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Emergency Services Levy Project Team
NSW Government
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Reforming the emergency services funding system: Consultation paper

Thank you for the opportunity to comment on Reforming the emergency services funding system. The Financial Rights Legal Centre (**Financial Rights**) is a community legal centre that specialises in helping consumers 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 also operates the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Financial Rights will limit our comments to the transitional arrangements and monitoring of insurance prices.

Reforming the Emergency Services Levy (**ESL**) is unfinished business that needs to be resolved to ensure fairer outcomes for consumers and improve insurance affordability.

We welcome the announcement that an insurance monitor will be appointed to ensure insurers don't keep premiums at elevated levels once the ESL is removed.

Key to this transition is the creation of a price monitor, independent of industry, and empowered to investigate, conduct research, and collect and collate information relating to pricing practices.

Any over-collection of ESL contributions must be returned to policyholders in line with the process instituted in the Victorian removal. Where not practicable, they should be paid to appropriate insurance-related consumer assistance and advocacy services, so that this valuable work can continue.

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 for the year before and after the change and the reasons for the change.

We provide further details below in answer to Question 8.

8. What arrangements should be put in place to ensure that the removal of the current Emergency Services Levy is passed on in lower insurance premiums? How long should the transition take? What other transitional arrangements should be considered for the reform?

Price monitoring

Financial Rights supports the establishment of an *independent* price monitor similar in form to the previously proposed 2017 reforms.

The Emergency Services Levy Insurance Monitor Act 2016 provides a model upon which to base the appointment of an Emergency Services Levy Insurance Monitor and Deputy Monitor “who will be responsible for ensuring that insurers pass on the benefits of abolishing the ESL to households and businesses in the form of lower insurance premiums.”¹

Section 9(2) of the Act specified that the Monitor had the following general functions which should be replicated:

- to provide information, advice and guidance in relation to the emergency services levy reform and prohibited conduct,
- to monitor prohibited conduct and compliance,
- to monitor prices for the issue of regulated contracts of insurance,
- to monitor the impact of the emergency services levy reform on the insurance industry and levels of insurance coverage,
- to prepare and publish Guidelines relating to the operation and enforcement of the ESL reform,
- to receive complaints about prohibited conduct and to deal with them – for example exploitation and false or misleading conduct in relation to the emergency services levy reform,
- to investigate and institute proceedings in respect of prohibited conduct or any contraventions of the reform framework.

Research function of the Pricing 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).

¹ NSW Legislative Assembly, [Emergency Services Levy Insurance Monitor Bill 2016, Second Reading, Ms Gladys Berejiklian, Treasurer and Minister for Industrial Relations, 3.May 2016.](#)

Financial Rights notes that this function was not explicitly included in the list of functions under section 9 of the Emergency Services Levy Insurance Monitor Act 2016 (NSW). However, the subsection relating to the provision of “information, advice and guidance in relation to the emergency services levy reform and prohibited conduct” was interpreted to enable the Monitor to conduct relevant analysis of the information gathered. This was a positive outcome and the Monitor produced significant pieces of research relating to insurance pricing practices that were valuable for the reform process. Its output also produced valuable insights that have contributed significantly to our understanding of insurance pricing more broadly – a practice that is otherwise largely opaque and hidden from view.

We note however that the Insurance Council was highly critical of the former ESL price monitor’s research – unreasonably so in our view. In 2018 the ICA called for the NSW Government to reconsider the continuing role arguing that it was exceeding its mandate in producing research and reports into the ‘loyalty tax’ issue in premium pricing.² The price monitor responded by asserting that it was necessary for the Monitor to have regard to the effectiveness of competition in the property insurance industry as it is relevant in determining the most appropriate way to implement its monitoring program. Financial Rights agreed with the monitor in this regard.

We raise this issue as we are concerned that the insurance sector will again seek to limit the ability for an independent pricing monitor to undertake appropriate research into pricing practices.

To this end we recommend that the enabling legislation ensure that the independent pricing monitor is explicitly and appropriately given a broad remit to research pricing practices in the insurance industry.

Over-collection model

The 2016 guideline for over-recovery of statutory contributions ensured that any over-collection of levies by insurers be returned to individual consumers. This is entirely appropriate and an important principle that must be instituted again in the current reforms.

It is also appropriate that in the circumstances where insurers prefer to make a bulk payment of their over-collected amounts to an appropriate organisation representing the interests of insurance consumers, such arrangements can be approved by the Monitor.

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.

The previous reform had planned to use over-collected funds raised from insurance policyholders to decrease the amount that property holders pay in their first year would have exacerbated the unfairness inherent in the current system. In our view, this is unfair. Not only have some property holders not had to pay their fair share for emergency services, but these

² InsuranceNews, [Industry fumes as Fels attacks ‘loyalty tax’](#), 21 November 2018

same property holders would also have received a significant discount on their first year, paid for by contributing insurance policyholders.

Additionally, with the artificial, lower levy in place in the first year (as a result of the offset against over-collection), there is the potential for many property owners to be surprised and potentially cynical about any subsequent increase in the second year of the levy. While many will understand the complicated reasons for those levy increases, others may blame their local council or the Government for the increase.

The Victorian Fire Services Levy Monitor

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 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.

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 included 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 was used to:

- provide insurance advice and casework – including servicing an additional 3,000 calls per annum;
- establish what was to become the Mob Strong Debt Help service, providing specialist legal advice, assistance and counselling including insurance catering to the specific needs of First Nations people;
- policy development – including the publishing of a groundbreaking report into insurance investigation practices, and
- insurance literacy – including the development of the popular national motor vehicle accidents problem solver.

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

Sufficient information to policyholders

Insurance 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 the years of transition and the reason for any change. It is critical that insurers are fully transparent with policyholders.

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 Drew MacRae, Senior Policy and Advocacy Officer, Financial Rights at drew.macrae@financialrights.org.au.

Kind Regards,



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