

# Emergency Services Levy Insurance Monitor Act 2016 No 23

[2016-23]



New South Wales

## Status Information

### Currency of version

Repealed version for 26 October 2018 to 30 June 2020 (accessed 22 December 2024 at 16:53)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Repeal**

This Act was repealed by sec 79 of this Act on 1.7.2020.

### 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](#).

File last modified 1 July 2020

# Emergency Services Levy Insurance Monitor Act 2016 No 23



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# Emergency Services Levy Insurance Monitor Act 2016 No 23



New South Wales

An Act to provide for the appointment and functions of an Emergency Services Levy Insurance Monitor, and for the protection of persons from certain practices in connection with fire and emergency services funding reform; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Emergency Services Levy Insurance Monitor Act 2016*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

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

**Chief Commissioner** means the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996*.

**Department** means the Department of Finance, Services and Innovation.

**Deputy Monitor** means the Deputy Emergency Services Levy Insurance Monitor appointed under this Act.

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

**emergency services funding scheme** or **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 enactment of the *Fire and Emergency Services Levy Act 2017*:

- (a) Part 5 of the *Fire and Rescue NSW 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** 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.

**emergency services levy reform** means:

- (a) the abolition, by the *Fire and Emergency Services Levy Act 2017*, of the emergency services funding scheme, and
- (b) the establishment of a fire and emergency services levy by that Act, and
- (c) the transition to the levy by the re-establishment of an emergency services insurance contribution under the *Emergency Services Levy Act 2017*.

**emergency services levy winding up arrangements** means the arrangements relating to emergency services levy reform, including the matters provided for by or under:

- (a) the *Fire and Emergency Services Levy Act 2017*, or
- (b) Schedule 4 to the *Fire and Rescue NSW Act 1989*, or
- (c) Schedule 3 to the *Rural Fires Act 1997*, or
- (d) Schedule 1 to the *State Emergency Service Act 1989*.

**false or misleading conduct** in relation to the emergency services levy reform—see section 15.

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

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**inspector** means a person appointed as an inspector under Part 5.

**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 any other 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 respect of such policies of insurance on behalf of, or for transmission to, a person, partnership, association or underwriter outside New South Wales.

**Monitor** means the Emergency Services Levy Insurance Monitor appointed under this Act.

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

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

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

**price exploitation**—see section 14.

**prohibited conduct** means:

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

**regulated contract of insurance** means any 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 is, on the commencement of this Act, 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).

**Secretary** means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no person employed as Commissioner for Fair Trading—the Secretary of the Department of Finance, Services and Innovation.

**substantiation notice**—see section 22 (1).

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

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Notes included in this Act do not form part of this Act.

#### **4 Involvement in prohibited conduct**

In this Act, **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.

## **Part 2 Emergency Services Levy Insurance Monitor**

### **Division 1 Appointment of Monitor**

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

- (1) The Governor may appoint an Emergency Services Levy Insurance Monitor.
- (2) Schedule 1 contains ancillary provisions relating to the office of Monitor.

#### **6 Deputy Emergency Services Levy Insurance Monitor**

- (1) The Governor may appoint a Deputy Emergency Services Levy Insurance Monitor.
- (2) The Deputy Monitor has and may exercise the functions delegated to the Deputy Monitor under section 12.
- (3) Schedule 1 contains ancillary provisions relating to the office of Deputy Monitor.

#### **7 Independence of Monitor**

- (1) Subject to this and any other Act, the Monitor is not subject to the control or direction of any Minister in respect of the exercise of the Monitor's functions under this Act.

- (2) In particular, the Monitor is not subject to the control or direction of any Minister in respect of the exercise of the Monitor's functions in respect of a specific matter or complaint.
- (3) However, the Minister administering this Act may issue a general direction in writing to the Monitor in respect of the exercise of the Monitor's functions under this Act.
- (4) A general direction issued under subsection (3) must be published in the Gazette as soon as practicable after it is issued to the Monitor.
- (5) The Monitor must comply with a general direction issued under subsection (3).

## **8 Staff of Monitor**

- (1) 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.
- (2) Without limiting subsection (1), the Monitor may:
  - (a) arrange for the use of the services of any staff or facilities of a Public Service agency, and
  - (b) engage such consultants as the Monitor requires to exercise the Monitor's functions.

## **Division 2 Functions of Monitor**

### **9 General functions**

- (1) The Monitor has such functions as are conferred or imposed on the Monitor by or under this or any other Act.
- (2) Without limiting subsection (1), the Monitor has the following functions:
  - (a) to provide information, advice and guidance in relation to the emergency services levy 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 levy 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 respect of prohibited conduct or any contravention of this Act or the regulations.

