



EMERGENCY SERVICES LEVY INSURANCE MONITOR

Level 18, One Margaret St, Sydney NSW 2000

Emergency Services Levy Insurance Monitor Act 2016 (“the Act”)

Guidance

The Emergency Services Levy Insurance Monitor (“the Monitor”) has published an order under section 30 of the Act relating to year on year price comparisons for the issue of regulated contracts of insurance (“the price comparison order”).

The price comparison order replaces an earlier order published in the Gazette on 11 August 2017.

The price comparison order comes into effect on 1 July 2019.

The price comparison order requires all insurance companies (as defined in the Act), or persons acting on their behalf in the circumstances set out below, to provide the information in the price comparison order (“the information”), in all invoices and other statements given or sent to policyholders identifying the price payable for the issue of those classes of regulated contracts of insurance identified below.

The information must be included in all invoices and other statements given or sent to policyholders, identifying the price payable for the issue of regulated contracts of insurance of the class of policies described in item 1 [but limited to individuals and small business only], 2, 3 and 4 [but limited to individuals and small business only], respectively, of Schedule 1 to the Emergency Services Levy Act 2017 (“the Schedule”), subject to the circumstances identified in section 37(3) of that Act as it applies to items 1 and 2 of the Schedule, which are referred to below as “affected policies of insurance”.

Guidance on the effect of the section 30 order published on 2 November 2018

General

The Monitor intends that the price comparison order operate as follows:

- (a) the information is to be contained in all invoices or other statements identifying the price payable by the policyholder for the renewal by an insurance company of affected policies of insurance (hereinafter referred to as “price communications”)
- (b) the person or entity who issues price communications directly to a policyholder is responsible for ensuring that the information is provided to the policyholder; and
- (c) the person or entity issuing a price communication may, or may not, be an insurance company [See Guidance note 2].

Scope and application

1. The price comparison order applies, from 1 July 2019, to all price communications given or sent to policyholders, either in hardcopy or electronic form, but does not apply to:
 - (a) affected policies of insurance issued as new business; or
 - (b) variations to existing affected policies of insurance—

- (“the obligation”).
2. The obligation applies to all insurance companies (as defined in the Act). Also, the obligation will apply to the following persons or entities (collectively referred to as “representatives”) who act on behalf of an insurance company in providing policyholders with price communications:
 - (i) an insurance company’s agents;
 - (ii) an insurance company’s authorised representatives;
 - (iii) an insurance broker or insurance intermediaries acting under a binder, but not an insurance broker who acts solely for a policyholder and has no involvement in issuing affected policies of insurance on behalf of the issuer of an affected policy of insurance, or
 - (iv) persons issuing affected policies of insurance under any other arrangement contemplated by Part 7.6 of the *Corporations Act 2001*.
 3. The obligation operates subject to section 37(3) of *Emergency Services Levy Act 2017* as that section applies to items 1 and 2 of the Schedule.
 4. The price comparison order requires the identification of any fee for service, in the form of brokerage, commission or other costs, including any related Government charges (collectively referred to as “fees”), charged to policyholders by insurance companies’ representatives in relation to the issue of affected policies of insurance.
 5. In comparison with the order published on 11 August 2017, the obligation referred to in Guidance note 4 above, represents an expansion of the information that must be included in price communications given or sent to policyholders. However, where no such fees are charged to policyholders by insurers’ representatives, it is unnecessary to include any reference to such fees in the information.
 6. The Monitor expects that any payments or allowances made by an insurer to its representatives associated with or arising from the issue of affected policy of insurance will be included, without being itemised, in the base premiums.
 7. The Monitor intends that the obligation apply to all price communications issued in connection with strata-titled properties, community titled properties or properties associated with a body corporate or owners corporation, which provide cover to buildings and common areas that are the responsibility of the body corporate or owners corporation for insurance purposes and which have a household residential component. The Monitor adopts as the definition of “strata title” for the purposes of this Guidance, any form of land title which allows for multiple titles to exist in or on a block of land where the common property is held under a single separate title.

