



New South Wales

# Emergency Services Levy Insurance Monitor Bill 2024

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to provide for the establishment of an Emergency Services Levy Insurance Monitor (the *Monitor*) to oversee the transition of insurance prices and to appoint the Independent Pricing and Regulatory Tribunal (*IPART*) as the Monitor.

## Outline of provisions

### Part 1 Preliminary

The proposed part sets out the name, also called the short title, of the proposed Act and provides for the commencement of the proposed Act. The proposed Act binds the Crown in right of New South Wales and, to the extent the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### Part 2 Emergency Services Levy Insurance Monitor

**Division 1** establishes the Monitor and appoints IPART as the Monitor. The proposed division makes it clear that the Monitor is not subject to the control or direction of a Minister in relation to the exercise of the Monitor's functions under the proposed Act, in particular, in relation to a specific matter or complaint.

**Division 2** provides for the functions of the Monitor that includes, among others, monitoring prices for the issue of regulated contracts of insurance for certain purposes. The proposed division provides that the Monitor may establish a committee to assist in the exercise of the Monitor's functions. The Monitor must, within 28 days of the end of each quarter, give a written report about

the performance of the functions of the Monitor to the Minister and the Treasurer and publish a copy of the report on a NSW Government website used by the Monitor. The proposed division authorises the Monitor to delegate the exercise of the Monitor's functions, other than the power of delegation, under the proposed Act to certain persons.

### **Part 3 Conduct relating to emergency services funding reform**

**Division 1** sets out that prohibited conduct under the proposed Act includes price exploitation and false and misleading conduct. The Monitor may give an insurance company a written notice if the Monitor considers the insurance company has engaged in price exploitation or if the Minister considers that giving the notice will aid the prevention of price exploitation. The Supreme Court may make an order requiring a person who has engaged in prohibited conduct to pay to the State a maximum amount of \$500,000 for an individual or \$10,000,000 otherwise. The Monitor may issue guidelines about conduct that may be regarded as constituting prohibited conduct.

**Division 2** provides that if the Monitor is satisfied a person has, in trade or commerce, made a claim or representation as to the effect or the likely effect of the emergency funding reform, the Monitor may, by written notice, require the person to substantiate the claim or representation (a *substantiation notice*). The maximum penalty for a person who has been given a substantiation notice and does not comply within the compliance period is 40 penalty units for an individual or 200 penalty units otherwise.

**Division 3** provides that a person may make a complaint to the Monitor about the conduct of an insurance company that is alleged by the person to be prohibited conduct. The proposed division sets out the way the Monitor may deal with a complaint.

**Division 4** provides that the Monitor may conduct an inquiry into a matter relating to prohibited conduct in the insurance industry the Monitor considers to be of significance to the public. The proposed division sets out the procedure and notice requirements for the Monitor when conducting an inquiry.

**Division 5** provides that the Monitor may, by order published in the Gazette, require an insurance company to give information about the emergency services funding reform. The maximum penalty for a failure of an insurance company to give information about the emergency services funding reform as required by the Monitor is 200 penalty units.

### **Part 4 Investigation of overcharging**

The proposed part provides that the Monitor must investigate and assess whether insurance companies are liable for an *over-collection amount* in the final years of the scheme, being the amount by which the total amount collected by an insurance company in the final years of the scheme exceeds the total amount contributed. The proposed part sets out the powers and obligations of the Monitor and insurance companies for over-collection amounts. The proposed part also sets out the information the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996* (the *Chief Commissioner*) must give to the Monitor. The maximum penalty for a failure of an insurance company to pay the over-collection amount within 30 days of it being payable is 50 penalty units.

### **Part 5 Legal proceedings**

**Division 1** provides that proceedings for offences under the proposed Act may be dealt with summarily before the Local Court or summarily before the Supreme Court in its summary jurisdiction. The proposed division sets out who may commence proceedings under the Act.

**Division 2** sets out enforceable undertakings that may be accepted by the Monitor in relation to a function the Monitor has under the proposed Act.

**Division 3** sets out circumstances when the Supreme Court may grant an injunction.

**Division 4** sets out circumstances when the Supreme Court may order a compensation order.

**Division 5** sets out the evidentiary provisions that apply in proceedings under the proposed Act.

## Part 6 Investigation and enforcement powers

**Division 1** provides that investigation and enforcement powers may be exercised for the following purposes—

- (a) for determining whether there has been compliance with or a contravention of a provision of the proposed Act or regulations under the proposed Act,
- (b) for obtaining information or records for purposes connected with the administration of the proposed Act,
- (c) in connection with exercising the functions of the Monitor,
- (d) generally for administering the proposed Act.

The Monitor may appoint a suitable inspector to exercise investigation and enforcement powers.

**Division 2** sets out the power an inspector may exercise when requiring a person to give the inspector information or records.

**Division 3** sets out the powers of an inspector to enter premises and inspect and seize things when an inspector has lawfully entered premises. The proposed division provides that the inspector may apply to an authorised officer for the issue of a search warrant. **Schedule 3** makes a consequential amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**Division 4** sets out the powers of an inspector to question persons the inspector suspects on reasonable grounds to have knowledge of matters relevant to an investigation.

**Division 5** provides that the following are offences under proposed Part 6—

- (a) a person, without reasonable excuse, refuses or fails to comply with a requirement made of the person under proposed Part 6,
- (b) a person gives information or does another thing in purported compliance with a requirement made under proposed Part 6, knowing that it is false or misleading in a material respect,
- (c) a person intentionally delays or obstructs an inspector in the exercise of an inspector's powers under proposed Part 6.

The maximum penalty for a person who impersonates an inspector is 100 penalty units. A person is not guilty of an offence of failing to comply with a requirement under the proposed part unless the person was warned on that occasion that a failure to comply is an offence. The proposed division sets out the requirements of the Monitor when an inspector has exercised a power under proposed Division 3.

## Part 7 Miscellaneous

The proposed part sets out the following miscellaneous matters—

- (a) that the Monitor may make or issue a public statement identifying and giving warnings or information about prohibited conduct or over-collection amounts,
- (b) the circumstances in which the Monitor may enter into an arrangement with certain relevant agencies for the purposes of sharing or exchanging information held by the Monitor and the relevant agency,
- (c) the maximum penalty of 50 penalty units for disclosing information in contravention of the proposed Act,
- (d) that certain protected persons are not personally liable in certain circumstances and that liability instead attaches to the Crown,
- (e) that the Chief Commissioner may delegate functions under the proposed Act, other than the power of delegation,
- (f) that persons may be employed in the Public Service to assist the Chief Commissioner in the Chief Commissioner's functions under the proposed Act,
- (g) the service of documents,

- (h) that the Monitor may issue a penalty notice,
- (i) that the Governor may make regulations,
- (j) that the proposed Act is repealed at the end of the last day of the monitoring period.

## **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

## **Schedule 2 Dictionary**

**Schedule 2** defines certain words and expressions used in the proposed Act.