## 10 Price monitoring

- (1) The Monitor may monitor prices for the issue of regulated contracts of insurance for either or both of the following purposes:
  - (a) to assess the general effect of the emergency services levy 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 57, 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 furnish to the Monitor such information or records (or both) relating to prices or the setting of prices at any time during the monitoring period as the Monitor requires by the notice for the purposes of that subsection.
- (3) For the purposes of subsection (2), the **monitoring period** is the period commencing on 1 July 2014 and ending on 30 June 2020 (inclusive).
- (4) Without limiting subsection (2), information or records that may be required by the notice may relate to any regulated contract of insurance or class of regulated contracts of insurance (including any regulated contract of insurance issued in respect of property, or a class of property, specified in the notice), and may include personal information (despite anything to the contrary in the [Privacy and Personal Information Protection Act 1998](#)).

## 11 Reports

- (1) The Monitor must, within 28 days after the end of each quarter, provide a written report to the Minister, and to the Treasurer, on the performance of the functions of the Monitor during the quarter.
- (2) Without limiting subsection (1), a report must include particulars of both of the following:
  - (a) any notices given under section 17,
  - (b) any variations or revocations of notices given under section 17.
- (3) As soon as practicable after the Minister receives a report under subsection (1), the Minister must publish the report.
- (4) The Minister may, by written notice, request the Monitor to provide a report to the Minister on:

- (a) the performance of the functions of the Monitor either generally or in respect of a specified matter, or
  - (b) the impact of the emergency services levy reform on levels of insurance coverage.
- (5) A written notice under subsection (4) must specify:
- (a) the matters to be addressed in the report, and
  - (b) the date by which the report must be provided to the Minister.
- (6) In this section, **quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December in each year.

## 12 Delegation

- (1) The Monitor may delegate the exercise of any function of the Monitor under this Act (other than this power of delegation) to:
- (a) the Deputy Monitor, or
  - (b) any person employed in the Department, or
  - (c) any person, or any class of persons, authorised for the purposes of this section by the regulations.
- (2) The Monitor may delegate to the Secretary the exercise of any function of the Monitor under this Act, including, subject to subsection (3), this power of delegation.
- (3) The Secretary may, subject to and in accordance with the instrument of delegation under subsection (2), delegate to any person employed in the Department the exercise of any function delegated to the Secretary (other than this power of delegation).

## 13 Incidental powers

The Monitor has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Monitor's functions. Any specific powers conferred on the Monitor by this Act are not taken to limit by implication the generality of this section.

# Part 3 Conduct relating to emergency services levy reform

## Division 1 Prohibited conduct

### 14 Price exploitation

- (1) For the purposes of this Act, an insurance company engages in **price exploitation** if:
- (a) the insurance company issues (or has, at any time 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 levy 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) any other matters prescribed by the regulations.

(2) For the purposes of this section, **issue** a regulated contract of insurance includes receive a premium in respect of a regulated contract of insurance on behalf of, or for transmission to, any body corporate, partnership, association, underwriter or person outside New South Wales.

(3) In this section, **relevant period** means the period commencing on 10 December 2015 and ending on the date on which this section commences.

## 15 False or misleading conduct

For the purposes of this Act, a person engages in **false or misleading conduct** in relation to the emergency services levy reform if the person engages in any conduct, in trade or commerce, that:

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

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

## 16 Contravention notices—price exploitation

(1) The Monitor may give an insurance company a notice in writing under this section (a **contravention notice**) if the Monitor considers that the insurance company has engaged in price exploitation.

(2) A contravention notice must:

(a) state that it is given under this section, and

(b) specify the name of the insurance company that issued the regulated contract of insurance concerned 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 14, 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 any guidelines issued under section 21 (in relation to price exploitation) in deciding whether to give a contravention notice.
  - (4) The Monitor may vary or revoke a contravention notice on the Monitor's own initiative or on the application of the insurance company to which it was given.
  - (5) The Monitor must, within 3 days after varying or revoking a contravention notice, give notice in writing to the insurance company of the variation or revocation.
  - (6) A contravention notice given under this section is admissible in any proceedings for an order under section 18 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 14.

#### **17 Prevention notices—price exploitation**

- (1) The Monitor may give an insurance company a notice in writing under this section (a **prevention notice**) if the Monitor considers that doing so will aid the prevention of price exploitation.
- (2) A prevention notice must:
  - (a) state that it is given under this section, and
  - (b) specify the name of the insurance company to which it applies, and
  - (c) specify the regulated contract of insurance, or class of regulated contracts of insurance, to which it 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.
- (3) The Monitor must have regard to any guidelines issued under section 21 (in relation to price exploitation) in deciding whether to give a notice under this section.
- (4) The Monitor may vary or revoke a prevention notice on the Monitor's own initiative or on the application of the insurance company to which it was given.
- (5) The Monitor must, within 3 days after varying or revoking a prevention notice, give notice in writing to the insurance company of the variation or revocation.

