

# Emergency Services Levy Insurance Monitor Act 2024 No 33

[2024-33]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Emergency Services Levy Insurance Monitor Act 2024 No 33



New South Wales

An Act to provide for the Independent Pricing and Regulatory Tribunal to be appointed as the Emergency Services Levy Insurance Monitor and for the functions of the Monitor; for protection from certain practices in connection with emergency services funding reform; and for related purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Emergency Services Levy Insurance Monitor Act 2024*.

### 2 Commencement

This Act commences on the date of assent to this Act.

### 3 Definitions

The dictionary in Schedule 2 defines words used in this Act.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

### 4 Act to bind Crown

This Act binds—

- (a) the Crown in right of New South Wales, and
- (b) 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 Appointment of Monitor**

#### **5 Emergency Services Levy Insurance Monitor**

- (1) There is an Emergency Services Levy Insurance Monitor (the **Monitor**).
- (2) IPART is appointed as the Monitor.

#### **6 Independence of Monitor**

- (1) The Monitor is not subject to the control or direction of a Minister in relation to the exercise of the Monitor's functions under this Act.
- (2) In particular, the Monitor is not subject to the control or direction of a Minister in relation to the exercise of the Monitor's functions in relation to a specific matter or complaint.

### **Division 2 Functions of Monitor**

#### **7 General functions**

The Monitor has the following functions—

- (a) to provide information, advice and guidance in relation to the emergency services funding reform and prohibited conduct,
- (b) to monitor prohibited conduct and compliance with this Act and the regulations,
- (c) to monitor prices for the issue of regulated contracts of insurance,
- (d) to monitor the impact of the emergency services funding reform on the insurance industry and levels of insurance coverage,
- (e) to prepare and publish guidelines relating to the operation and enforcement of this Act and the regulations,
- (f) to receive complaints about prohibited conduct and to deal with them in accordance with this Act,
- (g) to investigate and institute proceedings in relation to prohibited conduct or contraventions of this Act or the regulations,
- (h) other functions conferred or imposed on the Monitor by or under this Act or another Act.

#### **8 Committees**

- (1) The Monitor may establish committees to assist the Monitor in the exercise of the



Monitor's functions under this Act.

- (2) A committee established under subsection (1) may consist of the following persons—
- (a) members of IPART,
  - (b) officers of IPART,
  - (c) other persons.

## **9 Price monitoring**

- (1) The Monitor may monitor prices for the issue of regulated contracts of insurance for the following purposes—
- (a) to assess the general effect of the emergency services funding reform on prices charged by insurance companies for regulated contracts of insurance,
  - (b) to assist in the consideration of whether insurance companies are engaging in prohibited conduct.
- (2) Without limiting section 66, a notice given to a person under that section in connection with the exercise of a function under subsection (1) may require the person to give the Monitor the information or records relating to prices or the setting of prices at any time during the monitoring period specified in the notice.
- (3) Without limiting subsection (2), information or records that may be required by the notice may—
- (a) relate to a regulated contract of insurance or class of regulated contracts of insurance, including a regulated contract of insurance issued in relation to property, or
  - (b) include personal information, despite anything to the contrary in the [Privacy and Personal Information Protection Act 1998](#).

## **10 Reports**

- (1) The Monitor must, within 28 days after the end of each quarter—
- (a) give a written report about the performance of the functions of the Monitor during the quarter to—
    - (i) the Minister, and
    - (ii) the Treasurer, and
  - (b) publish a copy of the report on a NSW Government website used by the Monitor.
- (2) Without limiting subsection (1), a report must include information about the

following—

- (a) notices given under section 16,
  - (b) variations or revocations of notices given under section 16.
- (3) The Minister may, by written notice given to the Monitor, ask the Monitor to give the Minister a report about—
- (a) the performance of the functions of the Monitor either generally or in relation to a specified matter, or
  - (b) the impact of the emergency services funding reform on levels of insurance coverage.
- (4) A written notice under subsection (3) must specify—
- (a) the matters to be addressed in the report, and
  - (b) the date by which the report must be given to the Minister.
- (5) In this section—
- quarter** means the period of 3 months ending on the following dates in each year—
- (a) 31 March,
  - (b) 30 June,
  - (c) 30 September,
  - (d) 31 December.

## **11 Delegation**

- (1) The Monitor may delegate the exercise of the Monitor's functions under this Act, other than this power of delegation, to—
- (a) a member or officer of IPART, or
  - (b) a committee established under this Act, or
  - (c) a person, or class of persons, prescribed by the regulations.
- (2) The *Independent Pricing and Regulatory Tribunal Act 1992*, section 10 does not apply to IPART's functions under this Act.

## **12 Incidental powers**

- (1) The Monitor has power to do anything necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Monitor's functions.

- (2) Powers conferred on the Monitor by this Act do not limit this section.

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

### **Division 1 Prohibited conduct**

#### **13 Price exploitation**

- (1) For this Act, an insurance company engages in **price exploitation** if—
- (a) the insurance company issues, or has during the relevant period issued, a regulated contract of insurance, and
  - (b) the price for the issue of the regulated contract of insurance is unreasonably high, having regard to—
    - (i) the emergency services funding reform, and
    - (ii) the emergency services contributions required to be paid by the insurance company, and
    - (iii) the historical emergency services levy rates charged by the insurance company, and
    - (iv) the costs of supplying insurance against loss of or damage to property, and
    - (v) the fees or charges charged by the insurance company, and
    - (vi) other matters prescribed by the regulations.

- (2) In this section—

**issue**, of a regulated contract of insurance, includes receiving a premium in relation to a regulated contract of insurance for, or for transmission to, a body corporate, partnership, association, underwriter or other person outside New South Wales.

**relevant period** means the period—

- (a) starting on the date of assent to this Act, and
- (b) ending at the end of the monitoring period.

#### **14 False or misleading conduct**

For this Act, a person engages in **false or misleading conduct** in relation to the emergency services funding reform if the person engages in conduct, trade or commerce, that—

- (a) falsely represents, whether expressly or impliedly, the effect, or likely effect, of the emergency services funding reform, or

- (b) misleads or deceives, or is likely to mislead or deceive, a person about the effect or likely effect of the emergency services funding reform.

## **15 Contravention notices—price exploitation**

- (1) The Monitor may give an insurance company a written notice (a **contravention notice**) if the Monitor considers the insurance company has engaged in price exploitation.
- (2) A contravention notice must—
  - (a) state the notice is given under this section, and
  - (b) specify the name of the insurance company that issued the regulated contract of insurance the subject of the notice and the details of the regulated contract of insurance, and
  - (c) state that in the Monitor’s opinion the price for the issue of the regulated contract of insurance was unreasonably high having regard to the matters specified in section 13(1)(b), and
  - (d) specify the detailed reasons for the opinion and the matters to which the Monitor had regard in forming the opinion.
- (3) The Monitor must have regard to the following in deciding whether to give a contravention notice—
  - (a) guidelines issued under section 20 in relation to price exploitation,
  - (b) if a prevention notice had been given in relation to the regulated contract of insurance—a response from the insurance company to the prevention notice.
- (4) The Monitor may vary or revoke a contravention notice on—
  - (a) the Monitor’s own initiative, or
  - (b) the application of the insurance company to which the notice was given.
- (5) The Monitor must, within 3 days after varying or revoking a contravention notice, give written notice to the insurance company of the variation or revocation.
- (6) A contravention notice given under this section is admissible in proceedings for an order under section 17 and, in the absence of evidence to the contrary, is evidence that the price for the issue of the regulated contract of insurance was unreasonably high having regard to the matters specified in section 13(1)(b).

