



Submission by the Financial Rights Legal Centre

Emergency Services Levy Monitor

Emergency Services Levy Insurance Monitor Act
2016:

Draft Guidelines on the prohibition against price
exploitation, July 2016

&

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

August 2016

About the Financial Rights Legal Centre

The Financial Rights Legal Centre is a community legal centre that specialises in helping consumer's understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the Credit & Debt Hotline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. Financial Rights took over 25,000 calls for advice or assistance during the 2015/2016 financial year.

Financial Rights also conducts research and collects data from our extensive contact with consumers and the legal consumer protection framework to lobby for changes to law and industry practice for the benefit of consumers. We also provide extensive web-based resources, other education resources, workshops, presentations and media comment.

This submission is an example of how CLCs utilise the expertise gained from their client work and help give voice to their clients' experiences to contribute to improving laws and legal processes and prevent some problems from arising altogether.

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Credit & Debt Hotline 1800 007 007
Insurance Law Service 1300 663 464
Aboriginal Advice Service 1800 808 488

Monday – Friday 9.30am-4.30pm

Introduction

Thank you for the opportunity to comment on the sets of draft guidelines on price exploitation and the Prohibition on engaging in false or misleading conduct in relation to the emergency services levy reform. The Financial Rights Legal Centre (Financial Rights) supports the process being developed by the Emergency Services Levy Insurance Monitor and the guidelines proposed to address issues relating to price exploitation and false or misleading conduct. The Monitor's role in ensuring consumer interests are protected is a vital one throughout the transition process.

We will confine our comments to the following elements in the guidelines:

- When the provisions apply (B4) (Price Exploitation Guidelines, p10);
- Guideline 6: Over-recovery of statutory contributions (Price Exploitation Guidelines, pp. 13-14);
- Guideline 5: Sufficient information to policyholders (False or Misleading Conduct Guidelines, p12
- Research Function of the Emergency Services Levy Insurance Monitor.

This submission has also been endorsed by:

- Consumer Action Law Centre
- Footscray Community Legal Centre; and
- Good Shepherd Microfinance (Please find a letter of endorsement at [Attachment A](#)).

B4 When do provisions apply (Price Exploitation Guidelines p. 10)

Financial Rights notes that under the legislation:

An application for an order for a civil pecuniary penalty relating to price exploitation cannot be made later than 31 December 2018 (section 18(6)). A prosecution for a criminal offence under the Act may not be commenced after 31 December 2018.

We query whether the 31 December 2018 cut off for prosecutions is too soon. The provisions apply to policies issued right up until 31 December 2018. It is doubtful that complaints or intelligence received towards the end of the 2017/18 financial year could be investigated and progressed to prosecution within 6 months, let alone the fact that the legislation continues to apply to policies issued right up to the 31 December 2018 cut off. It is Financial Rights view that there should be a lag. The legislation should be amended to allow for the continuation of existing complaints and investigations for potential prosecution beyond the 31 December 2018 deadline.

Recommendation

The Financial Rights Legal Centre recommends that complaints and investigations for potential prosecution be allowed to continue beyond the 31 December 2018 deadline.

Guideline 6: Over-recovery of statutory contributions (Price Exploitation Guidelines pp. 13-14)

Financial Rights notes that the Monitor has proposed the following guideline with respect to the over-recovery of statutory contributions:

Guideline 6

The Monitor will require insurance companies to demonstrate that there has been no over-recovery of ESL over the financial years 2015-16 and 2016-17 combined. Any over-recovery of statutory contributions will be required to be dispersed in a manner approved by the Monitor. Threshold levels of \$30 for the average retail policy over-collection and \$200 for the average wholesale policy over-collection will apply. Above these threshold amounts, insurance companies will be expected to refund individual policy holders the amounts involved. Below these amounts companies can refund individual policy holders, or if they prefer, disperse the total over-collection in a manner agreed to by the Monitor in each case. Such agreement will be formalised in an enforceable undertaking pursuant to Part 4 Division 2 of the Emergency Services Levy Insurance Monitor Act 2016.