## 18 Orders relating to prohibited conduct

- (1) The Supreme Court may, on the application of the Monitor, make an order requiring a person who has engaged in prohibited conduct (the **respondent**) to pay to the State an amount not exceeding the maximum amount.
- (2) The Court is not to make an order against a respondent under this section if satisfied that the conduct to which the order relates is false or misleading conduct in relation to the emergency services levy reform and:
  - (a) the conduct was due to a reasonable mistake, or
  - (b) the conduct was due to a reasonable reliance on information supplied by another person (other than a servant or agent of the respondent or, in the case of a respondent who is a body corporate, a director or other person concerned in the management of the body corporate), or
  - (c) the conduct was due to 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 is not to make an order against a respondent under this section if satisfied that:
  - (a) the conduct to which the order relates is false or misleading conduct, in relation to the emergency services levy 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 on behalf of another person in the ordinary course of that business, and
  - (d) the respondent does not have a commercial relationship with that 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 any guidelines issued under section 21.
- (5) If the conduct to which the order relates occurred before the date on which the Bill for



this Act was first introduced into Parliament, the amount payable under the order is not to exceed the amount that the Court is satisfied represents the amount of any monetary benefits acquired by the respondent, or accrued or accruing to the respondent, as a result of the conduct.

- (6) An application under subsection (1) may be made not later than 30 June 2020.
- (7) An amount payable under an order made under this section is recoverable by the State as a debt from the respondent.
- (8) In this section, **maximum amount** means:
  - (a) in the case of an individual—\$500,000, or
  - (b) in the case of a body corporate—\$10,000,000.

## 19 Other orders

- (1) The Supreme Court may, on the application of the Monitor, make either or both of the following orders if satisfied that a person has engaged in prohibited conduct:
  - (a) an order requiring the person to take specified action to publicise the prohibited conduct (including the circumstances in which the person engaged in the prohibited conduct) and its consequences and any 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 the prohibited conduct (including the circumstances in which the person engaged in the prohibited conduct) and its consequences and any other orders made against the person (including, for example, the publication in an annual report or any other 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, fix a period for compliance and impose any 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) 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:

- (a) in the case of an individual—40 penalty units, or

(b) in the case of a body corporate—200 penalty units.

## 20 Nature of proceedings

For the avoidance of doubt, proceedings under this Division are civil proceedings, and the rules of procedure apply accordingly.

## 21 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 any variation of the guidelines made, under this section:
  - (a) must be published in the Gazette and on the Monitor's website, and
  - (b) must specify the date on which they take effect.

## Division 2 Substantiation notices

### 22 Monitor may require claims to be substantiated

- (1) If the Monitor is satisfied that a person has, in trade or commerce, made a claim or representation as to the effect or the likely effect of the emergency services levy reform, the Monitor may, by notice in writing (a **substantiation notice**), require the person to substantiate the claim or representation.
- (2) The substantiation notice may require the person to do either or both of the following within 21 days after the notice is given to the person:
  - (a) furnish to the Monitor information or records (or both) that could be capable of substantiating or supporting the claim or representation,
  - (b) furnish to the Monitor information or records (or both) of a kind specified in the notice.
- (3) Any kind of information or records specified in a substantiation notice under subsection (2) (b) must be information or records that 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 it is to be given, and
  - (b) specify the claim or representation to which it relates, and
  - (c) explain the effect of sections 23 and 24.

- (5) The substantiation notice may relate to more than 1 claim or representation made by the person to whom it is to be given.
- (6) The Monitor must have regard to any guidelines issued under section 21 in deciding whether to give a substantiation notice under this section.
- (7) 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 on behalf of another person in the ordinary course of that business, and
  - (c) the person does not have a commercial relationship with that 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.

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

- (1) A person who has been given a substantiation notice may, at any time within 21 days after the substantiation notice is given to the person by the Monitor, 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.

### **24 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) in the case of an individual—40 penalty units, or
  - (b) in the case of a body corporate—200 penalty units.
- (2) For the purposes of subsection (1), **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 23,

the period as so extended.

- (3) If an application has been made under section 23 (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 on the application.
- (4) Despite subsection (1), an individual may refuse or fail to furnish particular information or a particular record in compliance with a substantiation notice on the ground that the information or record might incriminate the individual or make the individual liable to a penalty.

## **Division 3 Complaints**

### **25 Making of complaints**

- (1) Any person may complain to the Monitor about any conduct of an insurance company that is alleged by the person to be prohibited conduct.
- (2) The Monitor may require a person who has made a complaint to give more information about the complaint within the time fixed by the Monitor.
- (3) A person who has made a complaint must give his or her name to the Monitor and such other information relating to his or her identity as the Monitor may require.

### **26 Dealing with complaints**

- (1) The Monitor may deal with a complaint made under section 25 in such manner as the Monitor considers appropriate.
- (2) Without limiting subsection (1), the Monitor may refer a complaint to any of the following persons or bodies:
  - (a) the Secretary,
  - (b) ASIC,
  - (c) the Australian Prudential Regulation Authority,
  - (d) Financial Ombudsman Service Limited,
  - (e) any other person or body prescribed by the regulations for the purposes of this section.
- (3) If the Monitor refers a complaint to another person or body under subsection (2), the Monitor may continue to deal with the complaint if the Monitor considers it appropriate to do so.

