MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HIKINA WHAKATUTUKI

Consultation Paper - Exposure draft Insurance Contracts Bill

24 February 2022

newzealand.govt.nz

We seek your views

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document and the draft Insurance Contracts Bill by 5pm on **Wednesday 4 May 2022**.

Your submission may respond to any or all of the issues or draft Bill. We also encourage your input on any other relevant issues. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please use the submission template provided at: ***https://www.mbie.govt.nz/have-your-say/consultation-on-exposure-draft-insurance-contracts-bill*** This will help us to collate submissions and ensure that your views are fully considered. Please also include your name and (if applicable) the name of your organisation in your submission. Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission:

- By sending your submission as a Microsoft Word document to ***insurancereview@mbie.govt.nz***.
- By mailing your submission to:

  Financial Markets Policy
  Building, Resources and Markets
  Ministry of Business, Innovation & Employment
  PO Box 1473
  Wellington 6140
  New Zealand

Please direct any questions that you have in relation to the submissions process to ***insurancereview@mbie.govt.nz***.

During the consultation period we will be available to meet with stakeholders. If you would like to discuss the contents of this document with us, please email: ***insurancereview@mbie.govt.nz***.

Use of information

The information provided in submissions will be used to inform the development of the Insurance Contracts Bill, decisions in relation to the outstanding policy matters, and advice to Ministers.

We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

Except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Submissions are also subject to the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

If your submission contains any confidential information, please indicate this on the front of the submission. Any confidential information should be clearly marked within the text. If you wish to provide a submission containing confidential information, please provide a separate version excluding the relevant information for publication on our website.

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List of Acronyms

Fair Trading Act 1986	FTA
Financial Markets Authority	FMA
Financial Markets Conduct Act 2013	FMC Act
Insurance Intermediaries Act 1994	IIA
Insurance Law Reform Act 1977	ILRA 1977
Insurance Law Reform Act 1985	ILRA 1985
Law Reform Act 1936	LRA
Life Insurance Act 1908	LIA
Marine Insurance Act 1908	MIA
Ministry of Business, Innovation and Employment	MBIE

1 Introduction

Purpose and context

This document seeks feedback on the draft Insurance Contracts Bill (the Bill) which will reform insurance contract law, and consolidate and modernise existing insurance legislation in New Zealand. The Bill includes:

- provisions that apply to insurance contracts generally, whether consumer (including home, vehicle, travel, health and life) or business; and
- provisions that apply to specific types of insurance contracts, eg Part 5 relating to contracts of life insurance.

Specifically, this document seeks your feedback on whether the drafting achieves the policy intent or could have any unintended consequences. In a few cases, policy questions remain and we are seeking feedback on these. However, for the most part, the policy of the new Bill has already been decided by the Government following previous consultation and the purpose of this consultation is to seek your feedback on the drafting.

Not legal advice

The information in this document is general information provided to help with reading the draft Bill, and is not legal advice. Please refer to the text of the Bill and seek legal advice if you wish to understand how the Bill would apply to specific circumstances.

About the review

The Government launched a review of insurance contract law in February 2018. The review's purpose is to ensure New Zealand's insurance contract law is facilitating insurance markets that work well and enable individuals and businesses to effectively protect themselves against risk. Problems have been identified with several aspects of the existing law, and both industry and consumer groups have been calling for reform for a number of years. The current review was preceded by a number of previous reviews, including Law Commission's 1998 report *Some Insurance Law Problems* and 2004 report *Life Insurance.*

A number of jurisdictions with similar laws have reformed them to reflect the changing nature of insurance and to provide more protection to consumers. This leaves the New Zealand regime out of step with what is occurring elsewhere.

The Ministry of Business, Innovation and Employment (MBIE) released an issues paper in May 2018 seeking submissions on the current review. An options paper was released in April 2019 seeking submissions on the proposed options. While submitters had different views on specific issues, there was widespread agreement that New Zealand's insurance contract law needed updating.

More information about the review can be found at ***https://www.mbie.govt.nz/business-and-employment/business/financial-markets-regulation/insurance-contract-law-review/.***

The current law

New Zealand's law relating to insurance contracts is currently spread across a mix of case law and various pieces of legislation. This reflects the incremental development of insurance contract law in New Zealand.

New Zealand's existing insurance contract-related legislation includes:

a. the Marine Insurance Act 1908

b. the Life Insurance Act 1908

c. Part 3 of the Law Reform Act 1936

d. the Insurance Law Reform Act 1977

e. the Insurance Law Reform Act 1985

f. the Insurance Intermediaries Act 1994.

A number of these Acts were made to address specific issues and did not result from a comprehensive review of New Zealand's insurance contract law.

A new Insurance Contracts Bill

In November 2019, the Government agreed to a number of changes to New Zealand's insurance contract law and these are incorporated into the draft Bill. The Cabinet paper setting out the Government's decisions can be found at ***https://www.mbie.govt.nz/dmsdocument/7478-insurance-contract-law-reforms-proactiverelease-pdf.***

The key changes agreed to are outlined below.

Policyholders' duty of disclosure

Currently, policyholders (whether consumer or business) must, before entering into an insurance contract, disclose to the insurer all material information that would influence the judgment of a prudent insurer in setting the premium or deciding whether to insure the risk. However, consumer policyholders may not know what an insurer might consider material, and the consequences for failing to disclose information can be harsh.

The Government agreed to reform this duty to instead require consumers to "take reasonable care not to make a misrepresentation" (effectively to answer any questions asked by the insurer truthfully and accurately). This approach has been implemented in the UK and was also recently adopted in Australia. The Government also agreed to requiring insurers to respond proportionately to any non-disclosure by consumer or business policyholders.

Unfair contract terms

The Fair Trading Act 1986 prohibits unfair terms in standard form consumer contracts. That Act currently states that certain insurance terms cannot be declared unfair. Consumer groups have been concerned for some time that the current insurance exceptions mean that inferior protections are available compared to contracts for other goods or services.

The Government agreed to remove the current insurance exceptions and tailor to insurance the exceptions which apply to all consumer contracts (i.e. exceptions for terms that define the main subject matter and upfront price of the contract). The Government agreed to consult on two options for how the generic exceptions apply to insurance.

Assisting consumer understanding and decision-making in relation to insurance policies

Consumers often do not fully understand the terms of their insurance policies. This includes important features such as extent of cover and exclusions which may apply.

To help consumers better understand and choose between insurance policies, the Government has agreed to require that consumer insurance policies be presented and worded clearly. The Government has also agreed to enable regulations to prescribe specific presentation requirements and specific information that insurers must make publicly available

Other matters

The Government also agreed to a number of other changes of a more technical nature, and to consolidate and modernise New Zealand's insurance legislation.

Next steps

We seek your feedback on the draft Bill by **Wednesday 4 May 2022**. The purpose of this consultation is to seek your feedback on whether the proposed drafting achieves the policy intent and is workable in practice. There may be some instances where the draft provisions may not adequately account for the variety of situations which occur in practice across the insurance industry. Where that is the case, we encourage feedback on suggested alternatives.

After the consultation period closes, MBIE will analyse the feedback received and consider any changes that may be required to the Bill. Once the drafting of the Bill is complete it will be introduced to Parliament and the normal Parliamentary process for the passage of legislation will begin. This will include a select committee process which will provide a further opportunity for public submissions on the Bill.

2 Commentary on the draft Insurance Contracts Bill

This section outlines and provides background information on core provisions in the Bill.

There are consultation questions throughout for you to respond to. In a few cases, policy questions remain and we have included specific questions to seek feedback on these. However, for the most part, the design of the new regime has already been decided by the Government following previous consultation, and the purpose of this consultation is to seek your feedback on the drafting. The table below summarises the contents of each part of the Bill.

Annex 1 sets out how each provision of the existing insurance legislation has been dealt with in the Bill.

Part of the Bill	What does it do?
Part 1	Part 1 of the Bill contains preliminary provisions. This includes the purpose and interpretation sections.

Part 2	Part 2 of the Bill sets out:
	- amended **disclosure duties** for consumer and non-consumer policyholders, along with related provisions including:
	  ○ insurers' duties to inform policyholders of certain matters
	  ○ duties on specified intermediaries to pass on information to insurers
	- the duty of utmost good faith.

Part 3	Part 3 of the Bill carries over and updates provisions from **Part 3 of the Law Reform Act 1936, Insurance Law Reform Act 1977** and **Insurance Law Reform Act 1985**. It includes changes relating to: - time limits for making claims under claims-made liability policies - increased risk exclusions - third party claims for liability insurance money.
Part 4	Part 4 of the Bill carries over and updates the provisions of the **Insurance Intermediaries Act 1994**.
Part 5	Part 5 of the Bill carries over and updates provisions of the **Life Insurance Act 1908**. Some provisions have not been carried over as they are considered to be no longer needed.
Part 6	Part 6 contains miscellaneous provisions and regulation-making powers.
Part 7	Part 7 of the Bill: - amends the Fair Trading Act 1908 in relation to **unfair contract terms** - amends the Financial Markets Conduct Act 2013 in relation to **presentation requirements for consumer insurance contracts** - repeals certain redundant provisions of the **Marine Insurance Act 1908**

Part of the Bill	What does it do?
Schedules 1 and 4	Schedules 1 and 4 contain certain transitional provisions.
Schedule 2	Schedule 2 sets out insurers' remedies where policyholders have breached disclosure duties.
Schedule 3	Schedule 3 sets out how third party claimants may request information about insurance arrangements.
Schedule 5	Schedule 4 contains amendments to other Acts, including to the Financial Markets Authority Act 2011, to reflect the Financial Markets Authority taking responsibility for monitoring and enforcing aspects of the Bill.

Part 1 of the Bill contains the preliminary provisions

Part 1 of the Bill contains the preliminary provisions, including purpose, interpretation and conflict of laws provisions.

