FIRE SERVICES LEVY MONITOR

Level 23
121 Exhibition Street
Melbourne Victoria 3000

Hotline 1300 300 635
www.firelevymonitor.vic.gov.au

September 2014

UNDERTAKING TO

THE FIRE SERVICES LEVY MONITOR

Given under section 92 of the
Fire Services Levy Monitor Act 2012
By Allrisk Pty Ltd
ACN 135 012 921
C/- Westcourt Consulting
Level 1
45 Royal Street
EAST PERTH WA 6004

1.0 The Fire Services Levy Monitor

1.1 The Office of the Fire Services Levy Monitor ("the Monitor") was created under section 8 of the Fire Services Levy Monitor Act 2012 (Vic) ("the Act"). The Monitor is responsible for the administration of the Act.

1.2 The statutory functions and powers of the Monitor include:

1.2.1 to provide information, advice and guidance in relation to fire services levy reform;

1.2.2 the preparation and publication of guidelines generally, in relation to the operation and enforcement of the Act;

1.2.3 the preparation and publication of guidelines, about when the price of regulated contracts of insurance in respect of Victorian property ("regulated insurance contracts") may be regarded as being in contravention of section 26 of the Act (price exploitation);

1.2.4 monitoring insurance premiums for insurance against fire, received by or owing to an insurance company, including the fire services levy, GST and stamp duty components of those premiums for contraventions of the prohibition on the insurance industry from engaging in price exploitation and/or misleading or deceptive conduct; and

1.2.5 examining complaints, investigating and prosecuting breaches of the Act.

1.3 The Monitor has all the statutory powers necessary to perform his functions including the power, under section 92 of the Act, to accept a written Undertaking from any person in connection with any matter in relation to which the Monitor has a power or function under the Act.

Guidelines

1.4 On 18 April 2013, the Monitor issued draft "Guidelines on false representation or misleading and deceptive conduct in relation to fire services levy reform" under section 27 of the Act. The Monitor released final Guidelines on 31 May 2013 ("the false representation Guidelines").

1.5 Guideline 3 of the false representation Guidelines provides, relevantly:

> *"From 1 July 2013, any insurance company which charges a price for a regulated contract of insurance issued or renewed after 30 June 2013 that includes any dollar amount (other than zero) identified as 'fire services levy' may be considered by the Monitor to have contravened section 31 of the Act..."*

2.0 Allrisk Pty Ltd ACN 135 012 921

2.1 Allrisk Pty Ltd ACN 135 012 921 ("the company") is an Australian proprietary company limited by shares, which was registered on 20 January 2009 and has its registered office at Level 1, 45 Royal Street, East Perth WA 6004

2.2 The company issues or is involved in the issue, renewal and endorsement of regulated contracts of insurance including contract works construction insurance to consumers in metropolitan and regional Victoria.

2.3 The company does not undertake liability under policies of insurance. Policies processed by the company are underwritten by various third party insurance companies.

3.0 Background

3.1 Victoria's fire services are provided by the Metropolitan Fire and Emergency Services Board ("MFESB") and Country Fire Authority ("CFA"). Until 30 June 2013, those services were funded by statutory contributions from the insurance industry, metropolitan municipal councils and the State Government in proportions determined by section 77A of the *Country Fire Authority Act* 1958 and section 37 of the *Metropolitan Fire Brigade Act* 1958.

3.2 Under the insurance-based funding arrangements current to 30 June 2013, relevant insurance policyholders contributed to the costs of providing fire services for the area in which their property is located, i.e., the metropolitan district or the country area of Victoria.

3.3 The legislative changes abolishing the FSL took effect from 1 July 2013. After that date, FSL was not payable under or in respect of any regulated contract of insurance having effect after that date.

4.0 The Monitor's investigation

4.1 In or about mid August 2013, the Monitor received a consumer complaint regarding a demand for the payment by the company of FSL upon the endorsement of an existing regulated insurance contract, where the endorsement had effect after 1 July 2013.

