



New South Wales

Emergency Services Levy Insurance Monitor Bill 2016

Explanatory note

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

Overview of Bill

On 10 December 2015, the Treasurer announced a proposal to reform the current scheme for funding State fire and emergency services expenditure (the *emergency services levy reform*). Under the current scheme, the expenditure is funded through contributions required to be paid by insurance companies (under the *Fire Brigades Act 1989*, the *Rural Fires Act 1997* and the *State Emergency Service Act 1989*). This scheme is proposed to be abolished and replaced by a scheme through which contributions are to be paid by property owners.

The objects of this Bill are to provide for the following matters in connection with the emergency services levy reform:

- (a) the establishment and functions of an Emergency Services Levy Insurance Monitor (the *Monitor*),
- (b) remedies in relation to the following conduct:
 - (i) exploitative pricing of insurance contracts as a consequence of the emergency services levy reform,
 - (ii) conduct that falsely represents, or misleads or deceives a person about, the effect of the emergency services levy reform.

The functions of the Monitor will include various advisory, monitoring, investigation and enforcement functions in connection with the emergency services levy reform.

The proposed Act will be repealed, and the functions of the Monitor will cease, on 1 January 2019.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 defines certain words and expressions used in the proposed Act:

emergency services funding scheme is defined to mean the scheme for funding certain fire and emergency services from contributions required to be paid by insurance companies under:

- (a) Part 5 of the *Fire Brigades Act 1989*, and
- (b) Part 5 of the *Rural Fires Act 1997*, and
- (c) Part 5A of the *State Emergency Service Act 1989*.

emergency services levy is defined to mean the amount included in a premium payable for the issue of a regulated contract of insurance for the purpose of recouping the contributions required to be paid by an insurance company under the current scheme for funding fire and emergency services expenditure, whether or not the amount is disclosed as a separate item.

insurance company is defined to mean a person, partnership, association or underwriter that:

- (a) issues or undertakes liability under policies of insurance against loss of or damage to property situated in New South Wales, or
- (b) receives premiums in respect of such policies of insurance on behalf of, or for transmission to, a person, partnership, association or underwriter outside New South Wales.

prohibited conduct is defined to mean price exploitation or false or misleading conduct in relation to the emergency services levy reform (which have the meanings given by clauses 14 and 15, respectively).

regulated contract of insurance is defined to mean any policy of insurance issued by an insurance company (whether before, on or after the commencement of the proposed Act) that:

- (a) belongs to a class of policies of insurance that is, on the commencement of the proposed Act, subject to contribution under the emergency services funding scheme, or
- (b) is a combined or comprehensive policy of insurance that includes a policy of insurance belonging to such a class.

Clause 4 extends the meaning of **engage** in prohibited conduct, for the purposes of the proposed Act, to include certain types of involvement in prohibited conduct (for example, aiding or abetting another person to engage in prohibited conduct).

Part 2 Emergency Services Levy Insurance Monitor

Division 1 Appointment of Monitor

Clause 5 provides for the appointment of the Monitor by the Governor.

Clause 6 provides for the appointment of a Deputy Emergency Services Levy Insurance Monitor (the **Deputy Monitor**) by the Governor. The Deputy Monitor has the functions delegated to the Deputy Monitor by the Monitor.

Clause 7 provides that the Monitor is not subject to the control or direction of any Minister in respect of the exercise of the Monitor's functions under the proposed Act. However, the Monitor must comply with any general direction (which is to be published in the Gazette) of the Minister administering the proposed Act.

Clause 8 provides that persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Monitor to exercise the Monitor's functions. The

Monitor may arrange for the use of the services of staff or facilities of a Public Service agency, and engage consultants, for that purpose.

Division 2 Functions of Monitor

Clause 9 provides that the Monitor has the functions conferred or imposed on the Monitor under the proposed Act or any other Act. **Clause 13** provides that the Monitor may exercise powers that are incidental to those functions.

The principal functions of the Monitor include:

- (a) to provide information, advice and guidance in relation to the emergency services levy reform and prohibited conduct, and
- (b) to monitor prohibited conduct and the pricing of insurance contracts, and
- (c) to receive complaints about prohibited conduct and to deal with them in accordance with the proposed Act, and
- (d) to investigate and institute proceedings in respect of prohibited conduct and any contravention of the proposed Act and regulations.

Clause 10 provides that the Monitor may monitor prices for the issue of regulated contracts of insurance for the purpose of assessing the general effect of the emergency services levy reform on insurance premiums or considering whether insurance companies are engaging in prohibited conduct. The Monitor may require any person to provide information (including certain personal information) relating to insurance premiums, or the setting of insurance premiums, during the period commencing on 1 July 2014 and ending on 31 December 2018.

Clause 11 requires the Monitor to provide to the Minister and the Treasurer certain reports relating to the performance of the Monitor's functions. The Monitor may also be requested to report on the impact of the emergency services levy reform on levels of insurance coverage.

Clause 12 provides for the delegation of functions of the Monitor.

