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29 August 2014

UNDERTAKING TO
THE FIRE SERVICES LEVY MONITOR

Given under section 92 of the
Fire Services Levy Monitor Act 2012
By CGU Insurance Limited
ACN 004 478 371
NRMA Centre
Level 26, 388 George Street
SYDNEY NSW 2000

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 price exploitation in relation to the fire services levy" under section 27 of the Act. The Monitor released Final Guidelines on 31 May 2013 ("the price exploitation Guidelines").
- 1.5 Guideline 5 of the price exploitation Guidelines provides, relevantly:

"If an insurance company collects an amount of FSL in 2012-13 that is more than the amount it is required to contribute to the MFESB and/or the CFA for 2012-13, it will be expected to refund the amount of over-collection by direct refund to policyholders or, allowing for the practical difficulties of direct refunds in some circumstances, by other methods of disbursement."

- 1.6 On 3 March 2014, after extensive consultation with the insurance industry, the Monitor published more detailed Guidelines under the Act for the assistance of insurers in relation to the "Resolution of insurers' over-collection of fire services levy in 2012-13" ("the over-collection Guidelines").
- 1.7 On 16 May 2014, the Monitor published guidance notes for insurers: *Over-collection resolution verification*.

2.0 CGU Insurance Limited ACN 004 478 371

- 2.1 CGU Insurance Limited ACN 004 478 371 ("the company") is an Australian public company limited by shares, which was registered on 23 November 1998 and has its registered office at Level 26, 388 George Street, SYDNEY NSW 2000.
- 2.2 The company is an insurance company for the purposes of the Act.
- 2.3 The company issues regulated contracts of insurance including residential and commercial property, fire and business interruption insurance to consumers in metropolitan and regional Victoria.

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* ("the CFA Act") and section 37 of the *Metropolitan Fire Brigade Act 1958* ("the MFB Act").
- 3.2 The funding arrangements in both the MFB and CFA Acts, until 30 June 2013 identified above, involved the fire service providers giving the Victorian Government an estimate of expenditure they would likely incur during each financial year. The Minister responsible determined the total statutory contributions required and the insurance

industry's statutory contribution was distributed between individual insurance companies. The liability of individual insurance companies to contribute to the funding of Victoria's fire services was based on the insurance companies' annual gross premium income for the relevant classes of insurance.

- 3.3 To meet their requirements to contribute to the funding of Victoria's fire services, most insurance companies recovered their contribution costs by charging a fire services levy ("FSL") on policyholders as a component of their insurance premiums. Individual insurers estimated the amount of their annual liability and recovered that estimated amount from persons to whom they issued or renewed regulated insurance contracts in the relevant financial year. The exact liability amount for an insurer was not known until the end of the financial year, so insurers estimated their contribution liability and set FSL rates accordingly.
- 3.4 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 and the country area of Victoria.
- 3.5 The legislative changes affecting the FSL were to take effect from 1 July 2013 and during the 2012-13 financial year, most insurers introduced a program of 'tapering', which had the effect of initially increasing then reducing the rate of FSL paid on insurance premiums at different times during the 2012-13 financial year.

4.0 Over-collection of FSL

- 4.1 The Monitor sought, by November 2013, from insurance companies collecting FSL under regulated insurance contracts, independent verification of the amounts of FSL they actually collected during, or related to, the 2012-13 financial year.
- 4.2 In December 2013, The Monitor obtained from the MFESB and the CFA, details of the final contributions of FSL that each insurance company, issuing regulated insurance contracts, was required to make under the CFA Act and the MFB Act for the 2012-13 financial year.
- 4.3 On 17 January 2014, the Monitor wrote to all insurance companies, identified as having recovered FSL from persons insured under regulated insurance contracts, in excess of their total liability to contribute to the funding of Victoria's fire services. In that letter the Monitor requested that the insurance companies indicate how they proposed to deal with any over-collected FSL, having regard to Guideline 5 of the price exploitation Guidelines.

In particular, the Monitor sought information about the method or formula proposed to allocate refunds to persons from whom they over-collected FSL.

5.0 CGU and over-collection of FSL

- 5.1 During the company's 2012-13 financial year, the company:
- 5.1.1 issued or renewed approximately 118,423 regulated insurance contracts during the 2012-13 financial year in the CFA region; and
 - 5.1.2 collected \$36,304,537.00 in FSL from the persons insured under regulated insurance contracts issued by the company in the CFA region.
- 5.2 The company's total liability to contribute to the funding of Victoria's fire services under the CFA Act during the 2012-13 financial year, was \$34,837,361.83. The gross sum over-collected was \$1,467,175.17.
- 5.3 The Monitor's staff met with senior company representatives, on 4 February 2014, and confirmed the Monitor's position that he would adopt an industry wide approach to the resolution of issues associated with over-collection of FSL and issue specific guidelines under the Act for the assistance of the industry.
- 5.4 On 4 February 2014, the Monitor requested the company to refrain from taking action to address its over-collection of FSL from the CFA region, until the Monitor had completed consultations in progress with the insurance industry and finalised specific guidelines for the resolution of these issues.
- 5.5 On 7 February 2014, the company wrote to the Monitor indicating that, in light of the range of administrative and practical difficulties in providing FSL refunds to individual policyholders, it intended to address the over-collection of FSL from the CFA region by making a payment of \$1.183 million to the CFA.
- 5.6 Later on 7 February 2014, the Monitor requested that the company refrain from such action until it had considered the Monitor's specific guidelines. The company acknowledged receipt of the Monitor's request on 10 February 2014.
- 5.7 On 3 March 2014, the company issued a media release announcing that it had made a donation of \$1.184 million in surplus FSL collections to the CFA and that this payment *"...completes the insurer's role in supporting the Victoria state-government driven*



transition from an insurance based levy to a property –based levy to fund Victoria’s fire fighting services” (“the media release”).

