



Professor Allan Fels AO, Monitor
Dr David Cousins AM, Deputy Monitor
Emergency Services Levy Insurance Monitor
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SYDNEY NSW 2000

2 August 2016

Dear Professor Fels and Dr Cousins

EMERGENCY SERVICES LEVY (ESL): DRAFT GUIDELINES

The Insurance Council of Australia (the Insurance Council) welcomes the opportunity to comment on the draft guidelines on price exploitation and false and misleading conduct which will apply during the removal of an insurance-based ESL. I would also like to express the Insurance Council's appreciation for the consultative approach taken in the development of the guidelines.

Through early contact with the industry, a number of the issues which created difficulties with the removal of the Fire Services Levy in Victoria are likely to be avoided. Examples are the explicit recognition that insurers may choose to taper the removal of ESL rates and acknowledgement that over-collection of ESL of itself is not evidence of price exploitation.

While most of the provisions in the draft guidelines are satisfactory, there are a number of details which we suggest should be reconsidered. These are explained in Attachment A on price exploitation and Attachment B on false and misleading conduct.

In order to maintain the momentum for completion of the regulatory regime governing ESL removal, the Insurance Council requests that the Monitor's Office move soon to issue draft guidelines which specifically address how over-collection will be determined and how insurance companies can deal with it satisfactorily. Draft guidelines on the manner in which the Monitor will exercise his powers, particularly those in relation to public inquiries, will also be welcome.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read "R Whelan", with a long horizontal flourish extending to the right.

Robert Whelan
Executive Director and CEO

ESL: COMMENTS ON DRAFT GUIDELINES ON PRICE EXPLOITATION

General comment

Throughout the Guidelines, “incepted” should be used rather than “commenced”, “issued” or “renewed” to clearly describe the time in which a policy and/or risk coverage period begins.

A5 Who do the Guidelines apply to in relation to price exploitation?

22. It should be made clear that this guideline does not apply to classes of policy which are listed in table 1 but for which ‘nil’ premium proportion is subject to ESL contribution.

B2 What is the appropriate level of analysis to determine price exploitation?

Guideline 1

It is important to note that pricing decisions are made at an overall portfolio level but implemented at the individual customer level. This will result in a range of premium changes. As a result, there will often be individual customers who will see a price change which is quite different from the average.

B3 The relevant components of a price?

30. As it’s assumed that the Monitor will take a risk-based approach to monitoring compliance, it would be appropriate to reword this paragraph as “The Monitor *may* seek information from the insurance companies on each of these elements of price in undertaking its monitoring role.”

31. The Insurance Council recommends that it be made clear that those companies that do not charge ESL on motor and home for NSW do not need to provide a statement to this effect to the customer.

33. It should be made clear that this paragraph only applies to policies or risks incepting after 30 June 2017.

B6 The criteria relevant to determining if an insurance price is ‘unreasonably high’?

50. In relation to the reference to “audited returns” in the last sentence, we would appreciate clarification whether the Monitor expects insurers to have an audited form completed which is different and separate to the Return of Premiums form that insurers currently provide to the NSW Department of Justice. If so, this would incur an additional compliance cost and would need to be factored in with the insurer’s external auditors.

51. (Third sentence) The acknowledgement is welcome that “The Monitor does not consider that over-collection in itself necessarily constitutes unreasonable pricing.”

Guideline 6:

The guideline should confirm that recovery of ESL contributions occurs at the Legal Entity level.

The Insurance Council submits that it is unnecessary to require an ‘enforceable undertaking’ in order to formalise agreement with the Monitor on the disposal of any total over-collection below threshold levels. This should only occur if there has been a breach of some sort. The Guidelines explicitly recognise that over-collection in itself is not to be price exploitation.

Guideline 7: It is welcome that the smoothing of collections over the 2015-16 and 2016-17 years is recognised and also that tapering is permissible.

Guideline 8:

In referring to elements within a premium component, the Insurance Council recommends that the Guideline should acknowledge that price naturally includes some allowance for profit margin.

B7 Assessing price exploitation in relation to a policy renewed after 30 June 2017

Guideline 10

This essentially provides that post-transition pricing in 2017/18 should be no greater than transition pricing for 2016/17 “unless there is a change *in policy coverage, risk rating or supply costs* that justify some other difference.” **(Emphasis added)**

The Insurance Council considers that the three risk factors referred to are too narrow. Examples of other relevant factors are claims experience, reinsurance costs, market conditions, exposure profile change (e.g. new premises with increased risk), portfolio results, and portfolio profitability.

