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16 January 2014

**UNDERTAKING TO**  
**THE FIRE SERVICES LEVY MONITOR**

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Given under section 92 of the  
*Fire Services Levy Monitor Act 2012*  
By **Insurance Manufacturers of Australia Pty Limited**  
**ACN 004 208 084**

## **1.0 The Fire Services Levy Monitor**

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- 1.1 The Office of the Fire Services Levy Monitor (“the Monitor”) was created under section 8 of *Fire Services Levy Monitor Act 2012*(Vic) (“the Act”). The Monitor is responsible for the administration of the Act.
- 1.2 The functions of the Monitor include 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 and the prohibition on the insurance industry from engaging in price exploitation, examining complaints and investigating alleged contraventions of the Act.
- 1.3 The Monitor has all the statutory powers necessary to perform his functions including the power 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, as a means of resolving contraventions of the Act.
- 1.4 On or about 31 May 2013, the Monitor issued:
  - 1.4.1 “Guidelines on price exploitation in relation to the fire services levy” (“the Guidelines on price exploitation”) under section 27 of the Act; and
  - 1.4.2 “Guidelines on false representation or misleading or deceptive conduct in relation to fire services levy reform” (“the Guidelines on misleading or deceptive conduct”) under section 6(2)(d) of the Act.
- 1.5 The prohibitions in the Act against price exploitation and misleading or deceptive conduct are the keystones of the regulatory regime, established under the Act, to ensure the effective abolition of the insurance based Fire Services Levy (“FSL”) and to ensure that the benefits of fire services levy reform are passed on fully to policyholders.

## **2.0 Insurance Manufacturers of Australia Pty Limited**

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- 2.1 Insurance Manufacturers of Australia Pty Limited ACN 004 208 084 (“IMA”) is an Australian proprietary company limited by shares, which was registered in

1936. The company has its registered office at Level 26, NRMA Centre, 388 George Street, Sydney NSW 2000.

- 2.2 IMA is a joint venture between NRMA Personal Lines Holdings Pty Limited ABN 98 088 394 398 (70% shareholding), a subsidiary of Insurance Australia Group Ltd ACN 090 739 923 and RACV Investment Holdings Pty Limited ABN 46 063 544 472 (30% shareholding), a subsidiary of The Royal Automobile Club of Victoria (RACV) Ltd ACN 004 060 833 (“RACV”)
- 2.3 IMA is an insurance company for the purposes of the Act and issues regulated contracts of insurance in respect of Victoria residential property under the RACV brand. These contracts include residential building or contents or a combination of residential building and contents insurance (“insurance contracts”).
- 2.4 IMA has a market share of approximately 7.8 per cent of property insurance premiums in Victoria. During the financial year ending June 2013, it issued approximately 441,000 insurance contracts, which included a building component.
- 2.5 Insurance contracts issued by IMA are distributed in Victoria by RACV Insurance Services Pty Ltd ACN 004 131 800.

### **3.0 Background**

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- 3.1 In or about early May 2013, the Monitor received and inquired into a number of complaints from IMA policyholders with a building component in their insurance policy. These complaints related to the extent of premiums payable on the renewal of their existing insurance contracts and their concerns that the removal of the FSL had not resulted in a reduction of the total premiums payable under these contracts.
- 3.2 In or about August 2013, the Monitor commenced a formal investigation of IMA under the Act. During the course of that investigation the Monitor issued and caused to be served, statutory notices:
  - 3.1.1 on IMA requiring it to provide information and documents;

3.1.2 on members of staff of IMA, and IAG to produce documents and give evidence before the Monitor or his nominee

about alleged contraventions of section 26 of the Act, dealing with price exploitation and/or section 31 of the Act, dealing with false representations or misleading or deceptive conduct about the effect, or likely effect, of the fire services levy reform.

## **4.0 Legislation**

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4.1 The Act came into effect on 19 December 2012. It provides for the establishment, functions and powers of the Monitor.