## **16 Prevention notices—price exploitation**

- (1) The Monitor may give an insurance company a written notice (a **prevention notice**)

if the Monitor considers that giving the notice will aid the prevention of price exploitation.

- (2) A prevention notice must—
  - (a) state the notice is given under this section, and
  - (b) specify the name of the insurance company to which the notice applies, and
  - (c) specify the regulated contract of insurance, or class of regulated contracts of insurance, to which the notice applies, and
  - (d) specify the detailed reasons for giving the notice and the matters to which the Monitor had regard in deciding whether to give the notice, and
  - (e) state the insurance company, within the reasonable time specified in the notice, must give the Monitor the information specified in the notice about the steps taken by the insurance company in response to the notice to prevent price exploitation.
- (3) The Monitor must have regard to guidelines issued under section 20 in relation to price exploitation in deciding whether to give a prevention notice.
- (4) The Monitor may vary or revoke a prevention notice on—
  - (a) the Monitor's own initiative, or
  - (b) the application of the insurance company to which the notice was given.
- (5) The Monitor must, within 3 days after varying or revoking a prevention notice, give written notice to the insurance company of the variation or revocation.
- (6) An insurance company given a prevention notice must comply with the notice.

Maximum penalty for subsection (6)—100 penalty units.

## **17 Orders relating to prohibited conduct**

- (1) The Supreme Court may, on the application of the Monitor, make an order requiring a respondent to pay to the State an amount not exceeding the maximum amount.
- (2) The Court must not make an order against a respondent under this section if satisfied—
  - (a) the conduct to which the order relates is false or misleading conduct in relation to the emergency services funding reform, and
  - (b) the conduct was due to—
    - (i) a reasonable mistake, or
    - (ii) a reasonable reliance on information supplied by another person, other than—

- (A) an employee or agent of the respondent, or
  - (B) if the respondent is a body corporate—a director or other person concerned in the management of the body corporate, or
  - (iii) causes over which the respondent had no control and the respondent took reasonable precautions and exercised due diligence to prevent the conduct.
- (3) The Court must not make an order against a respondent under this section if satisfied—
- (a) the conduct to which the order relates is false or misleading conduct, in relation to the emergency services funding reform, involving the publication of an advertisement, and
  - (b) the respondent is a person whose business is to publish, or arrange for the publication of, advertisements, and
  - (c) the respondent engaged in the conduct for another person in the ordinary course of the business, and
  - (d) the respondent does not have a commercial relationship with the other person, other than for the purpose of—
    - (i) publishing, or arranging for the publication of, advertisements promoting, or apparently intended to promote, the other person’s business or other activities, or
    - (ii) the other person supplying insurance to the respondent.
- (4) Without limiting the matters to which the Court may have regard in determining whether to make an order under this section, the Court may have regard to guidelines issued under section 20.
- (5) An application under subsection (1) may be made not later than the end of the monitoring period.
- (6) An amount payable under an order made under this section is recoverable by the State as a debt from the respondent.
- (7) In this section—
- maximum amount** means—
- (a) for an individual—\$500,000, or
  - (b) otherwise—\$10,000,000.
- respondent** means a person who has engaged in prohibited conduct.

## **18 Other orders**

- (1) The Supreme Court may, on the application of the Monitor, make the following orders if satisfied a person has engaged in prohibited conduct—
  - (a) an order requiring the person to take specified action to publicise—
    - (i) the prohibited conduct, including the circumstances in which the person engaged in the prohibited conduct, and
    - (ii) the consequences of the prohibited conduct, and
    - (iii) other orders made against the person,
  - (b) an order requiring the person to take specified action to notify specified persons, or classes of persons, of—
    - (i) the prohibited conduct, including the circumstances in which the person engaged in the prohibited conduct, and
    - (ii) the consequences of the prohibited conduct, and
    - (iii) other orders made against the person, including, for example, the publication in an annual report or another notice to shareholders of a company or the notification of persons aggrieved or affected by the prohibited conduct.
- (2) The Court may, in an order under this section, do the following—
  - (a) fix a period for compliance with this order,
  - (b) impose other requirements the Court considers necessary or expedient for enforcement of the order.
- (3) If the person against whom an order is made under subsection (1)(a) or (b) fails to comply with the order, the Monitor may take action to carry out the order.
- (4) The reasonable cost of taking action referred to in subsection (3) is recoverable by the State as a debt from the person against whom the order is made.
- (5) A person must not fail to comply with an order under this section.  
Maximum penalty for subsection (5)—
  - (a) for an individual—40 penalty units, or
  - (b) otherwise—200 penalty units.

## **19 Nature of proceedings**

To avoid doubt—

- (a) proceedings under this division are civil proceedings, and
- (b) the rules of procedure for civil proceedings apply to the proceedings.

## **20 Guidelines relating to prohibited conduct**

- (1) The Monitor may issue guidelines about when conduct may be regarded as constituting prohibited conduct.
- (2) The Monitor may at any time vary guidelines issued under subsection (1).
- (3) Guidelines issued, and a variation of the guidelines made, under this section must—
  - (a) be published—
    - (i) in the Gazette, and
    - (ii) on a NSW Government website used by the Monitor, and
  - (b) specify the date on which the guidelines take effect.

## **Division 2 Substantiation notices**

### **21 Monitor may require claims to be substantiated**

- (1) 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 services funding reform, the Monitor may, by written notice (a **substantiation notice**), require the person to substantiate the claim or representation.
- (2) The substantiation notice may require the person to do the following within 21 days after the notice is given to the person—
  - (a) give the Monitor information or records that may be capable of substantiating or supporting the claim or representation,
  - (b) give the Monitor information or records of a kind specified in the notice.
- (3) Information or records specified in a substantiation notice under subsection (2)(b) must be information or records the Monitor is satisfied are relevant to substantiating or supporting the claim or representation.
- (4) The substantiation notice must—
  - (a) state the name of the person to whom the notice is to be given, and
  - (b) specify the claim or representation to which the notice relates, and
  - (c) explain the effect of sections 22 and 23.
- (5) The substantiation notice may relate to more than 1 claim or representation made by



the person to whom the notice is given.

- (6) The Monitor must have regard to guidelines issued under section 20 in deciding whether to give a substantiation notice under this section.
- (7) The Monitor may vary or revoke a substantiation notice under this section.
- (8) This section does not apply to a person who makes a claim or representation if—
  - (a) the person is a person whose business is to publish, or arrange for the publication of, advertisements, and
  - (b) the person makes the claim or representation for another person in the ordinary course of the business, and
  - (c) the person does not have a commercial relationship with the other person, other than for the purpose of—
    - (i) publishing, or arranging for the publication of, advertisements promoting, or apparently intended to promote, the other person's business or other activities, or
    - (ii) the other person supplying insurance to the person who makes the claim or representation.

## **22 Extending period for complying with substantiation notices**

- (1) A person who has been given a substantiation notice by the Monitor may, at any time within 21 days after the substantiation notice is given to the person, apply in writing to the Monitor for an extension of the period within which the person must comply with the substantiation notice.
- (2) The Monitor may, by written notice given to the person, extend the period within which the person must comply with the substantiation notice.