## **Division 4 Inquiries**

### **27 Inquiries**

- (1) The Monitor may 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.
- (2) An inquiry may be conducted under this Division in respect of a particular insurance company, or insurance companies generally.
- (3) An inquiry may be held in public or in private.

### **28 Procedures at inquiries**

- (1) The procedure to be followed at an inquiry under this Division is to be determined by the Monitor, subject to this Act and the regulations.
- (2) The Monitor may, by notice in writing given to any person, require the person within such reasonable time as may be specified in the notice:
  - (a) to furnish to the Monitor such information, and
  - (b) to produce to the Monitor such documents in the person's possession or under the person's control,as may be required for the purposes of the inquiry and as may be specified in the notice, whether generally or otherwise.
- (3) The Monitor may, by notice in writing given to any person, require the person:
  - (a) to attend at a specified time and place before the Monitor and at such other times as may be required by the Monitor, and
  - (b) to give evidence concerning any matter the subject of the inquiry, and
  - (c) to produce all such documents in the person's possession or under the person's control as may be required for the purposes of the inquiry and as may be specified in the notice, whether generally or otherwise.
- (4) The Monitor may require any such evidence to be given in writing or orally.
- (5) The Monitor may, subject to section 13 of the [Oaths Act 1900](#), require any such evidence to be given on oath, and for that purpose the Monitor may 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) furnish any information pursuant to subsection (2) knowing that it is false or misleading in a material particular, or
- (b) give any evidence pursuant to subsection (3) knowing that it is false or misleading in a material particular.

Maximum penalty: 100 penalty units.

## **29 Public inquiries**

- (1) Before commencing a public inquiry under this Division, the Monitor is required to give notice, by advertisement in the Gazette and in such other manner as the Monitor considers appropriate, of the intention to hold the inquiry, of its subject and of the time and place at which it is to commence.
- (2) If, after commencing a public inquiry, the Monitor is satisfied that it is desirable in the public interest to do so because of the confidential nature of any evidence or matter or for any other reason, the Monitor may do either or both of the following:
  - (a) direct that the inquiry or any part of it take place in private and give directions as to 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) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 100 penalty units.

- (4) If evidence is given at a public inquiry by written statement, the Monitor is to make available to the public in such manner as the Monitor considers appropriate the contents of the statement. This does not apply to matter the publication of which, in the opinion of the Monitor, would be contrary to the public interest because of its confidential nature or for any other reason.

## **Division 5 Miscellaneous**

### **30 Notice relating to emergency services levy reform**

- (1) The Monitor may, by order published in the Gazette:
  - (a) require any insurance company or class of insurance companies to provide information about emergency services levy reform or the functions of the Monitor under this Act (or both), including about the impact of emergency services levy reform on the price payable for the issue of a regulated contract of insurance, and

(b) specify the way in which the impact of emergency services levy reform is to be calculated, and

(c) specify the way in which the information is to be provided (including by requiring it to be contained in an invoice or other statement as to 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) For the purposes of this section, the **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.

### 31 Public warning statements

(1) The Monitor may make or issue a public statement identifying and giving warnings or information about prohibited conduct and insurance companies that engage in prohibited conduct.

(2) The statement may identify particular insurance companies.

(3) The Monitor must have regard to any guidelines issued under section 21 in deciding whether to make or issue a statement under this section.

(4) The Monitor is not to make or issue a statement under this section unless satisfied that it is in the public interest to do so.

## Part 3A Investigation of overcharging

### 31A Definitions

In this Part:

**debt recovery order**—see section 31J.

**final 2 years of the scheme** means the financial years commencing on 1 July 2015 and 1 July 2016.

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

**over-collection amount** means an over-collection amount under section 31C or 31CA.

**refund undertaking**—see section 31H.

**relevant policy holder**—see section 31B.

**transition period** means the financial years commencing on 1 July 2017 and 1 July 2018.

**31B 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 2 years of the scheme, and
    - (a1) investigate and assess whether insurance companies are liable for over-collection amounts in the transition period, and
  - (b) endeavour to ensure that any 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 that is practicable, or
    - (ii) if that is not practicable—pays the over-collection amount to the Chief Commissioner for payment into the Consolidated Fund.
- (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 2 years of the scheme.

**31C Liability for over-collection amount under the scheme**

- (1) An insurance company is liable for an over-collection amount in the final 2 years of the scheme if the total amount collected by the insurance company in the final 2 years of the scheme exceeds the total amount contributed by the insurance company in the final 2 years of the scheme.
- (2) The total amount collected by an insurance company in the final 2 years of the scheme is the total amount that, in the opinion of the Monitor, was collected by the insurance company from relevant policy holders for, or purportedly for, the payment of emergency services contributions payable for the final 2 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 that amount.
- (4) The total amount contributed by an insurance company in the final 2 years of the scheme is the total of the following amounts:
  - (a) the final 2-year assessment of the insurance company given to the Monitor under clause 37 of Schedule 4 to the *Fire and Rescue NSW Act 1989*,
  - (b) the final 2-year assessment of the insurance company given to the Monitor under clause 35 of Schedule 3 to the *Rural Fires Act 1997*,



(c) the final 2-year assessment of the insurance company given to the Monitor under clause 19 of Schedule 1 to the *State Emergency Service Act 1989*.