The Bill provides that the purpose of the new Insurance Contracts Act is to reform and modernise the law relating to contracts of insurance to:

- promote the confident and informed participation of insurers, policyholders, and other participants in the New Zealand insurance market; and
- ensure that the provisions included in contracts of insurance, and the practices of insurers in relation to those contracts, operate fairly.

Part 1 also defines a "contract of insurance" to which the Bill applies to. The definition is consistent with that in the Insurance (Prudential Supervision) Act 2010, being a contract involving the transference of risk and under which a person (the insurer) agrees, in return for a premium, to pay to another person (the policyholder) a sum of money on the happening of uncertain events. The Bill applies to a range of insurance contracts, whether consumer (including home, vehicle, travel, health and life), business, or contracts of reinsurance. There are exclusions for contracts relating to matters such as derivatives transactions, gambling and product guarantees.

The interpretation provisions cross-refer to a number of new key terms used in Part 2 of the Bill. Those terms are discussed further below in the commentary on Part 2. Please refer to the Bill for definitions of other terms, which are based on the Insurance (Prudential Supervision) Act 2010 or the existing insurance Acts.

1	*Do you have any feedback on Part 1 of the Bill?*

Part 2 of the Bill contains the disclosure duties, and Schedule 2 contains the remedies

This part of the Bill reforms the current duty of disclosure placed on policyholders that enter into insurance contracts. The Government has already agreed to reform aspects of the policyholders' duty of disclosure as follows:

- to change policyholders' duty to disclose material information so that
    - the duty for consumers is to take reasonable care not to make a misrepresentation
    - the duty for non-consumers is to make a fair presentation of risk
- to change the remedies for non-disclosure and misrepresentation for both consumers and non-consumers to provide proportionate consequences (based on how the insurer would have responded to the information when considering entering into or varying the contract of insurance, and whether the policyholders intended to mislead or deceive the insurer or were reckless)
- to require insurers to inform policyholders of the disclosure duties and the consequences before they enter the contract
- that if an insurer seeks permission to access medical or other third party records about a consumer, the insurer must inform consumers of the information the insurer will likely access.

Part 2 of the Bill gives effect to these decisions along with other clauses that provide relevant definitions, consider the role of specified intermediaries in relation to disclosure, and set out how the duty applies to group insurance contracts. Remedies for breach of duty and assumed knowledge provisions are also contained in this part and Schedule 2.

Duty for consumers

Currently, before a contract of insurance is entered into or renewed, a policyholder has to disclose to the insurer all material information that would influence the judgment of the insurer, regardless of whether the insurer explicitly asked for the information or not. Material information can include any information that would influence how the insurer sets the premium or decides whether to insure the risk.

Clause 14 of the Bill replaces this duty and instead requires policyholders under consumer insurance contracts to "take reasonable care not to make a misrepresentation to the insurer" having regard to all the relevant circumstances. This effectively means a consumer must answer any questions asked by the insurer (or its specified intermediaries) truthfully and accurately.

"**Consumer insurance contract**" is defined in clause 10 to be a contract or proposed contract of insurance entered into by a policyholder wholly or predominantly for personal, domestic, or household purposes.[1] Clauses 11-12 include rules to help determine whether a contract is a

[1] The definition of consumer insurance contract in Part 2 of the draft Bill differs in form to the definition in the Financial Markets (Conduct of Institutions) Amendment Bill (the latter is also used in Part 7 of the draft Bill as Part 7 also amends the Financial Markets Conduct Act 2013). The difference is because group insurance arrangements (see below on page 13) that cover consumers need to be dealt with separately for the purpose of Part 2 of this Bill so are not included in the definition of consumer insurance contract in Part 2 of the Bill, whereas they can be treated the same as other consumer insurance contracts for the purpose of the Conduct of Institutions Bill.

consumer insurance contract. Private home, motor vehicle, life, health and personal travel insurance policies are likely to be "consumer insurance contracts" under the Bill.

Clauses 15 to 19 set out the matters that may be taken into account when determining if a policyholder has taken reasonable care not to make a misrepresentation. The matters in the Bill are based on the provisions of the UK's Consumer Insurance (Disclosure and Representations) Act 2012 for consumers, and are consistent with the new duty introduced in Australia under the Financial Sector Reform (Hayne Royal Commission Response) Act 2020.

The matters that may be taken into account include the type of insurance product, how clear and specific any questions asked by the insurer of the policyholder were, how clearly the insurer communicated to the policyholder the importance of answering the questions, and whether the consumer received advice from a financial advice provider, lawyer or not-for-profit organisation in relation to the information they disclosed to the insurer.[2]

This approach means that it would be harder for an insurer to suggest a consumer breached the duty to take reasonable care if the insurer asked an open-ended question such as "Please tell us about your health history."[3]

The list does not limit the relevant circumstances that can be taken into consideration when determining if a policyholder has taken reasonable care. In addition, it is necessary to have regard to any particular characteristics or circumstances of the policyholder that it was reasonable for the insurer to be aware of. If a policyholder merely fails to answer or gives an incomplete or irrelevant answer to a question it cannot be considered a misrepresentation. However, any fraudulent misrepresentation is a breach of the duty.

Clause 20 of the Bill provides that a representation to a specified intermediary is treated as having been made to the insurer. See further discussion in relation to this on page 19.

Group Insurance

Subpart 2 of Part 2 applies to 'group insurance' which occurs when an insurance contract covers a group of people, for example all employees of an organisation. The contract will be entered into by one person, to provide cover for others. Under this part of the Bill, if the person to whom the cover is provided gives information directly or indirectly to the insurer they are also subject to the duty to take reasonable care not to make a misrepresentation to the insurer. A breach of duty by one person does not affect the contract in so far as it relates to the other parties and will only have consequences for the cover of that member and not for the policy as a whole.

2	*Do you have any feedback on the Bill's provisions in relation to the duty for consumers to take reasonable care not to make a misrepresentation, including the matters that may be taken into account to determine whether a consumer policyholder has taken reasonable care not to make a misrepresentation?*

[2] The UK and Australia legislation refer to "whether or not an agent was acting for the [consumer/insured]". In the UK and Australia, whether a third party who assisted the policyholder is an agent of the policyholder is relevant for determining whether information given to the third party is deemed to be given to the insurer. As Part 2 does not follow that approach, clause 15 does not use the concept of an "agent".

[3] See clause 15(1)(c) of the Bill.

Remedies for breach of consumer duty

The Government has agreed that where a policyholder has breached the duty to take reasonable care, the insurer will have proportionate remedies available based on how the insurer would have responded to the information at the time and whether the policyholder's breach was intentional or reckless.

Subpart 3 of Part 2 of the Bill provides in relation to consumer policyholders that:

- An insurer has a remedy if the policyholder made a misrepresentation in breach of the policyholder's duty and the insurer would not have entered into the contract or would have entered the contract on different terms absent the misrepresentation (these misrepresentations are referred to as 'qualifying misrepresentations')
- The insurer's remedy differs based on whether the qualifying misrepresentation
    - was deliberate or reckless; or
    - was neither deliberate or reckless[4]

The table below sets out the available remedies for qualifying misrepresentations as set out in Schedule 2. The remedies seek to put both parties back in the position they would have been in had insurers had the correct relevant information at the start, and create the right disincentives against policyholders deliberately or recklessly withholding information.

New contracts: Insurer remedies for misrepresentation – non-life policy

		Contract	Claims	Premium
1	Qualifying misrepresentations – deliberate or reckless	Avoid the contract	Refuse all claims	Not return any premium
2	Qualifying misrepresentations – not deliberate nor reckless – but without it insurer would not have entered contract on any terms	Avoid the contract	Refuse all claims	Return the premiums
3	Qualifying misrepresentations – not deliberate nor reckless – but insurer would have entered contract on different terms	Contract treated as entered into on altered terms	Reduce the amount paid on the claim by the difference in the premium that would have been charged under the contract or series of contracts	

Note that unlike the UK position, clause 5 of Schedule 2 (scenario 3 above) provides for the amount payable on a claim to be reduced by the amount of the difference in the premium that would have been charged eg if the insurer would have charged $100 instead of $70 in premiums, the claim is reduced by $30. The UK legislation provides for the claim to be reduced proportionately based on the premium actually paid eg if the insurer would have charged $100 instead of $70 in premiums, the

[4] This second category would capture when the consumer policyholder was careless in making a misrepresentation (there would only be a qualifying misrepresentation if the policyholder did not take "reasonable care"), but was not deliberate or reckless (as defined in clause 28 of the Bill).

claim is reduced by 30%. We consider that the proposed approach in clause 5 of Schedule 2 more equitably puts the parties back in the position they would have been absent the misrepresentation, and we are interested in feedback on this approach.

Clause 5 of Schedule 2 also provides that if the contract was part of a series of contracts (eg house insurance that is renewed each year), the difference in premium under scenario 3 in the table above relates to each of those contracts for which the premium would be different because of the misrepresentation.

Life policies

Clauses 2(2) and 4(2) of Schedule 2 contain special provisions in relation to life policies, which are based on the position under section 4 of the Insurance Law Reform Act 1977 (ILRA 1977). A life policy cannot be avoided for a qualifying misrepresentation unless the representation was made either fraudulently or, if not fraudulently, within three years before the date on which the policy is sought to be avoided, or the death of the life insured. We understand these provisions reflected industry practice.

We are interested in feedback as to whether it is still necessary to include legislative provisions on this matter, and if so, whether the Bill should provide for any other remedies for the insurer in relation to misrepresentations that are not fraudulent and more than three years ago eg whether the insurer should be entitled to vary the terms of the contract or reduce the amount paid on a claim. Special rules relating to misstatement of age in clause 7 of the ILRA 1977 have not been carried over as it is unclear to us why misstatements of age should be treated differently.