## **23 Compliance with substantiation notices**

- (1) A person who is given a substantiation notice must comply with the substantiation notice within the compliance period.

Maximum penalty—

- (a) for an individual—40 penalty units, or
  - (b) otherwise—200 penalty units.
- (2) If an application has been made under section 22(1) for an extension of the period specified in the substantiation notice, the compliance period includes the period up until the time when the applicant is given notice of the Monitor's decision about the application.

- (3) Despite subsection (1), an individual may refuse or fail to give particular information or a particular record as required by a substantiation notice on the ground the information or record might—
  - (a) incriminate the individual, or
  - (b) make the individual liable to a penalty.
- (4) In this section—
  - compliance period*** means—
    - (a) the period of 21 days specified in the substantiation notice, or
    - (b) if the period for complying with the notice has been extended under section 22—the extended period.

## **Division 3 Complaints**

### **24 Making of complaints**

- (1) A person may make a complaint to the Monitor about conduct of an insurance company that is alleged by the person to be prohibited conduct.
- (2) The Monitor may ask the person to give more information about the complaint within the time specified by the Monitor.
- (3) A person who has made a complaint must give the following information—
  - (a) the person's name,
  - (b) other information relating to the person's identity requested by the Monitor.

### **25 Dealing with complaints**

- (1) The Monitor may deal with a complaint made under section 24 in the way the Monitor considers appropriate.
- (2) Without limiting subsection (1), the Monitor may refer a complaint to the following—
  - (a) ASIC,
  - (b) the Australian Prudential Regulation Authority,
  - (c) the Australian Financial Complaints Authority,
  - (d) another person or body prescribed by the regulations.
- (3) If the Monitor refers a complaint to a person or body under subsection (2), the Monitor may continue to deal with the complaint if the Monitor considers it appropriate.

## **Division 4 Inquiries**

### **26 Inquiries**

- (1) 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.
- (2) An inquiry may be conducted under this division in relation to—
  - (a) a particular insurance company, or
  - (b) insurance companies generally.
- (3) An inquiry may be held in public or in private.

### **27 Procedures at inquiries**

- (1) The procedure to be followed at an inquiry under this division must be determined by the Monitor, subject to this Act and the regulations.
- (2) The Monitor may, by written notice given to a person, require the person within the reasonable time specified in the notice to—
  - (a) give the Monitor information required for the inquiry and specified in the notice, whether generally or otherwise, and
  - (b) produce to the Monitor documents in the person's possession or under the person's control required for the inquiry and specified in the notice, whether generally or otherwise.
- (3) The Monitor may, by written notice given to a person, require the person to—
  - (a) attend at a specified time and place before the Monitor and at other times required by the Monitor, and
  - (b) give evidence about a matter the subject of the inquiry, and
  - (c) produce to the Monitor documents in the person's possession or under the person's control required for the inquiry and specified in the notice, whether generally or otherwise.
- (4) The Monitor may require evidence under subsection (3)(b) to be given in writing or orally.
- (5) The Monitor may, subject to the [Oaths Act 1900](#), section 13—
  - (a) require the evidence to be given on oath, and
  - (b) for that purpose, administer an oath.

- (6) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this section.

Maximum penalty—100 penalty units.

- (7) A person must not—

- (a) give information under subsection (2) knowing the information is false or misleading in a material particular, or
- (b) give evidence under subsection (3) knowing the evidence is false or misleading in a material particular.

Maximum penalty—100 penalty units.

## **28 Public inquiries**

- (1) Before starting a public inquiry under this division, the Monitor must give notice, by advertisement in the Gazette and other ways the Monitor considers appropriate, of—
  - (a) the intention to hold the inquiry, and
  - (b) the subject of the inquiry, and
  - (c) the place at which the inquiry will start.
- (2) If, after starting a public inquiry, the Monitor is satisfied it is in the public interest because of the confidential nature of any evidence or matter or for another reason, the Monitor may do either or both of the following—
  - (a) direct that the inquiry or a part of the inquiry take place in private and give directions about the persons who may be present,
  - (b) give directions prohibiting or restricting the publication of evidence given at the inquiry or of matters contained in documents provided for the inquiry.
- (3) If evidence is given at a public inquiry by written statement, the Monitor must make available to the public in the way the Monitor considers appropriate the contents of the statement.
- (4) Subsection (3) does not apply to the matter the publication of which, in the Monitor's opinion, would be contrary to the public interest because of its confidential nature or for another reason.
- (5) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty for subsection (5)—100 penalty units.

## Division 5 Miscellaneous

### 29 Notice relating to emergency services funding reform

- (1) The Monitor may, by order published in the Gazette—
- (a) require an insurance company or class of insurance companies to give information about—
    - (i) the emergency services funding reform, including about the impact of the emergency services funding reform on the price payable for the issue of a regulated contract of insurance, and
    - (ii) the functions of the Monitor, and
  - (b) specify the way in which the impact of the emergency services funding reform must be calculated, and
  - (c) specify the way in which the information must be given, including by requiring the information to be contained in an invoice or other statement about the price payable for the issue of a regulated contract of insurance.
- (2) An insurance company must not fail to comply with a requirement imposed on the insurance company by an order under subsection (1).

Maximum penalty—200 penalty units.

- (3) In this section—

***issue of a regulated contract of insurance*** includes the renewal of an existing regulated contract of insurance, but does not include the variation of an existing regulated contract of insurance.

## Part 4 Investigation of overcharging

### 30 Definitions

In this part—

***debt recovery order***—see section 40(2).

***final contribution amount*** means a final contribution amount under the [Emergency Services Levy Act 2017](#).

***final years of the scheme*** means the following financial years—

- (a) the financial year commencing on 1 July 2023,
- (b) the financial year commencing on 1 July 2024,

- (c) a financial year that commences after 1 July 2024 in which a contribution under the [Emergency Services Levy Act 2017](#) is levied.

**refund undertaking**—see section 38(2).

**relevant policy holder**—see section 31(2).

### **31 Monitor to investigate over-collection amounts**

- (1) The Monitor must—
- (a) investigate and assess whether insurance companies are liable for over-collection amounts in the final years of the scheme, and
  - (b) endeavour to ensure that an insurance company that is liable for an over-collection amount—
    - (i) refunds the over-collection amount to relevant policy holders of the insurance company if it is practicable, or
    - (ii) pays the over-collection amount to the Chief Commissioner for payment into the Consolidated Fund if it is not practicable to refund the over-collection amount.
- (2) A policy holder is a **relevant policy holder** of an insurance company if the policy holder was insured under a regulated contract of insurance with the insurance company in the final years of the scheme.

### **32 Chief Commissioner to advise Monitor of final contribution amounts**

- (1) The Chief Commissioner must give the Monitor, in relation to each insurer liable for a contribution payable for a financial year in the final years of the scheme—
- (a) a copy of the Chief Commissioner's assessment of the final contribution amount for the insurer for the financial year, and
  - (b) information about the total amount of attributed charges of the insurer for the financial year, as disclosed in the return for the financial year lodged by the insurer under the [Emergency Services Levy Act 2017](#).
- (2) The Chief Commissioner must give the Monitor the information required under subsection (1) within 30 days after issuing a notice of assessment for the final contribution amount payable by an insurer for each financial year in the final years of the scheme.
- (3) If the Chief Commissioner's assessment of the final contribution amount for an insurer for the financial year is subject to an objection or review, the Chief Commissioner must—

- (a) indicate that the assessment is subject to an objection or review, and
  - (b) advise the Monitor if the insurer's final contribution amount is reassessed.
- (4) The Chief Commissioner must give the Monitor any other information, in connection with an assessment, as the Monitor reasonably requires to exercise the Monitor's functions under this Act.
- (5) In this section—

**total amount of attributed charges** has the same meaning as in the [Emergency Services Levy Act 2017](#), section 38(2).

