

CLOSURE OF THE NSW EMERGENCY SERVICES LEVY INSURANCE MONITOR

1. Overview

- (a) The office of the NSW Emergency Services Levy Insurance Monitor (Monitor) [will close on 30 June 2020](#) by reason of the repeal of the [Emergency Services Levy Insurance Monitor Act 2016 \(ESLIM Act\)](#), which establishes the role, functions and powers of the Monitor.
- (b) The repeal of the ESLIM Act is provided for by the Act itself in s79, which provides that “this Act is repealed on 1 July 2020 or on a later date appointed by the regulation” (“date of repeal”). No regulations are currently in force.
- (c) As such, from this date:
 - (i) The Monitor has no powers and ceases to exist;
 - (ii) there is nothing in the ESLIM Act providing for continued price monitoring after the date of repeal. The [Emergency Services Levy Act 2017 \(ESL Act\)](#) which establishes the requirement to pay an emergency services insurance contribution in respect of premiums for relevant insurance and sets out the methods of assessment and calculation for these contributions, will however continue in force.

This provides the Treasurer with some oversight functions including the ability to request certain information from insurers regarding the payment of premiums and monitor of over-collection of ESL after the date of repeal (see for example s 41 and 47(1)).

Furthermore, s39 of the ESL Act enables the Chief Commissioner of Revenue NSW to provide information to the Treasurer on whether insurers have over-collected ESL after they submit their annual Return of Premiums for the financial year. This power is currently in effect.

These provisions of the ESL Act will practically replace the general oversight functions of the Monitor after the date of repeal.

- (iii) any *conduct occurring after repeal* would not give rise to a breach of the price exploitation or false or misleading conduct provisions which are not in effect after that date. Likewise, a failure to comply with the section 30 Order issued by the Monitor requiring year on year price comparisons would not be an actionable breach of section 30. This means insurers and brokers will not need to issue such section 30 information on an ongoing basis.
- (iv) in relation to any breaches of the ESLIM Act or *conduct which may have occurred prior to the repeal*:

- (A) an application for an order for a civil pecuniary penalty or a prosecution for a criminal offence must be made before the date of repeal;
- (B) any outstanding complaints or disputes will be passed to NSW Fair Trading for resolution; and
- (C) no new applications can be made after the date of repeal date.

On this basis, if no such events have occurred, the Monitor has no ability to do anything after the repeal date.

- (d) It is worth noting that members of the Insurance Council of Australia and subscribers to the updated 2020 General Insurance Code of Practice will be subject to Paragraph 50 which will apply from the earlier of the time an insurer adopts the new Code or 1 January 2021 which provides as follows in relation to Retail Insurance:

If we offer to renew any of the following products that you bought directly from us:

- a. home building;*
 - b. home contents;*
 - c. home building and home contents;*
 - d. motor vehicle — unless you have a fleet of vehicles or are a business or other organisation;*
- then, in our renewal notice, we will give you a comparison between this year and last year's premium and explain to you how it is calculated.*

IMPORTANT NOTICE

This document is designed to provide helpful general guidance on some key issues relevant to this topic. It should not be relied on as legal advice. It does not cover everything that may be relevant to you and does not take into account your particular circumstances. It is only current as at the date of release. You must ensure that you seek appropriate professional advice in relation to this topic as well as to the currency, accuracy and relevance of this material for you. Liability limited by a scheme approved under Professional Standards Legislation. Legal practitioners of Radford Lawyers Pty Limited are members of the scheme.