4.2 On or about 27 August 2013, the Monitor commenced an investigation into potential contraventions by the company of section 31 of the Act, relating to misleading or deceptive conduct, associated with the circumstances of demand for the payment of FSL by the company after 1 July 2014.

4.3 As part of that investigation, the Monitor:

4.3.1 issued a statutory notice to the company requiring it to produce information and documents; and

4.3.2 examined the company's sole corporate officer—

regarding the potential contravention of section 31 of the Act.

4.4 The Monitor obtained policy information for Allrisk policyholders, current to 4 July 2014.

5.0 Allrisk Pty Ltd and collection of FSL after 1 July 2013

5.1 During the Monitor's investigation, he determined that:

5.1.1 between 18 June 2013 to 27 February 2014, the company processed around 37 transactions involving the endorsement of around 33 regulated insurance contracts, by extending the period of insurance during which such endorsements had effect beyond 1 July 2013;

5.1.2 in each of those transactions, the company requested payment for a FSL as a component of the total premium payable for the extension of the relevant policy;

5.1.3 the company subsequently collected a FSL in respect of the above transactions on around 35 occasions.

5.2 The FSL collected by the company as a component of premiums payable by the insured in respect of endorsements, effective on or after 1 July 2013, was not required by any insurance company to meet their statutory obligations to contribute to the funding of Victoria's fire services.

5.3 The abovementioned transactions involved the extensions of regulated insurance contracts incepted prior to the removal of the FSL. The company endorsed these existing contracts to extend the period of coverage. The company asserted that it operated under the belief that FSL was to be applied in these specific circumstances only and that it sought guidance from its insurance provider, who confirmed this understanding.

5.4 The Monitor determined that the company did not retain for its own benefit any payments of FSL received from policyholders, but remitted those funds to the underwriter of the policies in accordance with the company's standard practice pre-1 July 2013. The company subsequently provided refunds of all FSL charged to affected policyholders.

6.0 Acknowledgements

6.1 The company acknowledges that it may have inadvertently engaged in conduct contravening section 31 of the Act, by making representations about the existence and the amount of FSL as a component of premiums payable under regulated contracts of insurance the company offered to supply.

6.2 The company seeks to address this acknowledgement by offering this undertaking to the Monitor.

7.0 Undertaking

7.1 The company undertakes to the Monitor that, pursuant to section 92 of the Act, it will by no later than seven days after the date of this undertaking, provide a written declaration to the Monitor that the company has not collected FSL in respect of Victorian property after 4 July 2014.

7.2 The company undertakes to the Monitor that, pursuant to section 92 of the Act, to not charge or cause to be charged, or permit any other person to do so on its behalf, FSL in relation to new business, endorsements, extensions, or renewals of regulated insurance contracts in respect of Victorian property.

8.0 Commencement and duration of the Undertaking

8.1 This Undertaking, once signed on behalf of the company, commences on the day the Monitor accepts the Undertaking ("the commencement date").

8.2 Unless varied by agreement earlier or withdrawn by the Monitor, this Undertaking remains in effect for a period of three years from the commencement date.

9.0 Public Nature of Undertaking

9.1 The company acknowledges that, pursuant to section 92 of the Act, the Monitor will register this Undertaking in the Register of Undertakings on the Monitor's website and the Undertaking will be available for public inspection.

9.2 The company acknowledges that the Monitor and/or the Director of Consumer Affairs Victoria may, from time to time, refer publicly to this Undertaking.

9.3 The company acknowledges that by entering into this Undertaking with the Monitor, under section 92 of the Act, this Undertaking and the commitments it contains, in no way diminishes or extinguishes any rights and remedies available to any other person arising from the conduct identified in such Undertaking.

11. Execution

Signed on behalf of Allrisk Pty Ltd ACN 135 012 921

By: MARK ADAMS

Title: Director

In the presence of: Witness: .....

(PRINT NAME) WILLIAM HACKETT

Accepted by the Fire Services Levy Monitor pursuant to section 92 of the Act.

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Dr David Cousins AM
Deputy Fire Services Levy Monitor
DATED: ~~September~~ 2 October 2014.