- 5.8 Later on the same day, the Monitor issued the over-collection Guidelines, [See paragraph 1.6 above], and sent a copy of them to each of the insurance companies identified as having over-collected FSL under regulated insurance contracts during the year ending 30 June 2013.
- 5.9 The treatment by the company of its over-collection of FSL, identified by the media release, was inconsistent with one element of the Monitor’s recommended treatment of over-collected FSL proposed in the over-collection Guidelines, in that the over-collection amount was not returned to policyholders or organisations identified by the Monitor as representing the interests of consumers of insurance in Victoria, but was instead paid to the CFA.

6.0 The Monitor’s investigation

- 6.1 Prior to the publication of the over-collection Guidelines, the Monitor was inquiring into potential contraventions of the Act, particularly *price exploitation* (section 26) and *misleading or deceptive conduct* (section 31) by insurance companies, which had over-collected FSL during the year ending 30 June 2013.
- 6.2 On 4 March 2014, the Monitor commenced an investigation into potential contraventions by the company of sections 26 and 31 of the Act, associated with the circumstances of its over-collection of FSL during the year ending 30 June 2013 and the contents of the media release.
- 6.3 As part of that investigation, the Monitor:
- 6.3.1 issued 2 notices to the company requiring it to produce information and documents;
 - 6.3.2 examined 4 of the company’s officers and employees under oath or affirmation—
- regarding the potential contravention of sections 26 and 31, respectively of the Act.

7.0 Acknowledgements

- 7.1 The company acknowledges that its gross over-collection of FSL, during the 2012-2013 financial year from regulated insurance contracts in the CFA region was \$1,467,175.17.
- 7.2 The Monitor formed a view based on his investigations to date that between 19 December 2012 and 30 June 2013, the company may have contravened sections 26 and/or 31 of the Act, in respect of either or both of the circumstances identified in paragraph 6.2 above. The Monitor had not concluded its investigation at the time of entry into this Undertaking.
- 7.3 The company does not admit that it has contravened section 26 or section 31 of the Act and makes no admissions by the provision of this Undertaking. The company acknowledges the Monitor's concerns about its conduct, identified in paragraph 6.2 above, and its concerns about the company not following the administrative path set out by the Monitor. The company seeks to address those concerns by offering the Monitor this Undertaking.
- 7.4 The company acknowledges that that any over-collection of monies described as FSL, in excess of insurance companies' liability to contribute to the funding of Victoria's fire services during the 2012-13 financial year, should have been disbursed, where practicable, to those persons who contributed to such over-collection in proportion to the amount of FSL they paid or, where this was impracticable, to organisations representing the interests of Victorian insurance consumers.
- 7.5 The Monitor and the company acknowledge that there are circumstances where it is uncommercial or unfeasible to return small sums of money to its policyholders.
- 7.6 The Monitor acknowledges the company's claim that its average over-collection of FSL from persons insured under regulated insurance contracts, issued or renewed during the year ending 30 June 2013, in the CFA region, was approximately \$8.80.
- 7.7 The Monitor notes that the company made a payment of \$1.184 million to the CFA on or about 3 March 2012.
- 7.8 The Monitor accepts that the amount of the company's over-collection of FSL during the 2012-13 financial year be adjusted to take account of refunds of FSL made to 2012 -13 CFA region policyholders, who cancelled their policies after 30 June 2013 and before 1 March 2014, net of any FSL paid to the company by policyholders during the that period.

8.0 Undertaking

- 8.1 The company undertakes to the Monitor that, pursuant to section 92 of the Act, it will by:
- 8.1.1 5 September 2014, pay the sum of \$210,000 to the Consumer Action Law Centre ACN 120 056 484, an organisation identified by the Office of the Monitor as representing the interests of consumers of insurance in Victoria; and
 - 8.1.2 immediately remove from its website at www.cgu.com.au and all other websites it operates or otherwise controls:
 - 8.1.2.1 the media release; and
 - 8.1.2.1 all references to the media release.
- 8.2 The company undertakes to the Monitor, pursuant to section 92 of the Act, that it, its officers, employees and agents will, in any future public statement however made, published or broadcast, refrain from referring to the payment of \$1.184 million it made to the CFA, on or about 3 March 2014, as a donation.
- 8.3 The Company undertakes to the Monitor, pursuant to section 92 of the Act, that it will, by no later than the date of this Undertaking provide the Monitor with a written report, prepared by a person or persons independent of the company, which provides a reconciliation of the company's:
- 8.3.1 refunds of FSL and foregone instalments of FSL, under regulated contracts of insurance, cancelled between 1 July 2013 and 1 March 2014; and
 - 8.3.2 FSL received under regulated insurance contracts processed between 30 June 2013 and 1 March 2014,
- in relation to the CFA region.

9.0 Commencement and duration of the Undertaking

- 9.1 This Undertaking, once signed on behalf of the company, commences on the day the Monitor accepts the Undertaking ("the commencement date").
- 9.2 Unless varied by agreement earlier or withdrawn by the Monitor, this Undertaking remains in effect until 31 December 2014, or such earlier date as the company has complied with all its obligations set out in this Undertaking.

10.0 Public Nature of Undertaking


- 10.1 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.
- 10.2 The company acknowledges that the Monitor and/or the Director of Consumer Affairs Victoria may, from time to time, refer publicly to this Undertaking.
- 10.3 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 for and on behalf of CGU Insurance Limited ACN 004 478 371

By: 
STUART CHAPMAN
Title: CFO

In the presence of: Witness: 
(PRINT NAME) Catherine Spillane

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


Dr David Cousins AM
Deputy Fire Services Levy Monitor
DATED: 29 August 2014.