- (5) The **over-collection amount** is the amount by which the total amount collected by the insurance company in the final 2 years of the scheme exceeds the total amount contributed by the insurance company in the final 2 years of the scheme.

### **31CA Liability for an over-collection amount in transition period**

- (1) An insurance company is liable for an over-collection amount in the transition period if the total amount collected by the insurance company in the transition period exceeds the total amount contributed by the insurance company in the transition period.
- (2) The total amount collected by an insurance company in the transition period is the total amount that, in the opinion of the Monitor, 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 transition period.
- (3) If the Monitor has insufficient information to decide exactly the total amount collected by an insurance company, the Monitor may estimate that amount.
- (4) The total amount contributed by an insurance company in the transition period is the total of the following:
- (a) the final contribution amount for the insurance company for the financial year commencing on 1 July 2017,
  - (b) the final contribution amount for the insurance company for the financial year commencing on 1 July 2018.
- (5) The **over-collection amount** is the amount by which the total amount collected by the insurance company in the transition period exceeds the total amount contributed by the insurance company in the transition period.

### **31D 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 that 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.

**31E 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 specify the over-collection amount.
- (3) The notice must:
  - (a) 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 can be referred to the Chief Commissioner for debt recovery action, and
  - (b) specify the deadline for giving the refund undertaking to the Monitor.
- (4) 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.
- (5) The deadline for giving the refund undertaking must not be less than 30 days after the notice is given to the insurance company.
- (6) The Monitor may extend the deadline for giving the refund undertaking.

**31F Objections to assessments**

- (1) An insurance company may object to an assessment of an over-collection amount within 21 days after notice of the assessment is given to the insurance company or within such further period as the Monitor allows.
- (2) An objection must be made in writing to the Monitor and must specify the grounds of the objection.
- (3) Only one objection can 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 it is made in accordance with this section.

**31G Monitor to decide objection**

- (1) The Monitor must consider an objection to an assessment, if the objection is duly made by the insurance company, and either allow the objection in whole or in part or 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 give notice in writing to the insurance company of its decision on the objection.
- (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 it 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 that notice of the Monitor's decision on the objection is given to the insurance company.

### **31H 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 Division 2 of Part 4 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 to relevant policy holders.
- (4) The Monitor is to advise the Chief Commissioner of any refund undertaking that provides for the payment of an amount to the Chief Commissioner.

#### **Note—**

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

### **31I 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 is to be made by notice in writing to the Chief Commissioner in a form approved by the Chief Commissioner.
- (3) The notice must specify the over-collection amount.
- (4) The Monitor is to give the Chief Commissioner:
  - (a) a copy of the notice of assessment in relation to the insurance company, and
  - (b) any other information in relation to the referral that the Chief Commissioner reasonably requires to exercise his or her functions under this Part.

### **31J Issue of debt recovery order by Chief Commissioner**

- (1) The Chief Commissioner may make an order (a **debt recovery order**) in relation to any over-collection amount referred to the Chief Commissioner by the Monitor under this Part.
- (2) 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 for payment.
- (4) A copy of the debt recovery order must be given to the insurance company.
- (5) The date for payment must be not less than 30 days after a copy of the order is given to the insurance company.

### **31K 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 that amount to the Chief Commissioner by the date for payment specified in the debt recovery order or within any further time allowed by the Chief Commissioner.
- (2) If an insurance company fails to pay the over-collection amount within 30 days of it 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.

**Note—**

Recovered over-collection amounts are deducted from the contribution target under the *Emergency Services Levy Act 2017*.

## **Part 4 Legal proceedings**

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

#### **32 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 any higher maximum monetary penalty provided in respect of the offence.

#### **33 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 Monitor is evidence of that authority without proof of the signature of the Monitor.

#### **34 (Repealed)**

### **Division 2 Enforceable undertakings**

#### **35 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 consent in writing 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.

### **36 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 35 has breached any of its terms.
- (2) The Supreme Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
  - (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any monetary benefits that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any other order that the Court thinks appropriate, including an order directing the person to compensate any other person who has suffered loss or damage as a result of the breach.

### **37 Register of undertakings**

- (1) The Monitor must:
  - (a) maintain a register of undertakings, and
  - (b) register each undertaking in the register of undertakings.
- (2) The register of undertakings must include each of 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 any person at any reasonable time, without charge.

## **Division 3 Injunctions**

### **38 Injunctions**

- (1) The Supreme Court may grant an injunction, in such terms as the Court considers appropriate, if the Court is satisfied that 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, promise 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 any other 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 that 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 any other 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 that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing, and
  - (b) whether or not the person has previously refused or failed to do that act or thing, and
  - (c) whether or not there is imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.
- (5) Without limiting subsection (1), the Court may grant an injunction requiring a person to do one or more of 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 any 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.