Variations: Insurer remedies for misrepresentation

The table below sets out available remedies for qualifying misrepresentations made prior to the variation of a contract.

		Contract	Claims	Premium
1	Qualifying misrepresentation – deliberate or reckless	Treat contract as terminated from date of variation	Refuse all claims made after date of variation	Not return any premium paid
2	Qualifying misrepresentation – not deliberate nor reckless – total premium increased or not changed[5] – insurer would not have agreed to variation on any terms without misrepresentation	Treat the contract as if the variation was never made		Return any extra premiums paid
3	Same as 2 but insurer would have agreed to variation on different terms	Variation to be treated as if it had been entered into on those different terms	Reduce the amount paid on the claim by the difference in the premium that would have been charged under the contract[6]	

[5] See clauses 11-14 of Schedule 2 in relation to situations where the total premium decreases as a result of the variation.

[6] Clause 14 of Schedule 2 is intended to deal with the scenario in which the varied contract is still in force. If there is a series of contracts and a contract is renewed after a variation has been made (eg house insurance

3	*Do you have any feedback on the Bill's provisions in relation to remedies for breach of the consumer duty?*
4	*Do you have any feedback on the Bill's provisions on remedies for breach of the consumer duty in relation to life insurance policies where the misrepresentation was not fraudulent and more than three years ago?*

Duty for non-consumer insurance contracts

Clause 31 replaces the disclosure duty for a policyholder under a non-consumer insurance contract with a duty to make a 'fair presentation of the risk'. This is modelled on the UK's duty of disclosure for businesses in its Insurance Act 2015. A non-consumer contract is any contract of insurance that is not a consumer insurance contract.

A fair presentation is one that:

- makes the required disclosure of every 'material circumstance' which the policyholder knows or ought to know
- failing that, make disclosure of sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purposes of revealing those material circumstances
- makes such disclosure in a reasonably clear and accessible manner
- ensures that every material representation of fact is 'substantially correct' and every material representation of expectation or belief is made in good faith.

Clauses 34 and 35 of the Bill provide a description of what is a 'material' circumstance or representation and what is 'substantially correct'. A material circumstance is one which would influence the judgment of a prudent insurer in determining whether to take the risk, and on what terms. For example, special or unusual facts relating to the risk, any particular concerns that led the policyholder to seek insurance to cover the risk, or anything that those concerned with the class of insurance in question would understand to be something that should be dealt with in a fair presentation of risks. A material representation is substantially correct if a prudent insurer would not consider the difference between what is represented and what is actually correct to be material.

There is no obligation on the policyholder to disclose a circumstance if it:

- diminishes the risk
- is known to the insurer
- ought to be known by the insurer
- is information which is waived by the insurer
- is something that the insurer is presumed to know.

policy varied in 2019 to cover new extension, and the contract is renewed twice after the variation), and the misrepresentation comes to light after the renewal, the intention is that clause 5 of Schedule 2 deals with the remedies in that scenario.

Clauses 39-49 of the Bill relate to what different parties know or ought to know for the purposes of the non-consumer disclosure duty provisions, based on the UK provisions. For example, clause 41 provides that what a policyholder (that is not an individual) knows includes what its senior management and those responsible for the policyholder's insurance know. Clause 43 provides that a policyholder ought to know what should reasonably have been revealed by a reasonable search of information available to the policyholder. Clause 48 provides that individuals have knowledge of something when they have deliberately failed to make an enquiry in case it results in confirmation of a suspicion (ie they are wilfully blind).

5	*Do you have any feedback on the Bill's provisions in relation to the disclosure duty for non-consumers?*

Remedies for breach of duty of fair presentation

Similar to the consumer duty, Subpart 5 of Part 2 of the Bill provides in relation to non-consumer policyholders that:

- An insurer has a remedy if the policyholder breaches the duty to make a fair presentation of risk and the insurer would not have entered into the contract or would have entered the contract on different terms absent the breach (a 'qualifying breach')
- The insurer's remedy differs based on whether the qualifying breach
    - was deliberate or reckless; or
    - was neither deliberate or reckless

Like 'qualifying misrepresentations' the remedies available to an insurer are set out in Schedule 2, and are the same as described in the earlier tables relating to remedies for breach of the consumer duty.

6	*Do you have any feedback on the Bill's provisions in relation to remedies for breach of the non-consumer duty?*

Insurer's duties

The Government has agreed:

- to require insurers to inform policyholders of the disclosure duty and its consequences before they enter the contract
- that if an insurer seeks permission to access medical or other third party records about a consumer, the insurer must inform consumers of the information the insurer will likely access.

Subpart 6 of Part 2 of the Bill gives effect to the Government's decisions. The insurer is required to clearly inform the policyholder of the above matters, orally or in writing.

The requirement to inform policyholders of the disclosure duty applies also to variations of insurance contracts if the variation provides additional insurance cover or will increased the sum insured under the contract, and if the variation is not automatic (the variation is not automatic if it is expressly agreed between the insurer and the policyholder before the contract is varied).

The requirement to inform consumer policyholders about access to third party information also applies where a contract is varied and the policyholder has not previously given consent to the insurer to access the third party information.

Where an insurer breaches these duties, the insurer loses its remedies for qualifying misrepresentations or breaches under Schedule 2, unless:

- a consumer policyholder knew the misrepresentation was untrue or misleading; or
- a non-consumer policyholder knew the breach was in breach of their duty of fair presentation.

Failure by the insurer to meet these duties may also give rise to civil liability under the Financial Markets Conduct Act 2013 (FMC Act) as these duties are considered to be market services licensee obligations. This includes civil pecuniary penalties of up to $600,000, which is consistent with maximum penalties for failures to meet other disclosure duties under that Act.

7	*Do you have any feedback on the provisions in relation to the insurer's duties to inform policyholders of the disclosure duties, and insurer access to third party information, including how the duties apply for variations of insurance contracts?*
8	*Do you have any feedback on the consequences in the Bill if an insurer breaches duties to inform policyholders of the disclosure duties, and insurer access to third party information?*

Duty of utmost good faith

The Government has also agreed that the duty of utmost good faith will be codified in legislation and will apply to both parties in an insurance contract. Clauses 59 and 60 of the Bill give effect to this decision.

Under the common law, both parties to an insurance contract must act with the utmost good faith. The requirement is a fundamental principle of insurance contract law. It applies when a contract is formed as well as during and after a claim is lodged.

Under the Bill, the duty is codified to reflect the common law position in New Zealand but leaves the courts flexibility to develop the law further.[7] There are no pecuniary penalties for breach of the duty.

Clause 60 of the Bill clarifies that the duty of utmost good faith (upon which the current duty of disclosure is based on) does not impose a disclosure duty on the policyholder other than the duty to take reasonable care not to make a misrepresentation (consumers) or the duty to make a fair presentation of risk (non-consumers).

9	*Do you have any feedback on how the Bill codifies the duty of utmost good faith?*

Miscellaneous provisions

The miscellaneous provisions in clauses 61-62 cover various matters. The Bill abolishes "basis of the contract" clauses, which have the effect of converting pre-contractual information supplied to

[7] We note that the courts' interpretation of the common law duty of utmost good faith has already evolved since the Government made decisions on changes to insurance contract law in November 2019. See *Southern Response Earthquake Services Ltd v Dodds* [2020] NZCA 395 and *Taylor v Asteron Life Ltd* [2020] NZCA 354.

insurers into warranties. It also voids any terms of any contract that would put a policyholder in a worse position in relation to disclosure and representations to the insurer and remedies for qualifying misrepresentations than they would be in under the Bill.

Specified intermediaries passing on information

Under section 10(2) and (3) of the ILRA 1977, insurers are deemed to know information known to "representatives of insurers", which is defined to include any person entitled to commission for arranging insurance. This could include a broker. If a representative fails to pass onto the insurer information about the policyholder (eg that the policyholder had a pre-existing condition), the insurer is still deemed to know that information. Clauses 20 and 45 of the Bill continue to reflect this concept.

In response to submissions that it is not always appropriate for the insurer to bear the consequences of a failure by a representative to pass on information, the Government agreed that a legislative requirement would be introduced for representatives to pass onto the insurer all relevant material information known to the representative. This means the insurer can recover losses or damages from the representative if the representative fails to pass on information.

Clauses 63 to 64 give effect to the Government's agreement:

- Clause 63 requires specified intermediaries to take all reasonable steps to pass onto the insurer all material representations a policyholder made to the intermediary in relation to a consumer insurance contract, unless the intermediary believes on reasonable grounds a representation to be a misrepresentation. A materiality element has been included here so that the intermediary is not obliged to pass on an unrelated representation that the policyholder may have made during the course of discussions with the intermediary.
- For a non-consumer contract, clause 64 provides the intermediary must take all reasonable steps to disclose to the insurer every material circumstance known to the intermediary.

The term "specified intermediary" has been adopted instead of the "representative of insurer" terminology in section 10 of the ILRA 1977 to better reflect that the intermediary may be an agent of the policyholder. We acknowledge that it is not ideal that the Bill has separate concepts of "specified intermediary", "insurance intermediary" and "broker", on top of the concepts of "intermediary" in the Financial Markets (Conduct of Institutions) Amendment Bill, as well as common law "agents". However, this appears unavoidable as all these concepts capture different groups of people.

We welcome feedback on the scope of representations or information that the specified intermediary is required to pass on under clauses 63 and 64. We are interested to hear what changes may need to be made to reflect best practice, including where an intermediary believes the policyholder to be making a *mis*representation. For example, should specified intermediaries be *prohibited* from passing on matters that the intermediary believes to be misrepresentations, rather than being *not required* to pass on those matters as currently set out in clause 63(3)?

We are not aware of any similar models overseas to draw on in this area. In the UK and Australia, the insurer is deemed to know information known to the intermediary only if the intermediary is an agent of the insurer.