4.2 Section 26 of the Act prohibits price exploitation by insurance companies in relation to the abolition of the FSL by the *Fire Services Property Levy Act 2012*. A contravention of that section does not require intent to be established. Further, there is no limitation on the scope or impact of the price exploitation conduct necessary for a contravention of that section.

4.3 Section 31 of the Act prohibits any conduct in trade or commerce which falsely represents (whether expressly or impliedly) the effect, or likely effect, of the fire services levy reform or which misleads or deceives or is likely to mislead or deceive, any person about the effect or likely effect, of the fire services levy reform. “Fire services levy reform” is defined in section 3 of the Act to mean “the abolition of the fire services levy by the *Fire Services Property levy Act 2012*”.

4.4 An insurance company found to have contravened section 26 or 31 of the Act, may be liable:

4.4.1 to pay a pecuniary penalty of up to \$10,000,000 in the case of a body corporate or up to \$500,000 in the case of a natural person; and

4.4.2 for injunctive, compensatory, and publicity orders arising from civil proceedings commenced under Division 3 of Part 8 of the Act—

in addition to the civil remedies provided for in Divisions 2 and 3 of Part 8 of the Act.

## 5.0 The Monitor's Investigation

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5.1 During the course of the Monitor's investigation, he determined that IMA reduced the rate at which it recovered the FSL as a percentage of the base premium payable by persons renewing building or combined building and contents insurance contracts across both Victoria's Metropolitan fire district ("MFB") and its country fire area ("CFA") as set out below:

<b>MFB Region</b>	<b>CFA Region</b>
<ul style="list-style-type: none"> <li>• 14.5% on 9 January 2013;</li> <li>• 7.5% on 1 April 2013;</li> <li>• 0% on 27 May 2013;</li> </ul>	<ul style="list-style-type: none"> <li>20% on 9 January 2013</li> <li>10% on 1 April 2013</li> <li>0% on 27 May 2013.</li> </ul>

5.2 Further, the Monitor determined that IMA implemented a series of base premium price increases payable by persons renewing insurance contracts with a building component, during the same period:

- 11% on 9 January 2013 (risk factor changes with variable effect);
- 10% on 13 May 2013 ("across the board increase"); and
- 11% on 24 June 2013 ("across the board increase").

5.3 During the six months prior to the abolition of the FSL on 1 July 2013, IMA increased base premium prices on the building component of its insurance contracts such that on average there was no reduction in the building component of total premiums paid by persons renewing insurance contracts during this 6 month period despite the abolition of the FSL. Based on his investigations to date, the Monitor formed a view that the totality of the premium price increases implemented during the 6 months prior to its abolition was unreasonably high.

5.4 In particular, the 11% base premium price increase had an effect on an estimated 206,000 IMA insurance contracts, renewed between 24 June 2013 and 31 December 2013, totalling approximately \$ 9.3 million.

- 5.5 Further, on the basis of his investigations to date, the Monitor formed a view that IMA had not, in its policy documentation, adequately explained to its policyholders renewing the building component of their insurance contracts, either during this period or subsequently, the effect these base premium price increases had on total premiums such that they may have been misled or deceived as to the effect or likely effect of the fire services levy reform.

## **6.0 Acknowledgements**

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- 6.1 IMA acknowledges that the Monitor formed a view based on his investigations to date that between 9 January 2013 and 19 December 2013, it contravened section 26 of the Act, by issuing regulated contracts for building insurance in respect of Victorian property, on the basis of his view that the price of supplying those regulated contracts of insurance was unreasonably high because of the matters identified in paragraphs 5.3 and 5.4 above.
- 6.2 IMA does not consider it has breached the Act. Premium increases, including the increase from June 2013, were driven by the need to redress an underperforming portfolio, exacerbated by unprecedented increases in input costs (such as reinsurance and claims costs). IMA believes it has a responsibility to provide a financially sustainable building insurance product for all Victorians.
- 6.3 While IMA does not admit or accept that it has contravened sections 26 or 31 of the Act and makes no admissions by the provision of this Undertaking, it seeks to address the Monitor's concerns by offering this Undertaking.