Part 3 Conduct relating to emergency services levy reform

Division 1 Prohibited conduct

Clause 14 provides that an insurance company engages in *price exploitation* for the purposes of the proposed Act if the insurance company issues (or has, on or after 10 December 2015, issued) a regulated contract of insurance and the price for the issue is unreasonably high having regard to certain relevant matters. The relevant matters include the emergency services levy reform, the contributions required to be paid by the insurance company under the current emergency services funding scheme, the historical emergency services levy rates charged by the insurance company and the costs of supplying insurance. This clause extends to an insurance company that receives a premium in respect of a regulated contract of insurance on behalf of an insurer outside New South Wales.

Clause 15 provides that a person engages in *false or misleading conduct* (in relation to the emergency services levy reform) for the purposes of the proposed Act if the person engages in certain conduct, in trade or commerce, that falsely represents, or misleads or deceives a person about, the effect or likely effect of the emergency services levy reform.

Clause 16 enables the Monitor to give a notice in writing (a *contravention notice*) to an insurance company if the Monitor considers that the insurance company has engaged in price exploitation. In the absence of contrary evidence, a contravention notice is evidence (in proceedings for an order under clause 18) that the price for the issue of the regulated contract of insurance constituted price exploitation.

Clause 17 enables the Monitor to give a notice in writing to an insurance company if the Monitor considers that doing so will aid the prevention of price exploitation.

Clause 18 provides that the Supreme Court may, on the application of the Monitor, make an order requiring an individual or body corporate who has engaged in prohibited conduct to pay to the

State an amount not exceeding \$500,000, in the case of an individual, or \$10 million, in the case of a body corporate. If the prohibited conduct occurred before the date on which this Bill is introduced into Parliament, the amount payable under the order is to be limited to the amount of any monetary benefits acquired by the individual or body corporate as a result of the conduct. An application for an order may not be made after 31 December 2018.

Clause 19 enables additional orders to be made requiring the individual or body corporate to publicise, or otherwise notify persons of, the prohibited conduct.

Clause 20 provides that proceedings for an order under clause 18 or 19 are civil proceedings (to which the rules of civil procedure apply).

Clause 21 enables the Monitor to issue, and vary, guidelines about when conduct may be regarded as constituting prohibited conduct.

Division 2 Substantiation notices

Clause 22 provides that the Monitor may, by notice in writing (a *substantiation notice*), require a person to provide certain information to substantiate any claim or representation the person has made, in trade or commerce, as to the effect of the emergency services levy reform. The clause does not apply to certain claims and representations involving the publication of advertisements.

Clause 23 allows a person to apply to the Monitor to extend the period for compliance with a substantiation notice.

Clause 24 provides that a person must comply with a substantiation notice within the period of 21 days specified in the notice or any period extended by the Monitor under clause 23.

Division 3 Complaints

Clause 25 provides that any person may complain to the Monitor about prohibited conduct of an insurance company.

Clause 26 authorises the Monitor to deal with complaints in any manner the Monitor considers appropriate, including by referring the complaints to certain other persons and bodies.

Division 4 Inquiries

Clause 27 authorises the Monitor to conduct an inquiry into any matter relating to prohibited conduct in the insurance industry that the Monitor considers to be of significance to the public. An inquiry may be held in public or in private.

Clause 28 enables the Monitor to determine the procedure to be followed at an inquiry, subject to the proposed Act and regulations. The Monitor may require a person to produce documents and other information and to attend and give evidence for the purposes of the inquiry. Failure to comply with a requirement, or giving false or misleading information or evidence, is an offence.

Clause 29 contains provisions relating to public inquiries.

Division 5 Miscellaneous

Clause 30 provides that the Monitor may publish a notice in the Gazette containing information about the emergency services levy reform and functions of the Monitor. It is an offence for an insurance company or person acting on behalf of an insurance company to issue an invoice or statement as to the price payable for a regulated contract of insurance unless the invoice or statement includes the information contained in the notice.

Clause 31 provides that the Monitor may, if satisfied that it is in the public interest to do so, make statements warning the public about prohibited conduct and insurance companies that engage in prohibited conduct.

Part 4 Legal proceedings

Division 1 Proceedings for offences

Clause 32 provides that offences under the proposed Act and regulations may be dealt with summarily before the Local Court or Supreme Court.

Clause 33 provides that proceedings for offences under the proposed Act and regulations may be commenced only by the Monitor or a person acting with the authority of the Monitor.

Clause 34 provides that proceedings for offences under the proposed Act and regulations may be commenced not later than 31 December 2018.

Division 2 Enforceable undertakings

Clause 35 enables the Monitor to accept undertakings from a person in connection with any matter related to the functions of the Monitor under the proposed Act. An undertaking may be withdrawn with the consent of the Monitor.

Clause 36 provides for the enforcement of undertakings by the Supreme Court.

Clause 37 requires the Monitor to keep a register containing details of undertakings, which may be inspected at any time without charge.

Division 3 Injunctions

Clause 38 enables the Supreme Court to grant an injunction restraining a person from engaging in prohibited conduct or requiring the person to take specified action (including instituting certain employee training programs and refunding money).

Clause 39 provides that an injunction may be granted against a person with the consent of all parties involved, whether or not the Supreme Court is satisfied that the person has engaged or been involved in, or is proposing to engage or be involved in, prohibited conduct.