The objectives of clauses 20 and 45 of the Bill (which carry over sections 10(2) and (3) of the ILRA 1977) and clauses 63-64 are that:

- in the event a specified intermediary fails to pass on material information to the insurer:
    - protection for policyholders is maintained so that they do not bear the loss

    - the insurer has an avenue of redress against a specified intermediary

- obligations placed on specified intermediaries are not unreasonable.

However, it may be difficult to appropriately define the scope of representations or information that the specified intermediary is required to pass on under clauses 63 and 64 of the Bill and achieve the right balance between the objectives. We therefore also welcome suggested alternative approaches to how to achieve the objectives sought.

10	*Do you have any feedback on the Bill's provisions relating to information provided by a policyholder to a specified intermediary?*
11	*Do you have any other feedback on the drafting of Part 2 of the Bill?*

Part 3 of the Bill relates to the terms of insurance contracts

As discussed further below, Part 3 gives effect to the changes the Government agreed to in relation to:

- time limits for making claims under claims-made liability policies (section 9 of the ILRA 1977)
- insurers' ability to rely on increased risk exclusions (section 11 of the ILRA 1977)
- third party claims for liability insurance money (sections 9 and 9A of the LRA 1936)

It also carries over and updates other provisions from the ILRA 1977 and ILRA 1985, as outlined at the end of this part.

Time limits for making claims under claims-made liability policies

Section 9 of the ILRA 1977 currently provides that insurers cannot decline a claim on the basis that the policyholder did not notify the claim to the insurer within time limits set out in the policy, unless the insurer has suffered prejudice. Clauses 68 and 70 of the Bill carry forward section 9 of the ILRA 1977.

There is an exception however. While the position in section 9 of the ILRA 1977 remains appropriate for many types of insurance policies, the Government has agreed that "claims-made policies" should be treated differently. A claims-made policy provides cover to the policyholder for third party claims against a policyholder where the third party claim is made during the policy term. Professional indemnity policies are typically claims-made policies. Some claims-made policies contain an extension clause, so that cover is also provided where the policyholder notified the insurer during the policy term of a potential third party claim.

The Government agreed that an insurer under a claims-made policy can decline a claim if the policyholder notifies the insurer of a third party claim or a potential third party claim after a defined period after the end of a policy term. This reflects that claims-made policies were intended to allow insurers to estimate risks with greater accuracy so that they know at the end of the policy term what risks they are exposed to. Clause 69 of the Bill gives effect to the Government's decision and sets out the position in relation to claims-made policies.

Under clause 69, it is proposed that an insurer can decline a claim under a claims-made policy if:

- the policyholder did not notify the insurer of the relevant claim or circumstances that may give rise to the claim before 60 days after the end of the policy term; and
- the insurer clearly informed the policyholder in writing no later than 14 days after the end of the policy term of the effect of failing to notify the insurer of the claim or circumstances before the end of the 60 day period.

The 60 days period is intended to allow policyholders who become aware of a claim (or circumstances that might give rise to a claim) close to the end of their policy term to have an extended (but not indefinite) period to establish the relevant facts and make a notification. We are interested in feedback about whether a 60 day period is appropriate and the proposed insurer notification requirements in clause 69.[8]

[8] A 28 days period had been proposed in Australia. See exposure draft Insurance Contracts Amendment Bill 2007. However, the proposal was abandoned because the way that liability insurance policies were offered in Australia meant that the above issues in relation to section 9 of the ILRA 1977 are not as much of an issue in Australia.

12	*For claims-made policies, do you consider that 60 days after the end of the policy term is an appropriate period for allowing the policyholder to notify relevant claims or circumstances that might give rise to a claim?*
13	*Do you consider that insurers should be required to notify policyholders in writing no later than 14 days after the end of the policy term of the effect of failing to notify a claim or circumstances that might give rise to a claim before the end of the 60 day period?*
14	*Do you have any other comments on clause 69 of the Bill (Time limits for making claims under claims-made liability policies)?*

Insurers' ability to rely on increased risk exclusions

Section 11 of the ILRA 1977 provides that:

- if a policy exclusion relevant to a claim was inserted because of increased risk of loss occurring in the excluded circumstances (an "increased risk exclusion");
- but the exclusion did not cause or contribute to the loss subject to a claim,

then the insurer must accept a claim. For example, a policy excludes cover if the insured vehicle is driven without a current Warrant of Fitness, but lack of a warrant did not contribute to loss because vehicle was hit while stationary at a stop light. Clause 71(1) and (2) of the Bill carries forward section 11 of the ILRA 1977.

The Government however agreed that certain policy exclusions should not be subject to the rule in section 11. This is because some circumstances raise a greater statistical likelihood of loss even if they do not cause the loss. eg some policies exclude loss when a vehicle is driven for commercial use. Commercial use is unlikely to cause or contribute to a loss, but there is increased likelihood of loss because such vehicles tend to be driven more. Section 11 currently limits insurers' ability to exclude such increased risks. Clause 71(3) of the Bill gives effect to the Government's decision by providing that exclusions relating to the following are not subject to the rules in clause 71(1):

- the age, identity, qualifications, or experience of a driver of a vehicle, a pilot of an aircraft, an operator of goods or a master or pilot of a ship; or
- the geographical area in which the loss must occur; or
- a vehicle, aircraft, goods or ship being used for a commercial purpose.

The list of exclusions is that identified previously by the Law Commission.

The intention had previously been to introduce a regulation-making power so that the exclusions in clause 71(3) could be added to in future via regulations. However we now consider that, subject to feedback, it would be more appropriate for any such changes to take place at an Act-level rather than at regulations-level.

15	*Do you have any feedback on the exclusions listed in clause 71(3), which are not subject to the rule for increased risk exclusions in clause 71(1)?*

Third party claims for liability insurance money

Subpart 4 of Part 3 of the Bill allows a third party who has been wronged by a policyholder to claim directly against the policyholder's insurer.

The new provisions are to replace section 9 of the Law Reform Act 1936. That section allows third parties to claim against insurers using a statutory charge. There are multiple issues with how the statutory charge operates, including whether costs are to be paid out to policyholders to defend a claim, as well as other timing and priority issues when there are multiple statutory charges. Cabinet agreed to replace section 9 with a provision that allows third parties to claim directly against the insurer.

The Bill does not create a property right or statutory charge, which resolves many of the problems with section 9.

The provisions in the Bill mainly follow the approach taken in New South Wales in the Civil Liability (Third Party Claims Against Insurers) Act 2017. Some provisions, including the information sharing provision, follow the Third Parties (Rights Against Insurers) Act 2010 (UK).

Some of the key features are:

- *Leave of the Court*: As in NSW, leave of the Court is required for a claim.[9] In New Zealand, leave of the Court is currently required under a section 9 claim. We expect that the Court would apply a similar test for leave as under the current section 9 provisions.

- *Limited to insolvency/death:* Unlike NSW, the circumstances in which a person can claim are limited to where a policyholder is insolvent or dead. This does not differ significantly from NSW in practice however, as the NSW Courts would consider whether the defendant policyholder would not be able to meet the judgment obtained against it when considering whether to grant leave to the third party.

- *Reinsurance is excluded:* The Bill excludes reinsurance. For treaty reinsurance (where the aggregate claims against the insurers exceed a trigger aggregate deductible figure) it is not possible to determine whether reinsurance applies without knowing all the claims against the policyholder and all the claims against the insurers. This would cause delays.

- *Link to limitation period:* the Bill treats the claim against the insurer as a claim against the policyholder for limitation purposes, which removes the need for the third party to claim against the policyholder.

- *Insurer cannot rely on defences after event giving rise to liability:* As in section 385J(6) of the Maritime Transport Act 1994, insurers cannot rely on defences arising from their acts or after the event that gives rise to liability. There is no such clause in the NSW Act. That is because section 54 of their Insurance Contracts Act 1984 permits the court to disallow any defence arising after the claim unless the policyholder has caused prejudice to the insurers.

- *Multiple claimants:* the Bill gives priority to the first claimant to obtain a judgment or settlement. This puts third parties in the same position as if they were claiming against the policyholder (up to the limits of the policy), and incentivises claimants to advance their claims in a timely way.

- *Information provision:* If the third party reasonably thinks that another person (such as the policyholder) has information that would assist them in their claim, they can request certain specified information under Schedule 3 of the Bill. These provisions are modelled on Schedule 1 of the UK legislation. We welcome feedback on whether changes are necessary in the New Zealand context. NSW does not contain similar provisions we understand because

[9] Unlike NSW, the draft Bill does not provide for leave of the Court to be sought after proceedings have commenced (see section 5(2) of the Civil Liability (Third Party Claims Against Insurers) Act 2017) as we understand it would be unusual in the context of New Zealand civil procedure, and it seems to us unnecessary to provide for this.

NSW civil procedure rules provide for preliminary discovery if another person may have information that would assist.

16	*Do you have any other feedback on Subpart 4 of Part 3 of the Bill (Third party claims for liability insurance money)?*
17	*Do you have any feedback on Schedule 3 of the Bill (Information and disclosure for third party claimants)?*

Carrying over and updating existing provisions

Part 3 also carries over provisions relating to:

- pro rata conditions of average, insurable interest not being required, and contracts for the sale of land. Minor drafting changes have been made for readability (see clauses 72-82 of the Bill / section 6-7, 13-16 of ILRA 1985)
- arbitration clauses in contracts of insurance not being binding when entered into by a policyholder otherwise than in trade. The Bill makes a small change to refer to "a consumer insurance contract" rather than a contract "entered into by an insured otherwise than in trade" to align with the terminology of the rest of the Bill (see clause 67 of the Bill / section 8 of the ILRA 1977)
- an application for shares in a company to not be contained in proposal for insurance. Fine levels have been increased to align with the rest of the Bill and to better reflect the commercial size of the parties (see clause 94 of the Bill / section 12A of the ILRA 1977)

Some provisions of the ILRA 1977 and 1985 have not been carried over as we consider they are no longer needed:

- certain transitional provisions from the ILRA 1977 and 1985[10]
- section 7 of the ILRA 1977 in relation to misstatements of age under a life policy as it is unclear to us why misstatements of age should be treated differently
- section 4 of the ILRA 1977 has been incorporated into Schedule 2 of the Bill
- section 12 of the ILRA 1977 relating to actions in relation to contracts of insurance to be tried before a Judge alone is now redundant as section 15 of the Senior Courts Act 2016 governs the use of juries in High Court civil proceedings

Section 10 of the ILRA 1977 has not been carried over, as the effect of 10(2) and (3) (insurer deemed to have notice of matters known to representatives) has been incorporated into Part 2 of the Bill. We understand that section 10(1) of the ILRA 1977 (representative who acts for insurer during negotiations of insurance contract deemed to be agent of insurer at all times until contract concluded) has not had much real effect and has caused confusion. We have not carried over section 10(1) but welcome feedback on whether it is still necessary in some form.