### 33 Liability for over-collection amounts in final years of the scheme

- (1) An insurance company is liable for an over-collection amount in the final years of the scheme if the total amount collected by the insurance company in the final years of the scheme exceeds the total amount contributed by the insurance company in the final years of the scheme.
- (2) The total amount collected by an insurance company in the final years of the scheme is the total amount that, in the Monitor's opinion, was collected by the insurance company from relevant policy holders for, or purportedly for, the payment of contributions under the [Emergency Services Levy Act 2017](#) payable for the final years of the scheme.
- (3) If the Monitor has insufficient information to decide exactly the total amount collected by an insurance company, the Monitor may estimate the amount.
- (4) The total amount contributed by an insurance company in the final years of the scheme is the total of the following—
  - (a) the final contribution amount for the insurance company for the financial year commencing on 1 July 2023,
  - (b) the final contribution amount for the insurance company for the financial year commencing on 1 July 2024,
  - (c) the final contribution amount for the insurance company for a financial year that commences after 1 July 2024 in which a contribution under the [Emergency Services Levy Act 2017](#) is levied.
- (5) The **over-collection amount** is the amount by which the total amount collected by the insurance company in the final years of the scheme exceeds the total amount contributed by the insurance company in the final years of the scheme.

### 34 Monitor to assess over-collection amount

- (1) If the Monitor is satisfied that an insurance company is liable for an over-collection

amount, the Monitor must issue an assessment for the over-collection amount.

- (2) The Monitor may, at any time, reassess the over-collection amount of an insurance company by issuing a further assessment.
- (3) The Monitor is not required to issue an assessment for an over-collection amount if the Monitor—
  - (a) comes to an agreement with an insurance company about its liability for an over-collection amount, and
  - (b) accepts a refund undertaking from the insurance company for the over-collection amount.

### **35 Notice of assessment to be given to insurance company**

- (1) If the Monitor issues an assessment for an over-collection amount, the Monitor must serve notice of the assessment on the insurance company that is liable for the over-collection amount.
- (2) The notice must—
  - (a) specify the over-collection amount, and
  - (b) advise the insurance company that, if the insurance company fails to give a refund undertaking to the Monitor in relation to the over-collection amount, in terms acceptable to the Monitor, the amount may be referred to the Chief Commissioner for debt recovery action, and
  - (c) specify the deadline for giving the refund undertaking to the Monitor.
- (3) The notice must advise the insurance company about how to object to the assessment, unless the assessment is of a kind that is not open to objection by the insurance company.
- (4) The deadline for giving the refund undertaking must not be less than 30 days after the notice is given to the insurance company.
- (5) The Monitor may extend the deadline for giving the refund undertaking.

### **36 Objections to assessments**

- (1) An insurance company may object to an assessment of an over-collection amount within—
  - (a) 21 days after notice of the assessment is given to the insurance company, or
  - (b) a longer period decided by the Monitor and specified in the notice of assessment.
- (2) An objection must—



- (a) be made in writing to the Monitor, and
  - (b) specify the grounds of the objection.
- (3) Only 1 objection may be made by an insurance company to an assessment.
- (4) The insurance company has the onus of establishing the grounds of the objection.
- (5) An objection is not duly made unless the objection is made in accordance with this section.

### **37 Monitor to decide objection**

- (1) The Monitor must—
  - (a) consider an objection to an assessment, if the objection is made by the insurance company in accordance with section 36, and
  - (b) decide to either—
    - (i) allow the objection in whole or in part, or
    - (ii) disallow the objection.
- (2) If the Monitor delegates the functions conferred by this section, the delegate who considers the objection must be a different person from, and not subordinate to, the person who made the decision against which the objection is lodged.
- (3) The Monitor must, as soon as practicable after making the decision about the objection, give written notice to the insurance company of the decision.
- (4) The Monitor may issue a reassessment for the purpose of giving effect to a decision to allow an objection in whole or in part.
- (5) A reassessment is not open to objection by an insurance company if the reassessment is made for the purpose of giving effect to a decision to allow an objection in whole or in part.
- (6) If an objection to an assessment is duly made to the Monitor, the Monitor is not to refer the over-collection amount to the Chief Commissioner for debt recovery action—
  - (a) while the objection is pending before the Monitor, or
  - (b) before the period of 7 days has elapsed from the time notice of the Monitor's decision on the objection is given to the insurance company.

### **38 Refund undertakings by insurance companies**

- (1) If an insurance company is liable for an over-collection amount, the Monitor may accept a refund undertaking from the insurance company in relation to the over-

collection amount.

- (2) A **refund undertaking** is an undertaking under Part 5, Division 2 under which an insurance company that is liable for an over-collection amount agrees to refund the whole or part of the over-collection amount to relevant policy holders or to pay the over-collection amount or part of it to the Chief Commissioner.
- (3) The Monitor is not to accept a refund undertaking that provides for the payment of an over-collection amount or part of an over-collection amount to the Chief Commissioner unless the Monitor is satisfied it is impracticable for the insurance company to refund the over-collection amount or part of it to relevant policy holders.
- (4) The Monitor must advise the Chief Commissioner of a refund undertaking that provides for the payment of an amount to the Chief Commissioner.
- (5) An amount paid to the Chief Commissioner under a refund undertaking must be paid into the Consolidated Fund.

**Note—**

A refund undertaking is enforceable by proceedings in the Supreme Court.

### **39 Referral of amount to Chief Commissioner for debt recovery actions**

- (1) The Monitor may refer an over-collection amount to the Chief Commissioner for debt recovery action if the insurance company liable for the over-collection amount fails to give the Monitor a refund undertaking in relation to the amount, in terms that are acceptable to the Monitor, by the deadline for giving the refund undertaking.
- (2) The referral must be made by written notice to the Chief Commissioner in a form approved by the Chief Commissioner.
- (3) The notice must specify the over-collection amount.
- (4) The Monitor must give the Chief Commissioner—
  - (a) a copy of the notice of assessment in relation to the insurance company, and
  - (b) other information in relation to the referral that the Chief Commissioner reasonably requires to exercise the Chief Commissioner's functions under this part.

### **40 Issue of debt recovery order by Chief Commissioner**

- (1) The Chief Commissioner may make an order in relation to an over-collection amount referred to the Chief Commissioner by the Monitor under this part.
- (2) An order under subsection (1) (a **debt recovery order**) is an order for the recovery of the over-collection amount from the insurance company that is liable for the over-

collection amount.

- (3) The debt recovery order must specify—
  - (a) the over-collection amount payable by the insurance company, and
  - (b) the date, not less than 30 days after a copy of the order is given to the insurance company, by which the over-collection amount is payable.
- (4) The Chief Commissioner must give a copy of the debt recovery order to the insurance company.