## **7.0 Undertaking**

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- 7.1 IMA undertakes to the Monitor that:
- 7.1.1 It will, within 120 days of the commencement date, send a refund cheque to each person who renewed an insurance contract with a building component that fell due at any time during the period 24 June 2013 to 31 December 2013, inclusive ("the period"). The cheque will be for an amount equivalent to the 11 per cent increase in base premiums

payable under such insurance contract implemented by IMA on 24 June 2013 plus statutory charges relating to that increase;

7.1.2 It will inform each person to whom or to which a refund is paid under the arrangements in paragraph 7.1.1 above of the reasons for such refund, by notice sent to them with the refund at their usual contact address, in a form agreed with the Monitor;

7.1.3 It will engage, at its expense, an independent auditor to undertake an audit and prepare a written report (“audit report”) of the refund arrangements identified in paragraphs 7.1.1. and 7.1.2 above to confirm that each person renewing an insurance contract with a building component issued by IMA during the period was sent within the time provided for in paragraph 7.1.1 above:

7.1.3.1 a cheque for the amount equivalent to the 11 per cent increase in base premiums payable plus statutory charges relating to that increase under such insurance contract implemented by IMA on 24 June 2013;

7.1.3.2 a notice setting out the reasons for such refund, sent to them at their usual contact address, in the form agreed with the Monitor; and

7.1.4 it will, within 150 days of the commencement date and at its expense, deliver to the Monitor or his nominee, a copy of the audit report.

7.2 Further, IMA undertakes to the Monitor that it will include documentation, in a form agreed with the Monitor, with the renewal notice for an insurance contract with a building component issued during the period 15 March 2014 to 23 June 2014 , inclusive that discloses:

7.2.1 the amount of the base premium component payable under such contracts, in addition to all government and other charges;

7.2.2 the amount of base premium charged in the renewal notices in the preceding year; and

7.2.3 the change in the amounts identified under the operation of paragraphs 7.2.1.and 7.2.2.

7.3 IMA also undertakes to the Monitor that it will send to policyholders who renewed insurance contracts with a building component in the period 1 January 2014 to 14 March 2014 inclusive correspondence, in a form agreed with the Monitor, which discloses:

7.3.1 the amount of the base premium component paid under such contracts, in addition to all government and other charges;

7.3.2 the amount of base premium charged in the renewal notices in the preceding year; and

7.3.3 the change in the amounts identified under the operation of paragraphs 7.3.1.and 7.3.2.

## **8.0 Commencement and duration of the Undertaking**

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8.1 This Undertaking, once signed on behalf of IMA, commences on the day the Monitor accepts the Undertaking (“the commencement date”).

8.2 This Undertaking remains in effect until IMA has complied with all its obligations set out in this Undertaking, unless varied earlier or withdrawn by the Monitor, or the first anniversary of the commencement date, whichever event occurs last.

## **9.0 Public Nature of Undertaking**

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9.1 IMA acknowledges that:

9.1.1 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;

9.1.2 the Monitor and/or the Director of Consumer Affairs Victoria may, from time to time, publicly refer to this Undertaking;



9.1.3 this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged contraventions of section 26 and/or 31 of the Act identified above.

**10.0 EXECUTION**

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Signed on behalf of:

**Insurance Manufacturers of Australia Pty Limited (ACN 004 208 084)**

By: .....

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

(PRINT NAME) \_\_\_\_\_

Position: .....

Signed by: .....

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

(PRINT NAME) \_\_\_\_\_

Position: .....

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

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**Fire Services Levy Monitor**

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

(PRINT NAME) \_\_\_\_\_

Position: .....

DATED: [#] January 2014