

9 May 2017

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

Joanna Ifield
Director
Office of the Emergency Services Levy Insurance Monitor
Level 9, McKell Building, 2-24 Rawson Place
Sydney NSW 2000

Dear Ms Ifield,

Submission: ESLIM public inquiry into matters relating to prohibited conduct in the insurance industry

Thank you for your invitation to make this submission to the NSW Emergency Services Levy Insurance Monitor (**ESLIM**) public inquiry into matters relating to prohibited conduct in the insurance industry (the **Inquiry**). We note that, as discussed with Susan Quinn on 5 May, we are unfortunately unable to attend the public hearing on 16 May in Sydney.

We were asked to provide feedback on questions 4, 5, 7 and 11 in the ESLIM's Public Inquiry Issues Paper of 13 April 2017 (the **Issues Paper**). We have also responded to question 9 on competition drivers, and briefly commented on our insurance work in recent years, funded by over-collected levies directed to us by the Victorian Office of the Fire Services Levy Monitor (**OFSLM**).

If you have any questions about this submission, please contact Susan Quinn on (03) 9670 5088 or at susan@consumeraction.org.au.

Yours sincerely,

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About Consumer Action

Consumer Action Law Centre (**Consumer Action**) 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.

Consumer Action's insurance work

The Victorian OFSLM was tasked with monitoring the removal of the fire services levy from insurance premiums between 2012 and 2014. Over-collected levies amounted to approximately \$12 million in Victoria. The Monitor distributed the over-collected levy amounts back to consumers and, where this was not practicable, the money was directed to other purposes. This included research, education, advocacy, community engagement (including advice and casework) and regulatory compliance.

In late 2014, Consumer Action received some funds via the Monitor which enabled us to employ a Senior Policy Officer and Senior Solicitor to work exclusively on insurance consumer issues, with an outlook of five to six years. At the time, we proposed to focus our work on:

1. **Add-on insurance:** Protecting consumers from exploitative and unfair business practices in the add-on insurance market, and
2. **Insurance suitability:** Improving competition in insurance markets through an unfair contract terms regime and standard and default cover.

Thanks to the funds received, we have made significant headway on these and other projects. This has included:

Research and advocacy

- Ground-breaking reports on add-on insurance and extended car warranties, based on our research and casework,¹
- Parliamentary engagement, including:
 - providing ongoing information and insights to Members of Parliament, and
 - appearing at the current Parliamentary inquiries into life and general insurance.
- Advocating through media, including by assisting our clients to share their stories directly.
- Providing a strong consumer perspective in government consultations including the Australian Consumer Law Review (2016-17), ASIC add-on insurance working group (2017) and current Treasury development of the Product Intervention Power and Product Design and Distribution Obligations.

¹ Consumer Action, *Junk Merchants: How Australians are being sold rubbish insurance, and what we can do about it*, December 2015; *Donating Your Money to a Warranty Company, Why the motor vehicle warranty you bought might be worthless*, August 2015.

Legal advice and representation

- The launch of the DemandARefund.com website, which enables people to claim refunds on junk add-on insurance. To date more than 260 people have claimed over \$570,000 through DemandARefund.com.
- Legal representation in insurance claims and disputes. Over the past 12 months alone, this has resulted in over \$859,000 being paid to our clients, which they would not otherwise have received.
- Complaints and notifications to ASIC and the General Insurance Code Governance Committee regarding significant and systemic consumer problems.

Industry engagement

- Strongly advocating the consumer perspective to industry, including through:
 - the development of the Life Insurance Code of Practice (2016),
 - the current review of the General Insurance Code of Practice,
 - the Insurance Council of Australia (ICA) Effective Disclosure taskforce (2016),
 - ongoing engagement with the General Insurance Code Governance Committee,
 - the ICA Consumer Liaison Forum (ongoing), and
 - other industry consultations and forums.
- Involvement in developing two general insurance products for people on low incomes— IAG’s Insurance4That and Suncorp’s Essentials (2015-16).

Our ongoing work includes:

- Pushing for law reform and industry changes to implement a delayed opt-in sales model and a ban on opaque financed single premiums for add-on insurance.
- Research and policy development on unsuitable insurance and issues with ‘big data’.
- Strong advocacy for law reform, including an unfair contract terms regime, a revived standard cover regime and broader suitability requirements for insurance.
- Continuing to help our clients share their stories publicly and advocate for fair insurance.
- Legal advice and representation to:
 - assist people who are particularly vulnerable, such as people experiencing family violence, and
 - grapple with the real impact of unfair contract terms and unsuitable insurance.
- Engaging with industry to identify and address difficulties faced by people who are vulnerable.

Response to the Issues Paper

4—Efforts to inform policyholders about the emergency services levy reform and about what it means to them

We are not aware of any efforts to this end by insurers in Victoria and cannot comment on this.

5—Providing comparative premium information on renewals to identify changes in premium components due to ESL reform

We support more transparent renewal policy pricing, including a breakdown of premium components in renewal notices. The component breakdown would be particularly useful to improve people’s understanding of value versus price when it comes to policies and premiums.