#### **41 Insurance company must pay over-collection amount**

- (1) An insurance company that is required by a debt recovery order to pay an over-collection amount must pay the amount to the Chief Commissioner by—
  - (a) the date for payment specified in the debt recovery order, or
  - (b) a later date allowed by the Chief Commissioner.
- (2) If the insurance company fails to pay the over-collection amount within 30 days of the amount being payable, the insurance company is guilty of an offence.

Maximum penalty—50 penalty units.

- (3) The over-collection amount specified in the debt recovery order is recoverable by the Chief Commissioner from the insurance company as a debt in a court of competent jurisdiction and is payable into the Consolidated Fund.

## **Part 5 Legal proceedings**

### **Division 1 Proceedings for offences**

#### **42 Nature of proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with—
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 100 penalty units, despite a higher maximum monetary penalty provided in relation to the offence.

#### **43 Persons who may commence proceedings**

- (1) Proceedings for an offence against this Act or the regulations may be taken and prosecuted only by the Monitor or, in the name of the Monitor, by a person acting with

the authority of the Monitor.

- (2) In proceedings for an offence against this Act or the regulations, an authority to prosecute purporting to have been signed by the Chairperson of the Monitor is evidence of that authority without proof of the signature of the Chairperson.

## **Division 2 Enforceable undertakings**

### **44 Undertakings**

- (1) The Monitor may accept a written undertaking given by a person for the purposes of this division in connection with a matter in relation to which the Monitor has a function under this Act.
- (2) The Monitor must give a copy of the accepted undertaking to the person who has given the undertaking.
- (3) The person may withdraw or vary an undertaking at any time, but only with the written consent of the Monitor. The consent of the Monitor is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.

### **45 Enforcement of undertakings**

- (1) The Monitor may apply to the Supreme Court for an order under subsection (2) if the Monitor considers that a person who has given an undertaking under section 44 has contravened any of the undertaking's terms.
- (2) The Supreme Court may make the following orders if the Court is satisfied the person has contravened a term of the undertaking—
  - (a) an order directing the person to comply with the term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of monetary benefits the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) another order the Court thinks appropriate, including an order directing the person to compensate another person who has suffered loss or damage as a result of the contravention.

### **46 Register of undertakings**

- (1) The Monitor must—
  - (a) keep a register of undertakings, and
  - (b) register each undertaking in the register of undertakings.

- (2) The register of undertakings must include the following—
  - (a) the name and address of the person who gave the undertaking,
  - (b) the date of the undertaking,
  - (c) a copy of the undertaking.
- (3) The register of undertakings may be inspected by a person at any reasonable time, without charge.

## **Division 3 Injunctions**

### **47 Injunctions**

- (1) The Supreme Court may grant an injunction, in the terms the Court considers appropriate, if the Court is satisfied a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
  - (a) prohibited conduct, or
  - (b) aiding, abetting, counselling or procuring another person to engage in prohibited conduct, or
  - (c) inducing, by threats, promises or otherwise, another person to engage in prohibited conduct, or
  - (d) being in any way, directly or indirectly, knowingly concerned in, or a party to, prohibited conduct, or
  - (e) conspiring with another person to engage in prohibited conduct.
- (2) The Court may grant the injunction on the application of the Monitor or another person.
- (3) The Court may grant an injunction under subsection (1) restraining a person from engaging in prohibited conduct—
  - (a) whether or not it appears to the Court the person intends to engage again or continue to engage in the prohibited conduct, and
  - (b) whether or not the person has previously engaged in prohibited conduct of that kind, and
  - (c) whether or not there is imminent danger of substantial damage to another person if the person engages in prohibited conduct of that kind.
- (4) The Court may grant an injunction under subsection (1) requiring a person to do an act or thing—

- (a) whether or not it appears to the Court the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing, and
  - (b) whether or not the person has previously refused or failed to do the act or thing, and
  - (c) whether or not there is imminent danger of substantial damage to another person if the person refuses or fails to do the act or thing.
- (5) Without limiting subsection (1), the Court may grant an injunction requiring a person to do the following—
  - (a) institute a training program for the person's employees in relation to prohibited conduct and compliance with this Act,
  - (b) refund money to purchasers,
  - (c) disclose information about the person's business activities or business associates,
  - (d) honour a promise made in the course of false or misleading conduct.
- (6) An application for an injunction under this section may be made ex parte or otherwise.

#### **48 Consent injunctions**

If an application for an injunction is made under section 47, the Supreme Court may, if the Court considers it appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied as required by section 47(1).

#### **49 Interim injunctions**

- (1) If an application for an injunction is made under section 47, the Supreme Court may, if it considers it appropriate, grant an interim injunction pending the determination of the application.
- (2) If the application has been made by the Monitor, the Court must not require the Monitor or another person to give an undertaking as to costs as a condition of granting the interim injunction.
- (3) If the following applies, the Court must accept the undertaking by the Monitor and must not require a further undertaking from another person—
  - (a) the application under section 47 has been made by a person other than the Monitor and the Court would, but for this subsection, require the person to give an undertaking as to costs, and
  - (b) the Monitor gives the undertaking.

## **50 Power to rescind or vary injunctions**

The Supreme Court may rescind or vary an injunction that it has granted under this division.

## **Division 4 Compensation orders**

### **51 Compensation orders**

- (1) This section applies if a person (the ***injured person***) or class of injured persons has suffered, or is likely to suffer, loss or damage as a consequence of prohibited conduct engaged in by another person (the ***respondent***).
- (2) The Supreme Court may, on the application of an injured person or the Monitor on behalf of 1 or more injured persons, make an order against the respondent the Court considers appropriate.
- (3) The Court must be satisfied the order will—
  - (a) compensate the injured person or class of injured persons, in whole or in part, for the loss or damage, or
  - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person or persons.
- (4) The Monitor must not make an application under subsection (2), other than an application for a class of injured persons, unless the person on whose behalf the application is to be made has consented in writing to the making of the application.
- (5) An application under subsection (2) may be made no later than the end of the monitoring period.

### **52 Compensation orders in relation to class of persons**

- (1) In determining whether to make an order under section 51 in relation to loss or damage suffered by a class of injured persons, the Supreme Court may have regard to the conduct of the respondent, and of the class of injured persons in relation to the prohibited conduct to which the order relates, since the prohibited conduct occurred.
- (2) In determining whether to make an order under section 51, the Court is not required to make a finding about the nature of the loss or damage suffered, or likely to be suffered, by the class of injured persons.

### **53 Effect of compensation orders in relation to class of persons**

- (1) An injured person who belongs to a class of injured persons in relation to whom an order is made under section 51 is bound by the order if—
  - (a) the loss or damage suffered, or likely to be suffered, by the person in relation to

the prohibited conduct to which the order relates has been redressed, prevented or reduced in accordance with the order, and

(b) the person has accepted the redress, prevention or reduction.

- (2) Another order made under section 51 that relates to the loss or damage has no effect in relation to the injured person.
- (3) Despite another provision of another Act or law of this State or another State or Territory, no claim, action or demand may be made or taken against the respondent by the injured person in relation to the loss or damage.

#### **54 Applications for orders**

An application may be made under section 51 in relation to prohibited conduct whether or not an application under section 17 has been made in relation to the prohibited conduct.

#### **55 Kinds of orders that may be made**

Without limiting section 51, the orders that the Supreme Court may make under that section against a respondent include the following—

- (a) an order requiring the respondent to pay the injured person or class of injured persons the amount of the loss or damage referred to in that section,
- (b) an order requiring the respondent to refund money or return property to the injured person.