Financial Rights strongly supports this guideline. Ensuring that any over-collection of levies by insurers be returned to individual consumers is entirely appropriate and an important principal that must be instituted and monitored. It is also entirely appropriate that in the circumstances where insurers may prefer to make a bulk payment of their over-collected amounts to an appropriate organisation, under arrangements approved by the Monitor, that these arrangements be supported.

It is Financial Rights view that appropriate organisations be those representing the interests of insurance consumers. It is our strong view that these monies should not be returned to NSW Government's consolidated revenue collection as any over-collected monies are from policyholders and should explicitly serve policyholder's interests. Nor should over-collected monies be returned to insurance companies themselves. As the Treasurer the Hon. Gladys Berejiklian stated in the second reading speech of the Bill:

"Price exploitation is when an insurance company does not pass on to consumers the full reduction in cost from the abolition of the insurance-based levy or seeks to recover more in fire services levy from policyholders than the insurance company is required to remit to the Government."

By not returning these funds to insurance consumers or to consumer representatives is to not faithfully serve the interests of insurance consumers.

NSW has only to look at the successful process implemented by the Victorian Fire Services Levy Monitor to find an appropriate model upon which to base the delivery of over-collected levies back to consumers.

The Victorian Fire Services Levy Monitor

The Fire Services Levy Monitor in Victoria was established as an independent statutory appointment with substantial powers to protect consumers when Victoria was transitioning to a Fire Services Property Levy. The Monitor was set up to ensure that insurers genuinely passed on the savings of the abolition of the fire services levy (FSL) to policyholders. The Monitor was empowered by legislation to monitor insurance premiums; monitor compliance of the industry with laws to ensure policyholders were not misled about the effect of the abolition of the FSL; investigate potential breaches of the law; and, take appropriate enforcement action.

During the time that the Monitor was in operation it found that fifty-six insurance companies and brokers had an over-collection of FSL in Victoria of \$12.4 million. Thirty-four companies agreed to refund some or all of their FSL over-collection to customers and 40,538 customers received refunds. Companies with smaller over-collection amounts, smaller refund amounts per policy, or difficulties in paying refunds to intermediated customers, agreed to resolve their over-collections through payments to designated organisations representing the interests of insurance consumers in Victoria.

The consumer representative organisations that received a share for specific insurance projects ourselves, the Financial Rights Legal Centre, as well as the Consumer Action Law Centre, Footscray Community Legal Service, Community Information and Support Victoria, Brotherhood of St Laurence, Kildonan Uniting Care, and Good Shepherd Microfinance.

FSL payments disbursed by relevant insurers to recipient organisations

Organisation	Total received from insurers
Brotherhood of St Laurence	\$437,000
Community Information & Support Victoria	\$130,000
Consumer Action Law Centre	\$1,597,000
Financial Rights Legal Centre	\$957,000
Footscray Community Legal Centre	\$206,000
Good Shepherd Microfinance	\$578,000
Kildonan Uniting Care	\$467,000
Total	\$4,372,000*

*The figures in this table have been rounded.

Financial Rights received \$956,932 in over-collected FSL funds distributed in accordance with the process set-up by the Victorian Fire Services Levy Monitor for projects benefitting consumers of insurance. This funding is being used to provide insurance advice and casework, policy development, and insurance literacy.

Insurance advice and casework

Insurance Law Service: Since 2007, Financial Rights' Insurance Law Service has provided a national, free and independent advice service for vulnerable consumers impacted by natural

disasters, motor vehicle accident, theft, illness and injury. FSLM funding has boosted our capacity to provide insurance advice by about 3,000 additional calls per annum for the last two financial years.

Aboriginal Advice Service: FSLM funding has enabled Financial Rights to establish an Aboriginal Advice Service 1800 808 488 providing specialist insurance advice catering to the specific needs of Indigenous Australians. This line commenced operation in June 2016 and has already assisted a number of Indigenous Australians.