18	*Do you have any comments on not carrying over section 10(1) of the ILRA 1977?*
19	*Do you have any other feedback on the drafting in Part 3 of the Bill?*

[10] Section 13 of the ILRA 1977 relating to events before the commencement of the 1977 Act; Section 4(2) of the ILRA 1985 relating to policies held by a person who died or was adjudged bankrupt before 1986; Section 5(2) of the ILRA 1985 relating to life annuity policies issued under the Inalienable Life Annuities Act 1910.

Part 4 of the Bill relates to payments of monies to insurance intermediaries

The Insurance Intermediaries Act 1994 (IIA) primarily provides protections for clients of insurance intermediaries (including insurance brokers). For example, it provides that payment by a policyholder to an intermediary discharges the policyholder's liability to the insurer. This means that the policyholder does not bear the loss if the premium then fails to reach the insurer.

Part 4 of the Bill mostly carries over the provisions of the IIA, to give effect to the Government's agreement to consolidate a number of insurance Acts.

Some small changes have been made, such as

- updates to the wording of section 8 of the IIA for clarity (see clause 99)
- other minor wording updates, for example to remove references to cheques, add a reference to "security interest" in light of the Personal Property and Securities Act 1999 (see clause 114/ section 16 of IIA), and to refer to "banks" rather than "financial institutions".

Feedback sought in relation to holding of premium money

We received submissions during our review from some insurers raising issues with:

- section 8 of the IIA providing that an insurance broker can hold onto premiums for 50 days (or a different period by arrangement) before passing onto insurers
- section 15 of the IIA allowing the intermediary to invest the premium and other money held in insurance broking accounts (eg claims payments) and keep any profits made on such investments.

Some insurers suggested that this creates an incentive for brokers to hold onto premiums for as long as possible and we understand that 80-90 days had been negotiated between brokers and insurers instead of the default 50 days for holding premium money. This is seen as increasing the risks associated with brokers defaulting on their payment obligations or becoming insolvent. Insurers also considered it an issue that they remain liable for the Fire Service Levy, GST and any relevant reinsurance premiums without access to the premium paid.

The ability for intermediaries to keep returns from investments also seems unusual at first blush, compared to the position for intermediaries of other financial products under the client money and property rules in the FMC Act. However, the circumstances are different because as noted above, the policyholder does not bear the loss if the premium fails to reach the insurer, whereas clients may bear the risk of loss if a client money and property provider[11] fails to properly keep and apply the money. This may mean it is appropriate for less stringent requirements to apply to intermediaries.

We are however seeking feedback on whether changes should be made to requirements for how insurance brokers must hold premium and other money subject to Part 4 of the Bill, including whether:

- brokers' ability to invest premium money and keep returns on investment should be limited;
- more stringent requirements should apply to premium money held in insurance broking client accounts in line with the client money and property rules in the FMC Act eg whether premium money should be required to be held on trust and only in a New Zealand or certain overseas bank accounts.

[11] See Subpart 5B of Part 6 of the Financial Markets Conduct Act 2013.

We have no preferred options at this stage and will consider whether changes may be appropriate after reviewing the feedback received. We acknowledge that restricting brokers' ability to invest would remove a source of income for brokers, and this could mean brokers seek increased commissions from insurers to make up for that loss.

20	*Do you consider that changes should be made to requirements for how insurance brokers must hold premium money such as restrictions on brokers' ability to invest or more stringent requirements in line with the client money and property rules in the FMC Act?*

Proposed penalties for non-compliance

Maximum penalties for failures by brokers to pass on premiums, make payments to the policyholder or comply with regulations are proposed to be significantly increased to civil pecuniary penalties of $200,000 for individuals and $600,000 for body corporates (see clause 181(2)). This brings the penalties in line with similar provisions in the FMC Act relating to how client money and property providers must deal with client money, and reflects that some intermediaries could be large commercial entities.

Clause 103 of the Bill provides that if a broker fails to comply with the duty in clause 102 (broker to notify insurer within 7 days if a premium has not been received by the broker by the end of the period by which broker must pass premiums onto insurer), then the broker must pay interest to the insurer. Clause 103 has been added as it is best practice to have a consequence for non-compliance with a duty. Section 10 of the IIA (the equivalent to clause 102) did not appear to have a consequence. However, we seek feedback on whether the consequence in clause 103 is appropriate, or whether it is even necessary to retain clause 102 as a legislative duty.

21	*Do you have any feedback on the proposed penalties for non-compliance with Part 4 of the Bill?*
22	*Is it necessary to retain clause 102 (broker to notify insurer within 7 days if a premium has not been received by the broker), and if so, what should be the consequence for breach of clause 102?*
23	*Do you have any other feedback on Part 4 of the Bill?*

Part 5 of the Bill relates to contracts of life insurance

The Life Insurance Act 1908 (LIA) includes provisions relating to:

- interest payable following the death of the insured
- process for assignment and mortgages of policies
- surrender value
- life insurance of minors
- insurance by partners.

Part 5 of the Bill carries over and updates some provisions of the LIA. Some provisions have not been carried over as they are considered to be no longer needed.

Interest payable from 91st day after date of death

Section 41A of the LIA provides that if a death claim under a life policy is not paid within 90 days after the death of the person insured, the insurer is liable to pay interest from the 91st day until the claim is paid. The interest rate is the greater of the rate specified in the policy or the civil debt interest rate in the Interest on Money Claims Act 2016, being the average of the 6 observations for the retail 6-month term deposit rate published by the Reserve Bank plus 0.15%.[12]

Clauses 120-122 of the Bill carry over the effect of section 41A of the LIA with minor drafting updates for readability.

However, life insurers have raised that interest should not be payable where delay paying a claim is due to matters outside of the insurer's control, such as delay in obtaining probate, or delay in the insurer being notified of the death claim. Insurers have also suggested that, particularly prior to 2018[13] when the interest rate under the LIA was higher, policyholders were incentivised to delay notifying claims or delay obtaining all the required documents knowing they could benefit from interest under section 41A.

We acknowledge that, particularly prior to 2018, insurers may have in some cases been required to pay unduly high interest amounts due to circumstances outside of their control. However, the Bill also needs to take into account that delays obtaining required documents may also be outside of the control of the policyholder, that insurers are able to earn interest from the money during the period of the delay, and that section 41A may be helpful to incentivise insurers to process death claims expediently.

It is not clear to us that it is necessary to make changes from section 41A. However, if insurers put forward further reasons for making change, we seek feedback on whether their concerns could be dealt with if we prescribe that interest only begins accruing after 90 days if the insurer has been notified of the death claim and (where relevant) letters of administration or probate have been obtained.

24	*If you consider that change needs to be made regarding interest payable from 91st day after date of death, please provide any further reasons and provide feedback on whether interest should only begin accruing after 90 days if the insurer has been notified of the death claim and (where relevant) letters of administration or probate have been obtained.*

[12] A claim for $100,000 would accrue interest of $1,521.87 from 1 July 2020 to 1 July 2021.
[13] Interest on Money Claims Act 2016 came into force in 2018.

Mortgaging of policies

The LIA contains a number of provisions relating to the mortgaging of life insurance policies. From discussions with some life insurers, we understand that the practice of mortgaging life insurance policies no longer occurs. The Bill therefore does not carry forward the LIA provisions relating to mortgages.

In relation to any legacy policies that may still allow for mortgaging, Schedule 1 of the Bill provides that the LIA provisions continue to apply to mortgages under policies that were entered into prior to the repeal of the LIA.

For parties that wish to mortgage life insurance policies where the policy is entered into after the Bill comes into force, the provisions of the Personal Property and Securities Act 2009 would need to be complied with (see clauses 185-187).

25	*Do you have any feedback on the proposal that any mortgaging of life insurance policies under new policies be dealt with under the Personal Property and Securities Act 2009?*

Assignment of policies

The LIA also sets out the process for:

- registration of assignments of life insurance policies (section 43)
- when the right to a policy is acquired by bankruptcy or will etc (section 52)
- registrations generally (sections 53-61)

The requirements are prescriptive and outdated, for example requiring endorsements to be made on paper policies.

We understand from discussions with some life insurers that assignments other than by way of ordinary transfer no longer occur.

In relation to assignments, the Bill therefore provides for ordinary transfers only.

Clause 123 sets out the high level process for an ordinary transfer. The Bill requires:

- an instrument to be submitted to the insurer in the manner prescribed by regulation (if any) or in the form reasonably required by the insurer;
- the instrument to contain the transferee's agreement to the transfer; and
- the insurer to register the instrument in the manner prescribed by the Act and regulations (if any).

The form of the instrument and the manner of submitting it to the insurer can be prescribed by regulations. However, the Bill moves away from the prescriptive approach of the LIA and there are no plans to prescribe requirements in regulations at this stage. The prescriptive forms in the Schedule of the LIA are not being carried over. The distinction in section 43 between the processes required in relation to New Zealand and overseas based life insurers has also been removed. We consider both should be equally able to comply with the amended requirements in the Bill.