#### **56 Power of court to make orders**

The Supreme Court may make an order under this division whether or not the Court grants an injunction or makes an order under another provision of this Act.

#### **57 Interaction with other provisions**

This division does not limit a provision of Part 3 or another provision of this part.

### **Division 5 Evidentiary provisions**

#### **58 Proof of certain appointments not required**

In proceedings under this Act, no proof is required until evidence is given to the contrary of the appointment of an inspector.

#### **59 Documentary evidence generally**

- (1) This section applies to an instrument, including a notice, order or direction in writing, purporting—
- (a) to be an instrument issued, made or given for the purposes of this Act, and



- (b) to have been signed by the Chairperson of the Monitor or another person authorised by the Monitor to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person.

(2) The instrument—

- (a) is admissible in proceedings under this Act, and
- (b) in the absence of evidence to the contrary—must be taken to be an instrument of that type and to have been signed by the authorised person.

## **60 Certificate evidence of certain matters**

- (1) A document signed by the Chairperson of the Monitor, or a person declared in writing by the Monitor for this section, and certifying 1 or more of the matters specified in subsection (2) is—

- (a) admissible in proceedings under this Act, and
- (b) in the absence of evidence to the contrary, evidence of the matters certified.

(2) The matters referred to in subsection (1) are the following—

- (a) that a relevant instrument a copy of which is set out in or annexed to the document was issued, made or given on a specified day,
- (b) that a person was or was not, at a specified time or during a specified period, an inspector.

(3) In this section—

**relevant instrument** means an instrument, including a written notice, order or direction that purports—

- (a) to be issued, made or given for the purposes of this Act, and
- (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or for the person.

## **Part 6 Investigation and enforcement powers**

### **Division 1 Preliminary**

#### **61 Definition**

In this part—

**contravene**, a provision of this Act, includes engage in prohibited conduct.

## **62 Purposes for which powers under part may be exercised**

Powers may be exercised under this part for the following purposes—

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

## **63 Effect on other functions**

Nothing in this part affects a function under another provision of this Act or under another Act.

## **64 Appointment and identification of inspectors**

- (1) The Monitor may appoint a person or class of persons as an inspector if, in the Monitor's opinion, the person or class of persons is suitably qualified to exercise the functions of an inspector.
- (2) The Monitor must ensure each inspector is issued with a means of identification in the form approved by the Monitor.
- (3) Identification must contain a photograph of the inspector to whom the identification is issued.
- (4) In exercising the functions of an inspector under this Act, the inspector must, if requested by a person affected by the exercise of the function, produce the inspector's identification for inspection by the person.

## **Division 2 Powers to require information or records**

### **65 Application of division**

This division applies whether or not a power of entry under Division 3 is being or has been exercised.

### **66 Requirement to give information or records**

- (1) An inspector may, by written notice given to a person, require the person to give the inspector the information or records the inspector requires by the notice in connection with a matter arising under or in connection with the functions of the Monitor under this Act.
- (2) The notice must specify—

- (a) the way in which the information or records must be given, and
- (b) a reasonable time by the information or records must be given.

#### **67 Provisions relating to records**

- (1) A notice under this division may only require a person to give records that are in the person's possession or that are within the person's power to obtain lawfully.
- (2) The inspector to whom a record is given under this division may take copies of the record.
- (3) If a record required to be given under this division is in an electronic, mechanical or other form, the notice requires the record to be given in written form, unless the notice otherwise provides.

### **Division 3 Powers of entry and search of premises**

#### **68 Power to enter premises**

- (1) An inspector may, with the approval of the Monitor, enter premises at any time for the purposes referred to in section 62.
- (2) Entry may be effected under this Act by an inspector with the aid of the other inspectors the inspector considers necessary and with the use of reasonable force.

#### **69 Entry into residential premises only with permission or warrant**

This division does not empower an inspector to enter a part of premises used only for residential purposes without the permission of the occupier or the authority of a search warrant under section 71.

#### **70 Powers to inspect and seize things**

- (1) An inspector may, on premises lawfully entered, do anything that, in the inspector's opinion, is necessary to be done for the purposes of this part, including the things specified in subsection (2).
- (2) An inspector may do the following—
  - (a) make the examinations and inquiries the inspector considers necessary,
  - (b) require records to be produced for inspection,
  - (c) examine and inspect records,
  - (d) copy records,
  - (e) seize anything that the inspector has reasonable grounds for believing is connected with a contravention of a provision of this Act or the regulations,

- (f) do another thing the inspector is empowered to do under this part.
- (3) The power to seize anything connected with a contravention of a provision includes a power to seize—
  - (a) a thing in relation to which the provision has been contravened, and
  - (b) a thing that will afford evidence of the contravention, and
  - (c) a thing that was used for the purpose of the contravention.
- (4) A reference to a contravention of a provision includes a reference to a contravention that there are reasonable grounds for believing has been engaged in.

## 71 Search warrants

- (1) An inspector under this Act may, with the approval of the Monitor, apply to an authorised officer for the issue of a search warrant if the inspector believes on reasonable grounds that—
  - (a) a provision of this Act or the regulations is being, is to be or has been contravened at premises, or
  - (b) there is in or on premises matter or a thing that is connected with a contravention of this Act or the regulations.
- (2) An authorised officer to whom an application is made may, if satisfied there are reasonable grounds for doing so, issue a search warrant authorising an inspector named in the warrant—
  - (a) to enter the premises, and
  - (b) to exercise a function of an inspector under this division.
- (3) The *Law Enforcement (Powers and Responsibilities) Act 2002*, Part 5, Division 4 applies to a search warrant issued under this section.
- (4) In this section—

**authorised officer** has the same meaning as in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**matter or a thing**, connected with a contravention of a provision of this Act or the regulations, means—

- (a) matter or a thing in relation to which the provision has been contravened, or
- (b) matter or a thing that will afford evidence of the contravention, or
- (c) matter or a thing that was used, or is intended to be used, for the purpose of the

contravention.

## **72 Assistance to be given to inspectors**

- (1) This section applies for the purpose of enabling an inspector to exercise the powers of an inspector under this division in connection with premises.
- (2) The inspector may, by written notice given to the owner or occupier of the premises, require the owner or occupier to provide the reasonable assistance and facilities specified in the notice within a specified time and in a specified way.
- (3) Assistance and facilities may be required under this section, whether the assistance and facilities are of the same kind as, or a different kind from, assistance and facilities prescribed by the regulations.

## **73 Dealing with seized things**

- (1) If an inspector seizes anything under section 70 on premises, the inspector must give the person apparently in charge of the premises a written receipt for the thing seized.
- (2) An inspector may keep anything seized under section 70 until the completion of proceedings, including proceedings on appeal, in which the thing may be evidence.
- (3) A record may be kept under subsection (2) only if the person from whom the record was seized is given, within a reasonable time after the seizure, a copy of the record certified by the inspector as a true copy.
- (4) The copy is, as evidence, of equal validity to the document of which the copy is certified to be a copy.
- (5) Subsection (2) ceases to have effect in relation to anything seized if, on the application of a person aggrieved by the seizure, the court in which proceedings referred to in that subsection are commenced so orders.