We commissioned research in 2015 which told us that 86% of people would find it useful if renewal notices included the renewal price, last year’s price and the reason for any change.² Also in 2015, we were part of the ICA’s Effective Disclosure Taskforce, which recommended a raft of further work towards *effective* rather than *mandated* disclosure. This included a trial of the inclusion of prior year pricing on renewal notices.³

In 2014, the UK Financial Conduct Authority (**FCA**) launched a large scale randomised control trial with over 300,000 consumers across the UK to test reactions to different types of information provided at renewal and whether this prompted people to switch. The inclusion of last year’s premium on renewal notices had the greatest impact, prompting between 11% and 18% more people to either switch provider or negotiate a lower premium when prices sharply increase.⁴

This experiment demonstrated the pro-competitive impact of this initiative. In the context of ESL reform, this pro-competitive impact would make it less likely that insurers could profit during the removal of the ESL.

The insurance industry’s own research also tells us that, while the vast majority of people do not read Product Disclosure Statements (**PDSs**) when they buy insurance, the renewal notice is the most commonly-used and highly-rated source of information.⁵ While mandated disclosure is not an effective consumer protection in itself, information in renewal notices is more likely to gain the attention of policy holders. This is a potentially very useful way to convey important information.

² Consumer Action, *Insurance companies: prove your loyalty to us, be upfront on prices*, June 2015, <http://consumeraction.org.au/insurance-companies-prove-your-loyalty-to-us-be-upfront-on-price-rises/>.

³ ICA Effective Disclosure Taskforce, *Too Long; Didn’t Read—Enhancing General Insurance Disclosure: Report of the Effective Disclosure Taskforce to Insurance Council Board*, October 2015, p 7.

⁴ FCA, *Press release: FCA to require insurance firms to publish details of last year’s premium*, 3 December 2015, <https://www.fca.org.uk/news/press-releases/fca-require-insurance-firms-publish-details-last-year%E2%80%99s-premium>.

⁵ ICA, *Consumer Research on General Insurance Product Disclosures: Research findings report*, February 2017, pp 5-6.

7—Factors the Insurance Monitor should consider in deciding what amount is “practicable” to refund

As noted in our submission on the ESLIM’s proposed Guidelines last year, we supported the refund thresholds to policyholders of \$30 for retail and \$200 for wholesale policies.⁶ We understand that at least one insurer has voluntarily refunded customers who had been over-charged the levy,⁷ however we do not know how the refund amount was calculated or administered.

9—What are the key drivers of competition in the property insurance? Do these drivers differ between New South Wales and other jurisdictions?

While Consumer Action operates in Victoria, we see some of the same drivers of competition in insurance markets nationally. Price and direct marketing access are two major factors.

From a consumer perspective, competition in home insurance is heavily driven by price. Policies are too complex and varied for the vast majority of insurance consumers to be able to make decisions based on what is the most suitable and best value policy based on cover and features. The price bias is reinforced by widespread discount offers and promises of the cheapest price. For example, retailers such as Woolworths say you can ‘save up to 30%’ when you buy online and urge you to ‘see how much you can save’.⁸

Companies which hold data on their customers or prospects are at a significant advantage in the insurance market. Established insurers and retailers such as Woolworths, which has a large customer base in their Woolworths Rewards incentive scheme, can have huge direct marketing reach. Detailed, long-term customer data can give an indication of a person’s financial and living situation, which enables very effective targeted marketing.

We note that the significant variation and complexity in policies are major barriers to effective competition. An important pre-condition that would enable more effective competition would be standardised or more comparable insurance policies. As stated in our submission and evidence to the current Senate Economics References Committee inquiry into general insurance,⁹ we believe that more could be done in this area. Reforms could include revising

⁶ Consumer Action, Emergency Service Levy Monitor – price exploitation and false conduct draft guidelines, August 2016, p 2, <http://consumeraction.org.au/emergency-service-levy-monitor-price-exploitation-false-conduct-draft-guidelines/>.

⁷ Professor Allan Fels AO, ESLIM, *Media Release: Insurers refund customers after errors detected: Fels*, 20 October 2016, http://www.eslinsurancemonitor.nsw.gov.au/esl/News_and_Information/News.page?#Insurers_refund_customers_after_errors_detected:_Fels_.

⁸ See <https://insurance.woolworths.com.au/home-insurance.html>, accessed 8 May 2017.

⁹ Consumer Action, *Submission: Senate Standing Committee on Economics inquiry into Australia’s general insurance industry*, 10 February 2017, http://consumeraction.org.au/wp-content/uploads/2017/02/170210_Senate_GenInsuranceInquiry_ConsumerActionSub_final.pdf and Senate Economics References Committee, *Proof Hansard: Australia’s general insurance industry*, 13 April 2017, <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommsen%2F8d0c334e-929c-424d-9eb1->

the standard cover regime under insurance laws,¹⁰ or creating a star-rating system for insurance policies, to rate their coverage, claims handling and complaint metrics. This would facilitate more accurate comparison and activate more effective competition across the market.

11—Low rates of customer switching and effectiveness of competition

The low rates of switching between insurance policies are symptomatic of a disengaged customer base and the lack of comparability of insurance policies. The complexity and variation problems noted above are a significant barrier to people attempting to weigh up and switch policies. Because people are buying ‘peace of mind’ when they buy insurance, the ‘safety’ of a known quantity keeps customers from even contemplating a switch.

Brand loyalty and insurers’ retention campaigns also play a significant part. ‘Loyalty’ discounts reinforce people’s aversion to shopping around. For example, NRMA has an online loyalty discounts calculator which shows you what percentage discount you will receive depending on the number of policies you hold and the number of years you hold them for.¹¹

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¹⁰ Set out in Pt 5 of the *Insurance Contracts Regulations 1985* (Cth).

¹¹ See <https://www.nrma.com.au/loyalty-discount>, accessed 8 May 2017.