### 39 Consent injunctions

If an application is made under section 38, the Supreme Court may, if it 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 38 (1).

### 40 Interim injunctions

- (1) If an application is made under section 38, the Supreme Court may, if it considers it appropriate, grant an interim injunction pending the determination of the application.
- (2) If the application under section 38 has been made by the Monitor, the Court must not require the Monitor or any other person to give any undertakings as to costs as a condition of granting the interim injunction.
- (3) If:
  - (a) the application under section 38 has been made by any 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,the Court must accept the undertaking by the Monitor and must not require a further undertaking from any other person.

### 41 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

### 42 Compensation orders

- (1) This section applies where 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 any order or orders that the Court considers appropriate against the respondent.
- (3) The order must be an order that the Court considers 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 on behalf of 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 not later than 30 June 2020.

#### **43 Compensation orders in respect of class of persons**

- (1) In determining whether to make an order under section 42 in respect of 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 42, the Court need not make a finding about the nature of the loss or damage suffered, or likely to be suffered, by the class of injured persons.

#### **44 Effect of compensation orders in respect of class of persons**

- (1) An injured person who belongs to a class of injured persons in respect of whom an order is made under section 42 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) Any other order made under section 42 that relates to that loss or damage has no effect in relation to the injured person.
- (3) Despite any other provision of any other Act or law of this or any other State or Territory, no claim, action or demand may be made or taken against the respondent by the injured person in relation to that loss or damage.

#### **45 Applications for orders**

An application may be made under section 42 in relation to prohibited conduct whether or not an application under section 18 has been made in relation to the prohibited conduct.

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

Without limiting section 42, 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.

#### **47 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 any other provision of this Act.

#### **48 Interaction with other provisions**

This Division does not limit any provision of Part 3 or any other provision of this Part.

### **Division 5 Evidentiary provisions**

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

In any proceedings under this Act, no proof is required (until evidence is given to the contrary) of:

- (a) the appointment of the Monitor or Deputy Monitor, or
- (b) the appointment of any inspector.

#### **50 Documentary evidence generally**

Any 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 person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

is admissible in any proceedings under this Act and, in the absence of evidence to the contrary, is to be taken to be such an instrument and to have been so signed.

#### **51 Certificate evidence of certain matters**

- (1) A document signed by the Monitor, or a person declared in writing by the Monitor for the purposes of this section, and certifying any 1 or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is, in the absence of evidence to the contrary, evidence of the matters so certified.
- (2) The matters referred to in subsection (1) are the following:
  - (a) that an instrument (including a notice, order or direction in writing), a copy of which is set out in or annexed to the document, being an instrument purporting:
    - (i) to be issued, made or given for the purposes of this Act, and

(ii) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,

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.

## **Part 5 Investigation and enforcement powers**

### **Division 1 Preliminary**

#### **52 Definition**

For the purposes of this Part, **contravene** a provision of this Act includes engage in prohibited conduct.

#### **53 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, the regulations or the emergency services levy winding up arrangements,
- (b) for obtaining information or records for purposes connected with the administration of this Act or the emergency services levy winding up arrangements,
- (c) in connection with exercising the functions of the Monitor,
- (d) generally for administering this Act or the emergency services levy winding up arrangements.

#### **54 Effect on other functions**

Nothing in this Part affects any function under any other provision of this Act or under any other Act.

#### **55 Appointment and identification of inspectors**

- (1) The Monitor may appoint as an inspector for the purposes of this Act any person (including a class of persons) who, in the opinion of the Monitor, is suitably qualified to exercise the functions of an inspector.
- (2) The Monitor is taken to have been appointed as an inspector.
- (3) The Monitor is to cause each inspector to be issued with a means of identification in the form approved by the Monitor.

- (4) Identification must contain a photograph of the inspector to whom it is issued.
- (5) In the course of exercising the functions of an inspector under this Act, the inspector must, if requested to do so by any person affected by the exercise of any such function, produce the inspector's identification for inspection by the person.

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

### **56 Application of Division**

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

### **57 Requirement to provide information and records**

- (1) An inspector may, by notice in writing given to a person, require the person to furnish to the inspector such information or records (or both) as the inspector requires by the notice in connection with any matter arising under or in connection with the functions of the Monitor under this Act.
- (2) Any such notice must specify the manner in which information or records are required to be furnished and a reasonable time by which the information or records are required to be furnished.

### **58 Provisions relating to records**

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

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

### **59 Power to enter premises**

- (1) An inspector may, with the approval of the Monitor, enter any premises at any time for the purposes referred to in section 53.
- (2) Entry may be effected under this Act by an inspector with the aid of such other inspectors as the inspector considers necessary and with the use of reasonable force.

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

This Division does not empower an inspector to enter any part of premises used only for

residential purposes without the permission of the occupier or the authority of a search warrant under section 62.