Clause 126 provides that a life insurer must on receiving a transfer record it in a register, confirm to the person who presented the instrument that it has been registered, and retain a record of the instrument.

Other aspects of the LIA, such as:

- the effect of an assignment by transfer
- the ability of the High Court to order registration
- ability of insurers to require evidence of matters affecting validity
- the impact of unregistered dealings

have been carried over to the Bill. They include updates to reflect the Bill's move away from the LIA's prescriptive and paper-based approach and to modernise the drafting eg referring to the insurer rather than the Secretary. Clause 127 adds that if an instrument is defective, the insurer must as soon as reasonably practicable notify the person who presented the instrument of the defect.

The process for registering title to a policy acquired by bankruptcy or will etc is updated in a similar manner in clause 125.

Clause 136 provides that a life insurers may not charge a fee for registering an instrument under the Bill (the LIA provides that no more than 5 shillings may be charged for registration).

Clause 139 sets out offences for failure to comply with clauses 120 to 136, without reasonable excuse. It replaces the outdated penalty mechanism in section 80 of the LIA. The maximum fine has been set at $50,000 to reflect the large commercial size of many life insurers and is consistent with other penalties in the financial markets regulatory system.

26	*Do you have any feedback on the Bill's requirements relating to assignments and registrations generally?*

Surrender value

Sections 63 and 64 of the LIA relating to surrender value have been carried over in clauses 137 and 138 of the Act, with a minor update to refer to "secured party" instead of mortgagee.

Minors

Sections 66A to 74 of the LIA relates to life insurance of minors. These provisions have largely been carried over with minor updates (eg clause 153 refers to "capital or income" rather than "corpus or the interest" per section 71 of the LIA). Substantive changes have been made in relation to the following:

- Section 67B of the LIA limits the payment amount payable under life insurance policies for minors under 10 years old. The limit is $2,000 plus the interest-adjusted total amount of premiums paid under the policy. The amount paid out under life insurance policies is generally insufficient to cover funeral costs. The Government agreed to change the $2,000 limit to $10,000 plus an inflation adjustment. Clause 146 of the Bill gives effect to this.
- Section 71 of the LIA has been updated in clause 153 so that it no longer refers to money payable under a life policy being applied to certain matters as Public Trust or the trustee "think fit". This is to reflect the mandatory duties in the Trusts Act 2019.
- Clause 155 provides that money received under this Part can be invested in accordance with the Trusts Act 2019, replacing the more complex provisions of sections 73 and 74 of the LIA. The changes are consistent with the changes recommended previously by the Law Commission.

- The offences in section 67E have been updated in clause 149. Fine levels have been increased to align with the rest of the Bill, to better reflect the commercial size of the parties and in light of the increase in the amount payable under life insurance policies for minors. The offences have also been amended to only apply where provisions were "knowingly" breached.

Life insurance for spouses, partners and children

Section 75A of the LIA relates to a policy entered into by a person for the benefit of the person's spouse, partner or children. Section 2(1) of the Life Insurance Amendment Act 1920 relates to the reversion or vesting of life policy assigned to a spouse or partner. These provisions have been carried over with minor updates to clause 156 to 158 of the Bill (including stating that "partner" includes civil union and de facto partners). However, we seek feedback on whether these provisions are still necessary.

Other provisions

Clause 160 carries over with minor updates sections 2 and 5 of the Life Insurance Amendment Act 1925.

Other provisions, such as those relating to industrial insurance under the Life Insurance Amendment Act 1920 and section 77 of the LIA relating to settlement policies under repealed Acts, have not been carried over.

27	*Are section 75A of the LIA (relating to a policy entered into by a person for the benefit of the person's spouse, partner or children) or section 2(1) of the Life Insurance Amendment Act 1920 (relating to the reversion or vesting of life policy assigned to a spouse or partner) still necessary?*
28	*Do you have any other feedback on Part 5 of the Bill?*

Part 6 of the Bill contains regulation-making powers and miscellaneous provisions

Clauses 161 and 162 of the Bill contain regulation-making powers to support the rest of the Bill, including carrying over the regulation-making powers in the IIA.

Clause 163 provides that the Marine Insurance Act 1908 (MIA) does not limit any provision of the Bill and clause 164 provides that the provisions of the Bill cannot be contracted out of.

29	*Do you have any feedback on Part 6 of the Bill?*

Part 7 of the Bill amends other Acts, including in relation to unfair contract terms and presentation of consumer policies

As discussed further below, part 7 gives effect to the changes the Government agreed to in relation to:

- requiring insurance policies to be written and presented clearly, and
- removing insurance specific exemptions from the unfair contract terms provisions in the Fair Trading Act 1986 and clarifying how the generic exemptions apply to insurance.

Part 7 also repeals the IIA, ILRA 1977, ILRA 1985, LIA, part 3 of the LRA 1936, and redundant provisions of the MIA.

Marine Insurance Act 1908

Clause 168 of the Bill repeals certain redundant provisions of the MIA.

The Bill repeals sections 18-20 of the MIA, as the new disclosure rules in part 2 of the Bill will apply.

The Bill repeals most of the MIA provisions relating to warranties, except for section 40 (Warranty of seaworthiness of ship) and 41 (No implied warranty that goods are seaworthy).

- Sections 34 and 35 are repealed because they are incompatible with section 11 of the ILRA 1977, which takes precedence over the MIA. Section 11 of the ILRA has carried over into the Bill (see clause 71).
- Sections 36-39 are repealed as they refer to eighteenth century customs which are no longer relevant today.
- Section 42 is repealed because case law has determined that the warranty of legality simply reflects the common law on the circumstances in which a person entering into an illegal contract or committing an illegal act in the course of performing a contract is unable to enforce that contract.

The Bill amends section 40 of the MIA to provide that an insurer cannot rely on a section 40 warranty if the policyholder proves that breach of the warranty did not cause or contribute to the loss for which the policyholder seeks to be indemnified. This is to ensure consistency with clause 71 of the Bill (which replaces section 11 of the ILRA 1977).

30	*Do you see any unintended consequences from removing these provisions from the MIA?*

Unfair contract terms

Clauses 171-175 of the Bill amends the unfair contract terms provisions in the Fair Trading Act 1986 (the FTA) in relation to insurance contracts. The Government agreed to remove insurance specific exceptions from the unfair contract terms provisions in the FTA and consult on two different options for clarifying how the unfair contract terms apply to insurance.

The Bill sets out two options for feedback.

As final policy decisions have not yet been made in this area, this section of the commentary contains more background information compared to other sections.

Background

The current provisions in the FTA prohibit "unfair" contract terms in standard form consumer contracts. The definition of "consumer contracts" in the FTA is broadly aligned with the approach in the definition of consumer insurance contract in Part 2 of the Bill.[14]

As a result of changes made in the Fair Trading Amendment Act 2021, the provisions will also be extended to apply to standard form small trade contracts.[15]

A term can be declared "unfair" if it would cause a significant imbalance in the rights and obligations of the parties to the contract, is not reasonably necessary to protect the legitimate interests of the party who would benefit from the term, and would cause detriment to a party to the contract. Terms that cannot be declared unfair ('generic exceptions') are terms that:

- define the main subject matter of the contract
- set the upfront price payable under the contract
- are required or expressly permitted by any enactment

There are also currently some exceptions for insurance contract terms ('insurance-specific exceptions'). The following terms in insurance contracts cannot be declared to be unfair:

- The subject or risk insured against
- The sum insured
- Excluded/limited liability on the happening of certain events
- The basis on which claims may be settled
- Payment of premiums
- The duty of utmost good faith
- Requirements for disclosure.

The generic exceptions were introduced because the main subject matter and upfront price are generally terms that consumers have a choice about and can negotiate over, and therefore these terms should not be able to be considered unfair.

The insurance-specific exceptions meanwhile, were introduced to provide certainty about what cannot be declared to be unfair in an insurance contract on the basis that these types of terms are needed to protect the legitimate interests of insurers.

However, the Government has agreed to remove the insurance exceptions due to concerns about consumers not having the same level of protection from genuinely unfair terms in insurance contracts as they do for other types of contracts. Instead, insurers would rely on the generic

[14] See 46H-46M if the Fair Trading Act 1986. The contract is a consumer contract if the goods or services are supplied in trade, they are of a kind ordinarily acquired for personal, domestic or household use or consumption, and under the particular contract in question, they are not acquired for any of the commercial purposes listed in the FTA.

[15] See section 7 of the Fair Trading Amendment Act 2021, which inserts new sections 26B to 26E into the Fair Trading Act 1986. See also the transitional arrangements in the Schedule of the Amendment Act.
The unfair contract terms provisions will be extended to apply to standard form small trade contracts from 16 August 2022. However, the application of the unfair contract terms to business-to-business *insurance* contracts is being delayed until the changes discussed in this document are passed into law.

exceptions for terms that define the main subject matter and upfront price of the contract, but with clarification in the legislation about how the main subject matter exception applies to insurance contracts.

The Bill sets out two options for how the main subject matter is defined for insurance.

Option A

The Government agreed to consult on an option that defines the main subject matter of insurance contracts in narrow terms.

Clause 171 of the Bill gives effect to this first option, which is consistent with the position in Australia as from 5 April 2021.

Clause 171 provides that the main subject matter exception extends only to insurance terms that set the main subject matter in narrow terms to:

- the thing being insured (i.e. the house that is insured or the life of Joan Smith that is insured, but not terms that define all the exclusions to cover);
- transparent terms that set the sum insured (i.e. the house is insured for $300,000); and
- transparent terms that set the quantum or existence of the excess, or other deductible.