The Insurance Council therefore suggests the following revised wording:

“ ... unless there is a change in factors such as policy coverage, risk rating, claims experience, market conditions, portfolio profitability or supply costs that justify some other difference.”

B9 Particular circumstances arising from the 30 June 2017 end-date

69. The reference to “perhaps some commercial policies where intermediaries are involved” should be strengthened to specifically acknowledge that delays in finalising policies incepted late in the 2016-17 financial year will be a larger issue for intermediated commercial policies.

71. The Insurance Council and its members question whether the following statement has a valid legal basis:

Third, where post 30 June 2017 adjustments are made on policies issued or renewed during the 2016-17 financial year leading to premium increases, the ESL end date means that the adjustment amount of premium will not be included in the DOJ Premium Return for 2016-17. Therefore, no contribution obligation attaches and, accordingly, no ESL amount should be charged to the policy holder. If any ESL is charged and collected, this should be treated as falling within the scope of Guideline 5.

Typically, whenever adjustments are made to existing policies, pricing will be re-calculated using the rates that were effective when the policy was incepted. This determines the amount of any premium return or additional premium payable. The Insurance Council is obtaining legal advice but we are not confident, without the policyholder’s consent, it is legal to use any other rates when performing this re-pricing apart from those that were effective when the policy was incepted.

The position taken is also contrary to that in para 43 of the draft Guidelines on False and Misleading Conduct:

43. The Monitor recognises that there may be limited and specific circumstances where documentation sent to policyholders after 30 June 2017 may validly identify an ESL amount other than zero. ...Such circumstances include:

- Post 30 June 2017 adjustment/endorsements on policies newly commenced or renewed prior to 1 July 2017; “

B10 Refunds of ESL on policies issued during 2016-17 and cancelled prior to 30 June 2017

Guideline 12:

The Insurance Council would appreciate clarification as to the meaning of “retail policies”. If the Corporations Act definition is used, some small business products would be caught.

ESL: COMMENTS ON DRAFT GUIDELINES ON FALSE AND MISLEADING CONDUCT

General comment

Throughout the Guidelines, “incepted” should be used rather than “commenced”, “issued” or “renewed” to clearly describe the time in which a policy and/or risk coverage period begins.

B4 Insurance companies’ communications regarding abolition of the ESL

Guideline 3

The Insurance Council would appreciate clarification that insurers do not have to provide information to consumers which duplicates the material in the recently gazetted sec 30 notice.

Guideline 4

This requires that policyholders requesting information on the removal of ESL “should be provided with information specific to their particular policy”.

This requirement will not be easy to satisfy. Most staff with customer contact are unable to see why a premium has changed and are unable to supply specific information that is peculiar to the customer’s policy. Furthermore, prices at an individual level change due to a large number of factors. Often some of these factors will cause the price to increase while other factors will cause the price to decrease; the net effect of this is what the customer will see.

This complexity makes it extremely difficult to provide customers with a simple, clear and accurate reason why a premium has changed. Providing a simple reason under these circumstances in fact risks misleading the customer. The Insurance Council submits that a generic explanation of premium changes should be acceptable at first contact with the ability to follow up with more detailed information if the consumer wants more.

B5 Assessing potential contraventions of section 15

43. This paragraph should recognise policies may cover multiple risks, with risks being added, changed or removed. Consequently, the inception date of these risk changes can be different from the policy inception date.

Guideline 5

It has been raised with the Insurance Council that for some insurers current systems are unable to show \$0 ESL. The Insurance Council suggests that rather than having to alter systems to show \$0, it should be satisfactory instead to include an additional sentence on the renewal confirming the ESL as \$0.

The guideline itself should refer to paragraph 43 rather than 42.

B6: Contraventions of section 15 in relation to a policy renewed after 30 June 2017

45. This requires policyholders to be given ‘the reason for any change’ in premiums from one year to the next. As discussed earlier, in nearly all cases there is no one reason for the price change, there will be numerous (often opposing) reasons why a premium has changed. This makes it technically difficult to come up with one simple concise reason why the premium

has changed without there being a risk of the policyholder misunderstanding the reason or misleading the policyholder altogether.

Furthermore, internal policy administration systems do not have the capability to provide each individual customer with a bespoke explanation for premium change. Consequently, generic explanations should be acceptable in written material.