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

- (1) An inspector may, on any premises lawfully entered, do anything that in the opinion of the inspector is necessary to be done for the purposes of this Part, including (but not limited to) the things specified in subsection (2).
- (2) An inspector may do any or all of the following:
  - (a) make such examinations and inquiries as the inspector considers necessary,
  - (b) require records to be produced for inspection,
  - (c) examine and inspect any records,
  - (d) copy any 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 any other 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 with respect 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.

A reference to any such contravention includes a reference to a contravention that there are reasonable grounds for believing has been engaged in.

### **62 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 or has been contravened at any premises, or
  - (b) there is in or on any premises matter or a thing that is connected with a contravention of this Act or the regulations.
- (2) An authorised officer to whom such an application is made may, if satisfied that 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 any function of an inspector under this Division.

(3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* 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*.

**contravention** includes a contravention that there are reasonable grounds for believing has been, or is to be, engaged in.

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

(a) matter or a thing with respect 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.

### **63 Assistance to be given to inspectors**

(1) This section applies for the purpose of enabling an inspector to exercise any of the powers of an inspector under this Division in connection with any premises.

(2) The inspector may, by notice in writing given to the owner or occupier of the premises, require the owner or occupier to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.

(3) Assistance and facilities can be required under this section, whether they are of the same kind as, or a different kind from, any prescribed by the regulations.

### **64 Dealing with seized things**

(1) If an inspector seizes anything under section 61 on any premises, the inspector must issue the person apparently in charge of the premises with a written receipt for the thing seized.

(2) An inspector may retain anything seized under section 61 until the completion of any proceedings (including proceedings on appeal) in which it may be evidence.

(3) A record may only be retained under subsection (2) if the person from whom the

record was seized is provided, within a reasonable time after the seizure, with a copy of the record certified by the inspector as a true copy. The copy is, as evidence, of equal validity to the document of which it is certified to be a copy.

- (4) 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**

### **65 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 respect of which information is reasonably required for the purposes of this Act to answer questions in relation to those matters.
- (2) An inspector (other than the Monitor) must not make a requirement under subsection (1) without the approval of the Monitor.
- (3) An inspector may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (4) Answers given by a person nominated under subsection (3) bind the corporation.
- (5) An inspector may, by notice in writing, 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 can be properly put and answered.
- (6) The place and time at which a person may be required to so attend is to be a place and time nominated by the inspector that is reasonable in the circumstances.

## **Division 5 Miscellaneous**

### **66 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.
- (2) A person must not furnish any information or do any other thing in purported compliance with a requirement made under this Part, knowing that it is false or misleading in a material respect.
- (3) A person must not intentionally delay or obstruct an inspector in the exercise of the inspector's powers under this Part.
- (4) A person must not impersonate an inspector.

Maximum penalty: 100 penalty units.

### **67 Provisions relating to requirements to furnish records, information or answer questions**

- (1) **Warning to be given on each occasion** A person is not guilty of an offence of failing to comply with a requirement under this Part to furnish 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) **Self-incrimination not an excuse** A person is not excused from a requirement under this Part to furnish 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) **Information or answer not admissible if objection made** However, any information furnished or 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 on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible** Any record furnished 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** Further information obtained as a result of a record or information furnished or of an answer given in compliance with a requirement under this Part is not inadmissible on the ground:
  - (a) that the record or information had to be furnished or the answer had to be given, or
  - (b) that the record or information furnished or answer given might incriminate the person.

### **68 Entry to be reported to Monitor**

- (1) If an inspector (other than the Monitor) exercises a power of entry under Division 3, 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.

#### **69 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 68, and
- (b) all relevant details (including the matters referred to in section 68 (2)) relating to any power of entry exercised by the Monitor under Division 3.

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

- (1) Any person may complain to the Monitor about the exercise of a power by an inspector under Division 3.
- (2) The Monitor must:
  - (a) investigate any complaint made to the Monitor, and
  - (b) provide a written report to the complainant on the results of the investigation.

### **Part 6 Miscellaneous**

#### **71 Expenditure of Monitor**

- (1) For the purposes of Part 5 of the *Fire and Rescue NSW Act 1989*, the estimate of fire brigades expenditure for the financial year commencing on 1 July 2016 is to be adjusted by increasing the estimate by the amount determined by the Treasurer as the amount of estimated expenditure incurred in the administration or execution of this Act for the period commencing on 1 July 2015 and ending on 30 June 2017.
- (2) In this section, **expenditure** incurred in the administration or execution of this Act includes any salary and allowances of the Monitor and Deputy Monitor and expenditure incurred for staff, consultants, office accommodation or other services or facilities.

#### **72 Emergency Services Levy Insurance Monitor Fund**

- (1) There is to be established in the Special Deposits Account in the Treasury an Emergency Services Levy Insurance Monitor Fund (the **Monitor Fund**) into which is to be paid the amount determined by the Treasurer under section 71.

- (2) There may be paid from the Monitor Fund all amounts required to meet the expenditure incurred in the administration or execution of this Act (within the meaning of section 71).