While the Government did not explicitly agree that sum insureds would be included under this first option, we consider it desirable to clarify that a transparent term setting the sum insured cannot be declared as unfair. The sum insured is a key basis for the existence of the contract and it would be reasonable to expect the consumer to have had a choice about whether to enter into the contract based on the sum insured.

Consistent with the Australian legislation, option A also excludes transparent terms that set excesses or deductibles from being considered unfair.[16] The rationale is that the quantum of the excess can increase or lower premiums, so is a feature that the consumer chooses.

Option B

The second option the Government agreed to consult on defines the main subject matter of insurance contracts in broader terms (i.e. terms that define the risk accepted by the insurer and the insurer's liability). This would mean that policy limitations and exclusions that affect the scope of cover would be considered part of the main subject matter and would not be open to review for unfairness.

Clause 172 of the Bill gives effect to this option. Under this second option provides the main subject matter exception extends to terms that:

- identify the event/subject/risk insured
- specify the sum insured (whether transparent or not)
- set excesses or deductibles (whether transparent or not)
- exclude or limit liability in certain circumstances (eg exclusion from cover if a house did not have a working smoke alarm).

Comment on options

Option A gives better protection to consumers and recognises that consumers usually do not have the opportunity to understand or negotiate what can be lengthy terms that set exclusions or limitations from cover. It is also consistent with the position in Australia and the UK.

[16] See section 12BI of the Australian Securities and Investments Commission Act 2001.

Insurers have, however, argued that opening up insurance terms to be challenged as unfair along the lines of Option A would create significant uncertainty. If an exclusion clause is declared to be unfair, insurers could end up paying out claims in circumstances which they did not intend to cover. Under Option A, insurers may have a good case for defending exclusion clauses on the basis that they were "reasonably necessary to protect the legitimate interests" of the insurer and therefore did not meet one of the three limbs of the test for an unfair term under the FMA. However, insurers have suggested that relying on the legitimate interests test creates uncertainty, which could lead to increased premiums and impact insurers' ability to obtain reinsurance.

31	*Which option do you prefer and why?*
32	*Do you have any feedback on the drafting of either of the options?*

Enforcement

Currently, the Commerce Commission can seek a declaration from the court that a term in a standard form contract is an unfair contract term under the FTA.

The Government has agreed for the Financial Markets Authority (FMA) to also be able to seek such a declaration for a term in a contract for a financial service or a "financial advice product",[17] including insurance contracts.

A change to the Financial Markets Conduct Act 2013 (FMC Act) is needed to give effect to this decision. That change is out of scope for this Insurance Contracts Bill because it extends to products and services other than insurance. Instead, that change is planned to be made through the next Regulatory Systems Amendment Bill[18] planned for introduction in 2022. It is anticipated that the FMA would take primary responsibility for enforcement in relation to unfair contracts terms in contracts for financial services or financial advice products (other than consumer credit contracts).

Duties to assist policyholders to understand insurance contracts

The Government agreed to require consumer insurance policies to be written and presented clearly, so that consumers easily understand them. The Government also agreed to allow for regulations to prescribe, in relation to consumer insurance policies:

- specific presentation requirements, for the purpose of improving understanding
- that insurers must publish certain information in a prescribed format, to assist consumers with choosing an insurance provider and to promote transparency.

These duties and regulation-making powers are set out in Part 7 of the Bill.

These obligations relating to the presentation of policies apply to policies entered into by licensed insurers that are consumer insurance contracts, or contracts of insurance that provide for life and/or health insurance.[19]

Note also:

- clause 177 of the Bill amends an existing provision of the FMC Act to reflect the repeal of the IIA; and

[17] Essentially investment financial products plus insurance contracts and consumer credit contracts.
[18] Regulatory Systems Amendment Bills are omnibus bills that amend various Acts administered by MBIE.
[19] The definition of consumer insurance contract in Part 2 of the draft Bill differs in form to the definition in part 7 of the draft Bill and in the Financial Markets (Conduct of Institutions) Amendment Bill. The difference is because group insurance arrangements need to be dealt with separately for the purpose of part 2 of the Bill.

- clause 180 of the Bill re-numbers an existing provision of the FMC Act. This is simply to help with the flow of the sections.

Obligations for contract wording and presentation

The Bill amends the FMC Act to impose a duty on licensed insurers to ensure contracts are worded and presented in a clear, concise and effective manner (see clause 179 of the Bill inserting new section 447A of the FMC Act):

- Insurers must ensure that the contract is worded in a "clear, concise and effective manner". This is similar to the obligations for Product Disclosure Statements (PDS) for other financial products under section 61 of the FMC Act.
- In complying with the above obligation, insurers must have regard to whether the wording assists consumers to understand their rights and obligations under the contract.

The Bill clarifies that other material provided alongside the contract may be taken into account in determining whether an insurer has met the requirement.

Consistent with PDS requirements, the Bill does not impose a monetary or other civil penalties for breach of this obligation, although any supporting regulations could carry civil liability. However, the FMA would have the power to issue a stop order to prohibit an insurer from using a contract if it did not meet the obligation (refer clause 182 and 183). The obligation will also be a market services licensee obligation, once insurers are licensed through the Conduct of Financial Institutions regime. This would mean the FMA could use a range of tools to enforce compliance (see section 414 of the FMC Act). The legislative objectives may be supported by FMA guidance (subject to resource and funding).

33	*Do you have any comments on the obligation that consumer insurance contracts be worded and presented in a clear, concise and effective manner?*

Regulations relating to form and presentation of contracts

The Bill provides for the power to make regulations relating to the form and presentation of insurance contracts under the above overarching obligation (see clause 184 of the Bill).

MBIE intends to consult in more detail about the content of any regulations at a later stage, but welcome initial feedback at this point. However, there is presently no intention to make regulations that contain detailed requirements of how each aspect of an insurance contract is to be presented (such as the prescriptive PDS requirements in the Schedules of the Financial Markets Conduct Regulations 2014) or prescribe standard forms for key fact sheets or summaries as are in place overseas.

Regulations under the Bill could instead (for example):

- require contracts to include a statement on the front page stating where the policy exclusions can be found or requiring explanatory material or guidance
- specify the font size and format requirements to ensure readability.

Regulations relating to publishing information

The Bill also provides for the power to make regulations requiring insurers to make certain information available (refer clause 184).

The purposes of these regulations would be to:

- assist consumers to make decisions relating to the provision of insurance, and

- promote and facilitate transparency in connection with an insurer's business.

Regulations could require an insurer to disclose information about their business, such as claim acceptance rates, the length of time to settle claims, contract cancellations, complaints made against the insurer, and disputes the insurer is or has been involved in.

If regulations were made, they would also specify:

- where the information should be published (for example, on an insurer's website),
- when the information must be published (eg annually), and
- how the information is calculated or prepared (for example how to calculate claims declined).

Again, MBIE intends to consult in more detail about the content of any regulations at a later stage, but welcome initial feedback at this point. However, there is presently no intention to make regulations under the power in clause 184.

Clauses 185-187 of the Bill amends the Personal Property Securities Act 1999 to reflect changes in relation to mortgages of life insurance policies as discussed in Part 5 of this document.

34	*Do you have any comments on the regulation-making powers in clause 184?*
35	*Do you think regulations specifying form and presentation requirements for consumer, life and health insurance contracts (eg a statement on the front page that refers to where policy exclusions can be found) would be helpful? If so, please explain.*
36	*Do you think regulations specifying publication requirements for insurers would help consumers to make decisions about insurance products? If so, please explain.*

Timing and transitional arrangements (including Schedules 1 and 4)

Commencement

As set out in clause 2 of the Bill, its provisions come into force by Order in Council. Different provisions of the Bill can come into force on different dates. All provisions will come into force by the 3rd anniversary of Royal assent of the Bill.

We do not expect to recommend commencement dates until after the Bill is in its final legislative stages and will engage further with interested parties before doing so. In setting commencement dates, we would take into account that:

- insurers will need time to prepare for changes relating to unfair contract terms, policy presentation and disclosure duty changes in particular; and
- insurers and intermediaries will also be preparing for changes resulting from the Financial Markets (Conduct of Institutions) Amendment Bill and other regulatory changes.

37	*Do you have any initial feedback on when the Bill's provisions should come into effect?*

Transitional arrangements

There will be a number of existing contracts of insurance in place on the date or dates that the provisions of the Bill come into force.

The Bill contains some transitional provisions to clarify how the Bill's provisions will work in relation to existing contracts.

New disclosure duties	Clause 2 of Schedule 1 of the Bill provides that new rules in Part 2 apply to contracts, renewals or variations entered into after clause 2 is in force.
Mortgages and certain assignments under existing life insurance policy	Schedule 1 of the Bill provides that the LIA 1908 continues to apply to: - an assignment other than by way of ordinary transfer of an existing life policy - a mortgage of an existing life policy
Unfair contract terms	Schedule 4 of the Bill provides that the amended unfair contract terms provisions in the Bill do not apply to a contract entered into before Schedule 4 commences, or a renewal or variation of such contract.

For other provisions of the Bill, we consider that the following transitional arrangements should apply:

- the changes to the FMC Act would apply to contracts entered into after commencement, and those parts of contract varied after commencement;
- in relation to third party rights (Subpart 4 of Part 3), section 9 of the LRA 1936 would continue to apply to actions brought against insurers under that section before that section is repealed.

38	*Do you have any feedback on the transitional provisions in Schedules 1 or 4, or other proposed transitional arrangements?*

Schedule 5 of the Bill contains amendments to other Acts

Schedule 5 contains consequential amendments to other Acts

Schedule 5 disapplies aspects of the Contract and Commercial Law Act 2017 in relation to contracts of insurance as the consequences for a misrepresentation by a policyholder is dealt with in this Bill. It also makes a number of consequential amendments to other Acts as a result of repeals and changes in terminology in the Bill.