Involvement of intermediaries / Authorised representatives

8. The Monitor recognises that an insurance company may enter into affected policies of insurance with policyholders with the assistance or participation of representatives in circumstances where the insurance company may not:
 - (a) give or send price communications to policyholders directly; and
 - (b) know immediately the final “price” paid or payable by the policyholder for the issue of an affected policy of insurance, given the impact of fees or other charges made by their representatives.
9. In the circumstances of Guidance note 8, the Monitor expects that the obligation will apply only to the insurance company or representative that gives or sends a price communication to a policyholder.

10. The Monitor expects that insurance companies will take all reasonable and necessary steps to ensure that their representatives comply with the obligation.

Affected policies of insurance

11. In comparison with the order published on 11 August 2017, the new order extends the obligation to include the provision of the information in price communications for those policies of insurance described in:
 - (a) item 1, [but only to the extent where such policies of insurance are issued to “individuals” or “small business”];
 - (b) item 2;
 - (c) item 3; and
 - (d) item 4, [but only to the extent where such policies of insurance are issued to “individuals” or “small business”] —
of the Schedule.
12. While the price comparison order requires that insurance companies, or their representatives, provide the information in respect of the issue of regulated contracts of insurance to a “small business”, the Monitor considers that it is industry best practice to provide the information in relation to the issue of all of regulated contracts of insurance identified in item 1 of the Schedule.

Other matters

13. The Monitor interprets the phrase “price payable” for the issue of an affected policy of insurance in the price comparison order, consistently with the definition of “price” in section 3 of the Act, as the price payable by a policyholder for the issue of an affected policy of insurance.
14. An insurance company or its representatives will not be regarded by the Monitor as having contravened section 30 of the Act, in relation to the price comparison order, solely because they express the information in price communications, using different wording to that of the price comparison order, provided that the:
 - (a) information forms part of the price communication;
 - (b) information is displayed prominently and at each location at which the price payable for the renewal of an affected policy of insurance is found; and
 - (c) essence of the information is retained.
15. Insurance companies and their representatives are encouraged to provide additional notes or material to explain the reasons for any changes affecting premiums provided that such additional notes or material do not contradict the information and are not otherwise misleading.
16. Where an affected policy of insurance, issued by an insurance company after 1 July 2019, relates to multiple classes of affected policies of insurance the information must be provided separately for each class of affected policies of insurance.
17. The Monitor will undertake compliance checks after 1 July 2019 to ensure that insurance companies, and their representatives issuing price communications, are complying with the obligation.
18. The Monitor will not undertake enforcement action regarding compliance with the obligation as it applies to the remaining classes of insurance identified in the Schedule

unless further Guidance on the application of the obligation to these classes of insurance has been issued.

19. An insurance company, and those acting on its behalf, may choose to include the Monitor's logo when sending, publishing or distributing the information. Those persons wishing to do so may request the grant of a non-exclusive and revocable right to use the Monitor's logo. However, the Monitor must agree to, and be advised in advance of, any proposed use of this logo.

Definitions

20. The Monitor adopts, for the purposes of the interpretation of the price comparison order, the following definitions:
 - (a) "insurance intermediary" and "insurance broker" in the *Insurance Contracts Act 1984*;
 - (b) "binder" and "authorised representative" in section 761A of the *Corporations Act 2001*;
 - (c) "issue" and "issuer" in section 761E of the *Corporations Act 2001*;
 - (d) "arrangement" in section 911A(2) of the *Corporations Act 2001*;
 - (e) "individual" in section 21 of the *Interpretation Act 1987*;
 - (f) "small business":
 - (i) as provided for in section 761G(12) of the *Corporations Act 2001* and adopted in the General Insurance Code of Practice; or alternatively
 - (ii) where the intended insured is a "small business" for the purposes of section 259A of the *Duties Act 1997*.
21. The Monitor considers that an affected policy of insurance is issued to a "small business" if it is issued to:
 - (a) a business employing less than 20 people or, for manufacturers of goods, businesses employing less than 100 people; or
 - (b) an entity which carries on a business having an aggregated turnover of less than \$2 million for the income year in which the policy of insurance is issued and which has provided the insurance company, or any person acting on their behalf, with a small business declaration for the purposes of section 259C(2) of the *Duties Act 1997*.