Clause 40 provides for the granting of interim injunctions, pending the determination of an application for an injunction.

Clause 41 enables the Supreme Court to rescind or vary an injunction.

Division 4 Compensation orders

Clauses 42 and 46 provide for the making of orders (*compensation orders*) where a person (or class of persons) has suffered or is likely to suffer loss or damage as a consequence of the prohibited conduct of another person (the *respondent*). A compensation order may require the respondent to pay the amount of the loss or damage or to refund money.

Clauses 43 and 44 deal with compensation orders in respect of classes of persons. In making such an order, the Supreme Court may have regard to the conduct of the parties since the prohibited conduct occurred. The Court need not make a finding about the nature of the loss or damage. If a person who has suffered, or is likely to suffer, the loss or damage accepts compensation provided by the respondent in accordance with the order, the person may not make any subsequent claim in respect of the loss or damage.

Clause 45 provides that an application for a compensation order may be made whether or not an application has been made under clause 18 in respect of the prohibited conduct.

Clause 47 provides that a compensation order may be made whether or not an injunction has been granted, or any other order has been made, under the proposed Act.

Clause 48 provides that clauses 42–47 do not limit any other provision of the proposed Act relating to legal proceedings.

Division 5 Evidentiary provisions

Clauses 49–51 provide for evidentiary matters, including the issue of evidentiary certificates to facilitate proof of certain matters.

Part 5 Investigation and enforcement powers

Division 1 Preliminary

Clause 53 specifies the purposes for which investigative powers under the Part can be exercised, including for determining whether there has been compliance with or a contravention of the proposed Act. **Clause 52** provides, for the purposes of the Part, that *contravene* includes engage in prohibited conduct.

Clause 54 provides that the provisions of the Part do not affect any function under any other provision of the proposed Act or any other Act.

Clause 55 provides for the appointment and identification of inspectors for the purposes of the proposed Act. The Monitor is an inspector for the purposes of the Part.

Division 2 Powers to require information or records

Clause 57 empowers inspectors to require information and records to be furnished in connection with the functions of the Monitor.

Clause 58 contains provisions relating to requirements to provide information or records.

Clause 56 provides that clauses 57 and 58 apply whether or not a power of entry is exercised under Division 3.

Division 3 Powers of entry and search of premises

Clause 59 empowers inspectors to enter premises with the approval of the Monitor and with or without the aid of other inspectors.

Clause 60 provides that the power of entry is not exercisable in relation to any part of premises used only for residential purposes, except with the permission of the occupier of the premises or under the authority conferred by a search warrant.

Clause 61 empowers inspectors to inspect and seize certain things.

Clause 62 enables an inspector to apply for a search warrant if the inspector believes on reasonable grounds that the proposed Act or regulations have been or are being contravened or there is any matter or thing in or on the premises that is connected with such a contravention.

Clause 63 enables an inspector to require an owner or occupier of premises to provide reasonable assistance and facilities for the purposes of exercising powers under the Division in connection with the premises.

Clause 64 contains provisions relating to the retention of things seized under the Division.

Division 4 Power to question persons

Clause 65 empowers inspectors to require persons to answer questions in relation to matters for which information is required for the purposes of the proposed Act.

Division 5 Miscellaneous

Clause 66 provides for offences in relation to the exercise of inspectors' powers (including failing to comply with a requirement and furnishing false or misleading information).

Clause 67 contains provisions relating to requirements to furnish records or information or answer questions.

Clause 68 requires the exercise by an inspector of a power of entry to be reported to the Monitor.

Clause 69 requires the Monitor to keep a register of the exercise of powers of entry.

Clause 70 enables any person to complain to the Monitor about the exercise of a power of entry, search or seizure by an inspector. The Monitor must investigate the complaint and report the results of the investigation to the complainant.

Part 6 Miscellaneous

Clause 71 provides that the amount of fire brigades expenditure estimated for the purposes of determining the contributions to be paid by insurance companies under the *Fire Brigades Act 1989* (for the financial year commencing on 1 July 2016) is to include the amount of estimated expenditure incurred for the Monitor during the period commencing on 1 July 2015 and ending on 30 June 2017.

Clause 72 provides for the establishment of an Emergency Services Levy Insurance Monitor Fund, from which all amounts required to meet the expenditure incurred for the Monitor may be paid.

Clause 73 provides that the proposed Act binds the Crown.

Clause 74 protects certain persons from personal liability for acts or omissions done in good faith.

Clause 75 provides for the exchange of information between the Monitor and specified persons and bodies.

Clause 76 makes it an offence to disclose information obtained in connection with the administration or execution of the proposed Act.

Clause 77 provides for the service of documents under the proposed Act.

Clause 78 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 79 provides for the repeal of the proposed Act on 1 January 2019.

Schedule 1 Provisions relating to Monitor and Deputy Monitor

Schedule 1 contains provisions relating to the appointment of the Monitor and Deputy Monitor (including provisions relating to terms of office, remuneration and vacancies in office).

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Acts

Schedule 3 makes consequential amendments to the Acts specified in the Schedule.