Insurance policy development

Policy input: FSLM funding has provided Financial Rights with an increased capacity to deliver specialised and consumer focussed input into insurance industry policy development and government regulatory review processes. The engagement of an additional policy and advocacy offer has allowed Financial Rights to provide significant input into the recent Senate Scrutiny of Financial Advice Inquiry on Life Insurance, the Northern Australia Insurance Premiums Taskforce Report, and participation in the development of the Financial Services Council Life Insurance Code of Practice. Financial Rights has also been able to assist ASIC with their investigations into Commlnsure's practices through the provision of hundreds of call records identifying systemic issues.

Guilty Until Proven Innocent: Insurance Investigations in Australia: Using FSLM funds, Financial Rights was able to take a detailed look at insurance investigation practices. Financial Rights solicitors have long felt that a large portion of their time has been dedicated to advising clients on how to deal with the experience of being investigated by insurers. Solicitors regularly hear stories of bullying, threats and intrusive surveillance, with clients often reporting they feel they are being treated like a criminal or racially profiled. Financial Rights published its findings and reform recommendations in a report titled *Guilty Until Proven Innocent: Insurance Investigations in Australia*.

Since the release of the Report the Financial Ombudsman Service has agreed to examine their data collection to better report on cases involving allegations of fraud and will take a look at developing a fraud investigations Approach document. The General Insurance Code Governance Committee is also working on an Own Motion Inquiry into claims investigations and arrangements with service suppliers - an inquiry that was expanded in response to the report. The two largest insurers IAG and Suncorp are also currently examining developing their own codes in relation to investigations. Finally FSC is currently including standards for investigation practices in its soon to be finalised Life Insurance Code of Practice.

Financial Literacy

Motor Vehicle Accidents Insurance problem solver: Financial Rights is the final stages of developing a Motor Vehicle Accidents problem solver website - an interactive decision tree that will enable consumers to gain tailored insurance information for their own unique motor vehicle accident situation. The site will be focussed solely on providing legal assistance and insurance information to people who have been involved in a motor vehicle accident.

New insurance information resources: Financial Rights have been able to enhance their range of insurance fact sheets to better assist those impacted by emergencies including “*If a tree falls...*” for those who have had a tree fall in their backyard, onto their property (be it a car or house) or onto a fence or neighbour's property and a *Storm factsheet* for those affected by natural disasters. It gives information about rainwater and storm surge definitions, discusses how to deal with assessors, and explains common challenges made by insurance companies.

Disclosure research: Financial Rights has engaged researchers from Monash University to undertake research and analysis on regulated general insurance disclosure in Australia. The research will examine consumer comprehension of PDS and KFS documents when purchasing home insurance.

Further projects developed and administered by other funded consumer representative organisations included:

- Research on the viability of not-for-profit insurance to reduce the rate of non-insurance and under-insurance of people on low incomes. The funding provided the critical seed funding needed to establish the Good Shepherd Microfinance Good Insurance program which aims to address the issues of non-insurance or under-insurance as a key lever for improving financial inclusion in Australia.¹ Good Insurance co-created Australia's first two insurance products designed for people on low incomes: *Essentials* by AAI, developed with Suncorp, and *Insurance 4 That*, developed with Insurance Australia Group (IAG).
- A project to reduce scam insurance targeted at taxi drivers and owners including the maintenance of a legal clinic for taxi drivers and owners scammed through the sale of inadequate and unregulated policies to cover the consequences of a motor vehicle accident.
- A report into the impact of landlord insurance policies on tenants – the report examined concerns that landlord and estate agents were double dipping by claiming on landlord insurance policies and seeking recovery for the statutory bond for the same items.²
- Casework and advocacy designed to protect insurance consumers from exploitative behaviour, such as pressure selling of ‘add-on’ insurance products of dubious value or utility.
- An examination of the need for and feasibility of applying the unfair contract terms provisions of the Australian Consumer Law to insurance contracts.
- Promotion and encouragement of insurance consumers and policyholders to look wider than price, when they shop around.
- Development of tailored educational materials on insurance for culturally and linguistically diverse communities.