# **Division 4 Power to question persons**

## **74 Power of inspectors to require answers**

- (1) An inspector may require a person whom the inspector suspects on reasonable grounds to have knowledge of matters in relation to information that is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) An inspector must not require a person to answer questions under subsection (1) without the approval of the Monitor.
- (3) An inspector may, by written notice, require a body corporate to nominate, in writing within the time specified in the notice, a director or officer of the body corporate to be the body corporate's representative for the purpose of answering questions under this

section.

- (4) Answers given by a person nominated under subsection (3) bind the body corporate.
- (5) An inspector may, by written notice, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions may be properly put and answered.
- (6) The place and time at which a person may be required to attend must be a place and time nominated by the inspector that is reasonable in the circumstances.

## **Division 5 Miscellaneous**

### **75 Offences under this part**

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this part.  
Maximum penalty—100 penalty units.
- (2) A person must not give information or do another thing in purported compliance with a requirement made under this part, knowing that it is false or misleading in a material respect.  
Maximum penalty—100 penalty units.
- (3) A person must not intentionally delay or obstruct an inspector in the exercise of the inspector's powers under this part.  
Maximum penalty—100 penalty units.
- (4) A person must not impersonate an inspector.  
Maximum penalty—100 penalty units.

### **76 Provisions relating to requirements to give records or information or answer questions**

- (1) A person is not guilty of an offence of failing to comply with a requirement under this part to give records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.
- (2) A person is not excused from a requirement under this part to give records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) However, information or an answer given by a natural person in compliance with a requirement under this part is not admissible in evidence against the person in criminal proceedings, except proceedings for an offence under this part if—
  - (a) the person objected at the time to doing so on the ground that it might

incriminate the person, or

- (b) the person was not warned under subsection (1) on that occasion that the person may object to giving the information or answer on the ground that it might incriminate the person.
- (4) A record given by a person in compliance with a requirement under this part is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.
- (5) Further information obtained as a result of a record, information or answer given in compliance with a requirement under this part is not inadmissible on the ground—
  - (a) that the record, information or answer had to be given, or
  - (b) that the record, information or answer given might incriminate the person.

#### **77 Entry to be reported to Monitor**

- (1) If an inspector exercises a power of entry under this part, the inspector must report the exercise of the power to the Monitor within 7 days after the entry.
- (2) The report must include all relevant details of the entry, including—
  - (a) the time and place of the entry, and
  - (b) the purpose of the entry, and
  - (c) a description of things done while on the premises, including details of things seized, copies made and extracts taken, and
  - (d) the time of departure.

#### **78 Register of exercise of powers of entry**

The Monitor must keep a register containing the particulars of—

- (a) all matters reported to the Monitor under section 77, and
- (b) all relevant details, including the matters referred to in section 77(2), relating to a power of entry exercised by the Monitor under this part.

#### **79 Complaints relating to powers of entry and search of premises**

- (1) A person may make a complaint to the Monitor about the exercise of a power by an inspector under this part.
- (2) The Monitor must—
  - (a) investigate a complaint made to the Monitor, and

- (b) give a written report to the complainant on the results of the investigation.

## Part 7 Miscellaneous

### 80 Public warning statements

- (1) The Monitor may make or issue a public statement identifying and giving warnings or information about—
  - (a) prohibited conduct and insurance companies that engage in prohibited conduct, or
  - (b) over-collection amounts and insurance companies that engage in over-collection.
- (2) The statement may identify particular insurance companies.
- (3) The Monitor must have regard to guidelines issued under section 20 in deciding whether to make or issue a statement under this section.
- (4) The Monitor must not make or issue a statement under this section unless satisfied it is in the public interest to make or issue the statement.

### 81 Exchange of information

- (1) The Monitor may enter into an arrangement (an **information sharing arrangement**) with a relevant agency for the purposes of sharing or exchanging information held by the Monitor or the relevant agency.
- (2) The Monitor may also enter into an arrangement (also an **information sharing arrangement**) with a public sector agency for the purposes of acquiring information that, under the repealed [Emergency Services Levy Insurance Monitor Act 2016](#), was in the possession, or under the control, of the Emergency Services Levy Insurance Monitor under that Act before the Act's repeal.
- (3) The information to which an information sharing arrangement may relate is limited to information that is reasonably necessary to—
  - (a) assist in the exercise of the functions of the Monitor, or
  - (b) assist in the exercise of the functions of the relevant agency in connection with the emergency services funding reform.
- (4) Under an information sharing arrangement, the Monitor and the relevant agency are, despite another Act or law of the State, authorised—
  - (a) to request and receive information held by the other party to the arrangement, and
  - (b) to disclose information to the other party.
- (5) This section does not—



- (a) limit the functions that may be exercised by the Monitor under section 7, or
- (b) require the Monitor to give information to a relevant agency only in accordance with an information sharing arrangement if the information may otherwise be lawfully given, or
- (c) limit the operation of another Act or law under which a relevant agency is authorised or required to disclose information to another person or body.

(6) In this section—

**relevant agency** means—

- (a) the Chief Commissioner, or
- (b) the Secretary of the Treasury or another Public Service employee employed in Treasury, or
- (c) a person or an agency of the State, or of the Commonwealth or another State or Territory, that exercises functions under an Act in relation to fair trading, or
- (d) another person or body prescribed by the regulations.

## **82 Disclosure of information**

A person must not disclose information obtained in connection with the administration or execution of this Act, or another Act conferring or imposing functions on the Monitor, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the other Act, or
- (c) for the purposes of legal proceedings arising out of this Act or the other Act or of a report of the proceedings, or
- (d) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), or
- (e) with other lawful excuse.

Maximum penalty—50 penalty units.

## **83 Personal liability**

- (1) A protected person is not personally subject to liability for anything done—
  - (a) in good faith, and
  - (b) for the purpose of exercising a function under this Act.
- (2) The liability instead attaches to the Crown.

(3) To avoid doubt, this provision is in addition to and does not limit the *Independent Pricing and Regulatory Tribunal Act 1992*, section 26.

(4) In this section—

**done** includes omitted to be done.

**liability** means civil liability and includes action, claim or demand.

**protected person** means—

- (a) the Monitor, or
- (b) the Chairperson or another member of the Monitor, or
- (c) a member of a committee, or
- (d) the Chief Commissioner, or
- (e) an inspector, or
- (f) a Public Service employee to whom a function of the Monitor or Chief Commissioner under this Act is delegated, or
- (g) another person engaged by, or acting under the direction of, the Monitor or Chief Commissioner for the purpose of administering or executing this Act.

#### **84 Delegation by Chief Commissioner**

The Chief Commissioner may delegate to a person a function of the Chief Commissioner under this Act, other than this power of delegation.

#### **85 Employees, consultants and contractors**

- (1) Persons may be employed in the Public Service to assist the Chief Commissioner in the exercise of the Chief Commissioner's functions under this Act.
- (2) The Monitor or the Chief Commissioner may engage consultants or contractors to assist the Monitor or Chief Commissioner in the exercise of the Monitor's or Chief Commissioner's functions under this Act.

