovered monies to be returned to consumers.

The proposed threshold levels of \$30 and \$200 (for retail and wholesale policies respectively), above which refunds must be made to individual policy holders are appropriate. Allowing insurers to return amounts below these amount *cy pres*, in agreement with the Monitor, would appear to be efficient given the cost of dispersing small refunds to policy holders.

In Victoria, the OFSLM agreed with some insurers to return over-recovered monies to consumer organisations. This has been effective to ensure that the monies benefit consumers of insurance in Victoria. Consumer Action was a beneficiary of a portion of these monies and has used these monies to:

- enhance our insurance legal advice and casework;
- prepare a number of submissions to policy processes and government inquiries;
- represent consumer interests on the Insurance Council of Australia's Effective Consumer Disclosure Taskforce;ⁱ
- produce two policy reports relating to add-on insurance sales;ⁱⁱ
- develop the independent consumer complaint tool DemandARefund.com website, enabling consumer to recover the cost of add-on insurance policies that were mis-sold; and
- work with insurers to promote improved disclosure of pricing on renewal notices.

Draft Guidelines on the prohibition on engaging in false or misleading conduct in relation to the emergency services levy reform

Consumer Action supports the above guidelines as published in draft. We particularly support guideline 3 that states that insurers should provide easily accessible and comprehensible information to customers about how their premiums for insurance policy renewals will be set to take into account the abolition of the emergency services levy. Easily accessible and comprehensive information would not only assist consumers understand their premiums, but would promote more effective competition in relevant insurance markets.

We also support guideline 4 that requires insurers to provide policyholders information specific to their policy. This will help avoid disputes. There is already some evidence that insurers do not regularly or consistently provide consumers with information about how premiums are calculated when they ask for this information. This can frustrate consumers and lead to complaints and disputes. We also believe that this guideline should be enhanced so that insurers are required to provide the previous year's premium on renewal notices. Consumer Action has commissioned research that this information is desired by consumers.ⁱⁱⁱ

Research function of Monitor

Like Financial Rights, we support the Monitor undertaking research, particularly about insurance pricing and disclosure, to promote effective competition. The relevant legislation enables the Monitor to provide information, advice and guidance in relation to the emergency services levy reform. The Monitor should use this power to investigate pricing practices more broadly in the insurance sector to promote a well-functioning and competitive insurance market, which is necessary for there to be confidence that insurers are passing on to consumers the full reduction in cost from the abolition of the emergency services levy.

Please contact Susan Quinn on 03 9670 5088 or at susan@consumeraction.org.au if you have any questions about this submission.

Yours sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

ⁱ Insurance Council of Australia, *Too Long; didn't read: Report of the Effective Disclosure Taskforce to the Insurance Council Board*, December 2015, available at:

http://www.insurancecouncil.com.au/media_release/plain/341

ⁱⁱ Consumer Action Law Centre, *Junk Merchants: How Australians are being sold rubbish insurance and what we can do about it*, December 2015, available at: <http://consumeraction.org.au/junk-merchants-fleeing-millions-from-unknowing-australians/>; and Consumer Action Law Centre, *Donating Your Money to the Warranty Company*, August 2015, available at: <http://consumeraction.org.au/almost-completely-worthless-used-car-warranties-catching-out-countless-australians/>.

ⁱⁱⁱ Consumer Action Law Centre, *Insurance companies: prove your loyalty to us, be upfront on prices*, June 2015, available at: <http://consumeraction.org.au/insurance-companies-prove-your-loyalty-to-us-be-upfront-on-price-rises/>.