¹ <http://goodshepherdmicrofinance.org.au/loans/insurance>

² Western Community Legal Centre, *The Impact of Landlord Insurance Policies on Tenants. Landlord Insurance Practice Interim Report*, October 2015.
http://www.footscrayclc.org.au/~footscra/images/stories/Landlord_insurance_project_report_-_October_2015.pdf

- Development and roll out of training modules that improve the competence of financial counsellors to advise on insurance issues.

Recommendation

The Financial Rights Legal Centre recommends that any over-collected levies should be returned to consumers in the first instance, and where not practicable, paid to appropriate consumer assistance and advocacy services.

Guideline 5: Sufficient information to policyholders (False or Misleading Conduct Guidelines, p12)

Financial Rights notes that under Guideline 5 policyholders should be provided with sufficient information to be able to identify

- *the total premium and the components of base premium, ESL, GST and duty paid by the policyholder during 2016-17;*
- *the total premium and the components of base premium, GST and duty payable by the policy holder on the renewal issued during 2017-18 and*
- *the reason for any change.*

Financial Rights supports consumers being provided with this information. However, we seek to clarify this guideline to ensure that policyholders in 2017-18 are provided with both the total 2017-18 premium (and its component parts) and the equivalent figures from 2016-17 for direct comparison on the renewal notice.

The provision of last year's previous premium (and components) is an important tool to assist policyholders to consider their financial situation and make appropriate decisions. The compulsory provision of this information is currently being considered by the Financial Conduct Authority in the UK. The report produced by the Victorian FSL Monitor *Enhancing the consumer experience of home insurance: Shining a light into the black box*³ also made a similar recommendation when it stated that policyholders should be provided with clear and accessible information including "how much (and why) the premium for a policy changes with renewal."⁴

Recommendation

The Financial Rights Legal Centre recommends that Guideline 5 be clarified to ensure that policyholders are provided with full details of the previous year's premium for direct comparison on the 2017-18 notice.

³ <http://assets.justice.vic.gov.au/fslm/resources/863168c7-80de-46a0-9327-6e80bb47c2b6/discussion+paper+-+shining+a+light+-+july+2014.pdf>

⁴ p. xi

Research function of the Emergency Services Levy Insurance Monitor

Under section 6 (2)(k)(ii) and (iii) the Victorian Fire Services Levy Monitor was empowered to investigate, conduct research, and collect and collate information in relation to matters arising out of the administration of the *Fire Services Levy Monitor Act 2012 (Vic)*. Financial Rights notes that this function however has not been explicitly included in the list of functions under section 9 of the *Emergency Services Levy Insurance Monitor Act 2016 (NSW)*. This is disappointing. However, Financial Rights believes that section 9 (2)(a) relating to the provision of “information, advice and guidance in relation to the emergency services levy reform and prohibited conduct” should be interpreted broadly to enable the Monitor to conduct relevant analysis of the information gathered.

Financial Rights directs the ESL Monitor to the July 2014 discussion paper *Enhancing the consumer experience of home insurance: Shining a light into the black box* by the Victorian Fire Services Levy Monitor.⁵ The paper examined the effectiveness of insurance companies communications with the insured. The study concluded that insurers could do much more to provide consumers with useful and accessible information about the coverage and pricing of their home insurance policies. This paper has been influential and assisted significant policy development in the sector including recommendations arising out of subsequent Northern Australia Taskforce and ICA Insurance Disclosure taskforce.

Financial Rights believes that similar analysis of the information gathered by the ESL Insurance Monitor could be delivered with scope for further research. Financial Rights recommends that this analysis and potential research should be funded out of the base funding for the ESL Insurance Monitor.

Recommendation

The Financial Rights Legal Centre recommends that the ESL Monitor conduct analysis of the information gathered in the process of the overseeing the transition with the potential to conduct further research where warranted.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact the Financial Rights Legal Centre.

Kind Regards,

⁵ <http://assets.justice.vic.gov.au/fslm/resources/863168c7-80de-46a0-9327-6e80bb47c2b6/discussion+paper+-+shining+a+light+-+july+2014.pdf>



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