#### **86 Service of documents**

- (1) A document authorised or required by this Act or the regulations to be served on a person may be served in the following ways—
  - (a) for service on an individual—
    - (i) by personal delivery to the individual, or
    - (ii) if the individual's address for service includes a document exchange address

in New South Wales—by leaving a copy of the document, addressed to the individual, at the document exchange in accordance with the usual arrangements for the exchange, or

(iii) by post to—

(A) the address specified by the individual for service of documents generally or documents of that kind, or

(B) if the individual has not specified an address for service—the residential or business address of the individual last known to the person serving the document, or

(iv) by leaving a copy of the document, addressed to the individual—

(A) at the address specified by the individual for service of documents generally or documents of that kind, or

(B) if the individual has not specified an address for service—at the residential or business address of the individual last known to the person serving the document, or

(v) if the individual has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by electronic communication—by electronic communication, or

**Examples of impliedly consenting to service of documents by electronic communication—**

previously using email to correspond with the Monitor or including the individual's email address on applications made, or other documents given, to the Monitor

(vi) in another way authorised by the regulations for the service of documents generally or documents of that kind,

(b) for service on another person—

(i) by post to—

(A) the address specified by the person for service of documents generally or documents of that kind, or

(B) if the person has not specified an address for service—the business address of the person last known to the person serving the document, or

(ii) if the person's address for service includes a document exchange address in New South Wales—by leaving a copy of the document, addressed to the person, at the document exchange in accordance with the usual arrangements for the exchange, or

(iii) by leaving a copy of the document, addressed to the person—

- (A) at the address specified by the person for service of documents generally or documents of that kind, or
  - (B) if the person has not specified an address for service—at the business address of the person last known to the person serving the document, or
  - (iv) if the person has consented, whether explicitly or impliedly, to service of documents generally or documents of that kind by electronic communication—by electronic communication, or
- Examples of impliedly consenting to service of documents by electronic communication—**
- previously using email to correspond with the Monitor or including the person's email address on applications made, or other documents given, to the Monitor
- (v) in another way authorised by the regulations for the service of documents generally or documents of that kind.
- (2) Nothing in this section affects the operation of another law, including the rules of a court, authorising a document to be served on a person in another way.

- (3) In this section—

**electronic communication** has the same meaning as in the [Electronic Transactions Act 2000](#).

**serve** includes give, issue, notify and send.

## 87 Penalty notices

- (1) The Monitor or an inspector may issue a penalty notice to a person if it appears to the Monitor or inspector the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The [Fines Act 1996](#) provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of another provision of, or made under, this Act or another Act relating to proceedings that may be taken in relation to offences.

## **88 Regulations**

- (1) The Governor may make regulations about a matter that—
  - (a) under this Act is required or permitted to be prescribed, or
  - (b) is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may apply, adopt or incorporate, whether wholly or in part or with or without modification, a document formulated, issued or published by a person or body, as in force—
  - (a) at a particular time, or
  - (b) from time to time.
- (3) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

## **89 Repeal of Act**

This Act is repealed at the end of the last day of the monitoring period.

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

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
  - (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW

legislation website does not—

- (a) affect the rights of a person existing before that publication in a way prejudicial to the person, or
- (b) impose liabilities on a person for anything done or omitted to be done before that publication.

(6) In this section—

**person** does not include the State or an authority of the State.

## Part 2 Provisions consequent on enactment of this Act

### 2 Reports

Despite section 10(1), the first report prepared by the Monitor under that subsection is not required to be prepared and published until 28 days after the end of the first full quarter after the commencement of the section.

## Schedule 2 Dictionary

section 3

**ASIC** means the Australian Securities and Investments Commission.

**Chairperson of the Monitor** means the Chairperson of IPART.

**Chief Commissioner** means the Chief Commissioner of State Revenue under the [Taxation Administration Act 1996](#).

**committee** means a committee established under section 8.

**contravene**, for Part 6—see section 61.

**contravention notice**—see section 15(1).

**debt recovery order**, for Part 4—see section 30.

**emergency services contribution** means a contribution by an insurance company under the emergency services funding scheme or the [Emergency Services Levy Act 2017](#).

**emergency services funding reform** means—

- (a) the removal of the emergency services levy on insurers levied under the [Emergency Services Levy Act 2017](#), and
- (b) the implementation of a replacement levy as announced by the Premier in the Bradfield Oration on 16 November 2023.

**emergency services funding scheme** means the scheme for funding certain fire and emergency services from contributions required to be paid by insurance companies under the following provisions,

as in force before the emergency services levy was levied under the [Emergency Services Levy Act 2017](#)—

- (a) the [Fire and Rescue NSW Act 1989](#), Part 5,
- (b) the [Rural Fires Act 1997](#), Part 5,
- (c) the [State Emergency Service Act 1989](#), Part 5A.

**emergency services levy** means the amount included in a premium payable for the issue of a regulated contract of insurance for the purpose of recouping emergency services contributions required to be paid by an insurance company, whether or not the amount is disclosed as a separate item.

**engage in prohibited conduct** includes—

- (a) aid, abet, counsel or procure another person to engage in prohibited conduct, and
- (b) induce, whether by threats or promises or otherwise, another person to engage in prohibited conduct, and
- (c) conspire with another person to engage in prohibited conduct.

**exercise**, a function, includes perform a duty.

**false or misleading conduct**, in relation to the emergency services funding reform—see section 14.

**final contribution amount**, for Part 4—see section 30.

**final years of the scheme**, for Part 4—see section 30.

**financial year** means a period of 12 months commencing on 1 July in each year.

**function** includes a power, authority or duty.

**inspector** means a person appointed as an inspector under Part 6.

**insurance against loss of or damage to property** means insurance against the risk of loss of or damage to property, or the risk of loss of profits consequent on loss of or damage to property, whether the insurance is associated with insurance against another risk or not.

**insurance company** means 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 relation to the policies of insurance for, or for transmission to, a person, partnership, association or underwriter outside New South Wales.

**IPART** means the Independent Pricing and Regulatory Tribunal established under the [Independent Pricing and Regulatory Tribunal Act 1992](#).

**Monitor**—see section 5(1).

**monitoring period** means the period—

- (a) starting on 1 July 2014, and
- (b) ending on the date prescribed by the regulations.

**over-collection amount**—see section 33(5).

**personal information** has the same meaning as in the [Privacy and Personal Information Protection Act 1998](#).

**prevention notice**—see section 16(1).

**price**, in relation to the issue of a regulated contract of insurance, includes—

- (a) a premium paid or payable for the issue of the regulated contract of insurance, including a base premium, emergency services levy, GST or duty, and
- (b) a brokerage or commission paid or payable on—
  - (i) the premium, or
  - (ii) bonuses or return premiums allowed in relation to the regulated contract of insurance, or
  - (iii) a part of the premium received by or payable to the insurance company issuing the regulated contract of insurance as is paid or payable by reinsurance by the insurance company to another insurance company.

**price exploitation**—see section 13(1).

**prohibited conduct** means—

- (a) price exploitation, or
- (b) false or misleading conduct in relation to the emergency services funding reform.

**refund undertaking**, for Part 4—see section 30.

**regulated contract of insurance** means a policy of insurance issued by an insurance company, whether before, on or after the commencement of this Act, that—

- (a) belongs to a class of policies of insurance that was subject to contribution under the emergency services funding scheme, or
- (b) is relevant insurance under the [Emergency Services Levy Act 2017](#), or
- (c) is a combined or comprehensive policy of insurance that includes a policy of insurance referred to in paragraph (a) or (b).

**relevant policy holder**, for Part 4—see section 30.

**respondent**—see section 51(1).

**substantiation notice**—see section 21(1).



***trade or commerce*** has the same meaning as in the [Fair Trading Act 1987](#).

### **Schedule 3 (Repealed)**