### **73 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### **74 Protection from liability**

- (1) A matter or thing done or omitted to be done by the Monitor, the Deputy Monitor, an inspector or a person acting under the direction of the Monitor, Deputy Monitor or inspector does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the Monitor, Deputy Monitor, inspector or person so acting personally to any action, liability, claim or demand. However, any such liability attaches instead to the Crown.
- (2) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person by reason only of either of the following acts done in good faith:
  - (a) the making of a complaint under section 25,
  - (b) the making of a statement, or the giving of a document or information, to the Monitor or any other inspector in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.

### **75 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 and the relevant agency.
- (2) 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 any functions of the relevant agency in connection with the emergency services levy reform.
- (3) Under an information sharing arrangement, the Monitor and the relevant agency are, despite any other 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.

- (4) However, this section does not authorise the Monitor to disclose personal information under an information sharing arrangement except to the Treasury for the purposes of or in connection with the emergency services levy reform.
- (5) This section does not:
  - (a) limit the functions that may be exercised by the Monitor under section 9, or
  - (b) require the Monitor to provide information to a relevant agency only in accordance with an information sharing arrangement where that information can otherwise be lawfully provided, or
  - (c) limit the operation of any other 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 Treasury, or
- (b) the Chief Commissioner, or
  - (b1) the Commissioner of Fire and Rescue NSW, or
  - (b2) the Commissioner of the NSW Rural Fire Service, or
  - (b3) the Commissioner of the State Emergency Service, or
- (c) an agency of the State, or of the Commonwealth or another State or Territory, that exercises functions under an enactment with respect to fair trading, or
- (d) any other person or body prescribed by the regulations.

## **76 Disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act (or any other Act conferring or imposing functions on the Monitor) unless that 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 any such other Act), or
- (c) for the purposes of any legal proceedings arising out of this Act (or any such other Act) or of any report of any such 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.

## **77 Service of documents**

(1) A document that is authorised or required by this Act or the regulations to be given to or served on any person may be given or served by:

(a) in the case of a natural person:

(i) delivering it to the person personally, or

(ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

(iii) sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

(i) leaving it with a person apparently of or above the age of 16 years at, or sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or

(ii) sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be given to or served on a person in any other manner.

## **78 Regulations**

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that 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) any document formulated, issued or published by a person or body, as in force at a particular time or as in force from time to time.

(3) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

## **79 Repeal of Act**

This Act is repealed on 1 July 2020 or on a later date appointed by the regulations.

## Schedule 1 Provisions relating to Monitor and Deputy Monitor

(Sections 5 and 6)

### 1 Acting Monitor

- (1) In the absence of the Monitor, the Deputy Monitor is to act as the Monitor.
- (2) While so acting, the Deputy Monitor has all the functions of the Monitor and is taken to be the Monitor.

### 2 Basis of offices

The Monitor and Deputy Monitor may each be appointed on a full-time or part-time basis.

### 3 Term of office of Monitor

- (1) The Monitor holds office for a period specified in the Monitor's instrument of appointment, subject to subclause (2).
- (2) The term of office of the person holding office as Monitor at the commencement of the [Emergency Services Levy Act 2017](#) is taken to expire at the end of 31 December 2018. However, that person may, if otherwise eligible, be re-appointed to office.
- (3) A person cannot be appointed as Monitor for a term that ends after the date of repeal of this Act.

### 3A Term of office of Deputy Monitor

- (1) The Deputy Monitor holds office for a period specified in the Deputy Monitor's instrument of appointment, subject to subclause (2).
- (2) The term of office of the person holding office as Deputy Monitor at the commencement of the [Emergency Services Levy Act 2017](#) is taken to expire at the end of 31 December 2018. However, that person may, if otherwise eligible, be re-appointed to office.
- (3) A person cannot be appointed as Deputy Monitor for a term that ends after the date of repeal of this Act.

### 4 Remuneration

- (1) The Monitor and Deputy Monitor are entitled to be paid such remuneration (including travelling and subsistence allowances) as may be determined by the Minister from time to time.
- (2) A determination does not operate so as to reduce the rate at which remuneration is payable during the Monitor's or Deputy Monitor's term of office.

## **5 Vacancy in office**

- (1) The office of Monitor or Deputy Monitor becomes vacant if the holder:
  - (a) dies, or
  - (b) resigns the office by instrument in writing addressed to the Governor, or
  - (c) is removed from office by the Governor under this clause, or
  - (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (e) becomes a mentally incapacitated person, or
  - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may remove the Monitor or Deputy Monitor from office for incapacity, incompetence or misbehaviour.

## **6 Filling of vacancy**

- (1) If the office of Monitor becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.
- (2) If the office of Deputy Monitor becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

## **7 Effect of certain other Acts**

- (1) The offices of Monitor and Deputy Monitor are statutory offices and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to those offices.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of Monitor or Deputy Monitor or from accepting and retaining any remuneration payable to the person under this Act as a Monitor or Deputy Monitor.

## **Schedule 2 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 enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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