Schedule 5 also adds the following provisions to the list of "financial markets legislation" in the Financial Markets Authority Act 2011, meaning that the FMA can use its information gathering and other powers under that Act for monitoring and enforcement in relation to those provisions.

- Subpart 6 of Part 2 (duty to inform policyholders in relation to disclosure duties)
- Clause 94 (application for shares in company not to be contained in proposal for insurance)
- Part 4 (payment of monies to insurance intermediaries)
- Clauses 126-136 (registration of assignments etc of life insurance)
- Clauses 146-149 (limits on life insurance payments in respect of minors)

These are provisions that have offences, pecuniary penalties or other enforcement mechanisms attached to their breach.

The FMA would also:

- have responsibility for enforcing the duties in Part 7 of the Bill relating to assisting policyholders to understand insurance contracts, as those duties sit within the FMC Act; and
- be expected to, following the passage of the next Regulatory Systems Amendment Bill, share responsibility with the Commerce Commission for enforcing compliance with the unfair contract terms provisions in relation to contracts for financial services or financial advice products (as mentioned in the commentary on Part 7 of the Bill and as agreed by Cabinet)

Schedule 5 also contains amendments to other Acts, including repealing section 6(1)(b) of the Trade Unions Act 1908, which specified that the LIA shall not apply to any trade unions. We expect that section 6(1)(b) does not have any real impact and is not needed.

39	*Do you have any feedback on Schedule 5 of the Bill?*

Annex 1: Mapping existing provisions to the Bill

	EXISTING PROVISION	COMMENT OR BILL PROVISION
	Insurance Intermediaries Act 1994	
	Title	
1	Short Title	N/A
2	Interpretation	Cl 95 as needed
3	Act to bind the Crown	Cl 9
	Payments to insurance intermediaries	
4	Payment by insured to intermediary to be discharge of insured's liability to insurer	Cl 96
5	Payment by insurer to intermediary not to be discharge of insurer's liability to insured	Cl 97
6	Prohibition on contracting-out	Cl 98
7	Contracts governed by foreign law	Refer cl 7
	Duties of brokers in relation to premiums	
8	Duties of broker in relation to premiums	Cl 99-100 See part 4 of commentary
9	Payment by broker to another insurance intermediary may constitute payment to insurer	Cl 101
10	Duty to notify insurer if premium not paid	Cl 102-103 See part 4 of commentary
11	Notification by broker to another insurance intermediary may constitute notice to insurer	Cl 104
12	Lloyd's brokers	Cl 105
	Duties of brokers in relation to payments due to insured	
13	Duties of broker in relation to payments due to insured	Cl 106-107
	Insurance broking client accounts	
14	Broker to operate insurance broking client account	Cl 108-110
15	Investment of broking money	Cl 111-113 See part 4 of commentary
16	Broking money not capable of being attached, etc	Cl 114
	Distribution of insurance broking client account money on insolvency	

	EXISTING PROVISION	COMMENT OR BILL PROVISION
17	Distribution of insurance broking client account money on insolvency	Cl 115-118
	Miscellaneous provisions	
18	Regulations	Cl 162
19	Act not to apply to contracts of reinsurance	Cl 119
20	Application of section 10 of Insurance Law Reform Act 1977	Not needed as relevant part of section 10 not carried over
	Insurance Law Reform Act 1977	
	Title	
1	Short Title	N/A
2	Interpretation	Updated definitions used in cl 5
3	Act to bind the Crown	Cl 9
4	Misstatements in contracts of life insurance	Cl 2(2) and 4(2) of Sch 2 See part 2 of commentary
5	Misstatements in other contracts of insurance	Not carried over See part 2 of commentary
6	Incorrectness and materiality defined	
7	Misstatement of age	
8	Arbitration clauses not binding	Cl 67 See part 3 of commentary
9	Time limits on claims under contracts of insurance	Cl 68-70 See part 3 of commentary
10	Salesman, etc, to be agents of insurer	Cl 20, 45 See part 2 of commentary
11	Certain exclusions forbidden	Cl 71 See part 3 of commentary
12	Actions on or in relation to contracts of insurance to be tried before a Judge alone	Not needed See part 3 of commentary
12A	Application for shares in company not to be contained in proposal for insurance	Cl 94 See part 3 of commentary
13	Application of Act	Not carried over See part 3 of commentary
14	Marine Insurance Act 1908 to be subject to this Act	Cl 163
15	No contracting out	Cl 164
16	Repeal	Not needed
	Insurance Law Reform Act 1985	

	EXISTING PROVISION	COMMENT OR BILL PROVISION
	Title	
1	Short Title and commencement	N/A
2	Act to bind the Crown	Cl 9
3	Interest payable from 91st day after date of death	Amendment provision – Refer Life Insurance Act
4	Abolition of protection of life policies from creditors	Not needed (amendment/ transitional provision)
5	Repeal of Inalienable Life Annuities Act 1910	Not needed (amendment/ transitional provision)
6	Need for insurable interest in life policy abolished	Cl 76
7	Need for insurable interest restricted	Cl 75
8	Repeal of Life Assurance Act 1774	Not needed (amendment provision)
9	New sections substituted	Not needed (amendment provision)
10	Consequential amendment to Minors' Contracts Act 1969	Not needed (amendment provision)
11	Consequential repeals	Not needed (amendment provision)
12	Repeal of power to regulate provisions of fire insurance policies	Not needed (amendment provision)
13	Purchaser of land entitled to benefits of insurance between dates of sale and possession	Cl 78-81
14	Double insurance relating to contracts for sale of land	Cl 82
15	Prohibition on inclusion of pro rata condition of average in contract of insurance relating to dwellinghouse	Cl 72
16	Disclosure of pro rata condition of average	Cl 73-74
	Part 3 of Law Reform Act	
9	Amount of liability to be charge on insurance moneys payable against that liability	Subpart 4 of Part 3 See part 3 commentary
9A	Claims for damages or compensation against estate of deceased owner where no administrator	Subpart 4 of Part 3
10	Consequential repeals	Not needed (amendment provision)
	Life Insurance Act 1908	
	Title	
1	Short Title	N/A

	EXISTING PROVISION	COMMENT OR BILL PROVISION
	Part 1 Life insurance companies *[Repealed]*	
	Part 1A Judicial management of companies *[Repealed]*	
	Part 2 Life insurance policies	
41	Interpretation	Not needed given other changes
41A	Interest payable from 91st day after date of death	Cl 120-122 See questions in part 5 of commentary
	Assignments and mortgages of policies	
42	Company not affected by notice of trust	Cl 135
43	Registration of ordinary transfer of policy	Cl 123-124, 126 See part 5 of commentary
44	Form of mortgages	Considered not needed See part 5 of commentary
45	Covenants, etc, implied in mortgages	
46	Several mortgages may be registered	
47	Registration of mortgage after advances by the company	
48	Mortgagee when selling may execute assignment	
49	Company or purchaser not affected by notice of improper sale, etc	
50	How mortgages discharged	
51	How discharges registered	
52	How title to policy acquired by bankruptcy, etc, registered	Cl 125 See part 5 of commentary
53	Provisions as to registration, etc, of assignment of policies to apply to mortgages	Not needed See part 5 of commentary
54	Secretary before registering may require proof of signatures	Cl 128
55	Registration may be ordered by court	Cl 129
56	What is date of registration	Cl 130
57	Secretary to keep record of registrations	Cl 131
58	Notice of unregistered dealings not to affect company or purchasers	Cl 132
59	Provision for lost or destroyed policies or instruments	Cl 133

	EXISTING PROVISION	COMMENT OR BILL PROVISION
60	Courts may enforce equities	Cl 134
61	Fee for registration	Cl 136
62	Reversion of assigned policy in certain case *[Repealed]*	N/A
63	Company not prevented from applying surrender value to keep policy in force	Cl 137
	Protection of policies	
64	Policies to be kept in force by surrender value	Cl 138
65	Certain policies absolutely protected from bankruptcy, etc *[Repealed]*	N/A
66	Policies protected *[Repealed]*	N/A
	Insurance of minors	
66A	Insurance by minor who is under the age of 10 years	Cl 140
66B	Insurance by minor who is of or over the age of 10 years	Cl 141
66C	Dealings by minors with policies	Cl 142
66D	Presumption in respect of policies issued and dispositions made	Cl 143
	Insurances by parents on lives of children [Repealed]	
67	Insurance on life of minor who is under the age of 16 years	Cl 144
67A	Endowment insurances on lives of minors	Cl 145
	Limitations on payments in respect of death of minors	
67B	Limitation on total amount of payments where deceased minor under the age of 10 years	Cl 146 See part 5 of commentary
67C	Limitation on persons to whom payments may be made where deceased minor under the age of 16 years	Cl 147
67D	Company to supply statement in respect of limitations	Cl 148
67E	Offences	Cl 149 See part 5 of commentary
68	Certain policies excluded from the operation of last preceding section *[Repealed]*	N/A
	Moneys payable under a policy for benefit of minors, etc	
69	Moneys payable to minors or persons incapable of giving discharges may be made to Public Trust	Cl 150-151
70	Powers of Public Trust receiving moneys	Cl 152
71	Trustee may apply money of minors, etc, for their maintenance, etc	Cl 153

	EXISTING PROVISION	COMMENT OR BILL PROVISION
72	Payment to trustee a valid discharge to company	Cl 154
73	How insurance moneys received by trustee may be invested	Cl 155 See part 5 of commentary
74	Income of minor, etc, not required for maintenance, etc, shall be capitalised	Cl 155
	Insurances by minors *[Repealed]*	
75	Insurances by minors and dealings by minors with policies *[Repealed]*	N/A
	Insurances by married women	
75A	Wife may insure her own or her husband's life for her own benefit	Cl 156-157 See part 5 of commentary
	Payments without probate	
76	Conditions on which payments may be made without requiring probate or administration *[Repealed]*	N/A
	Provisions as to settlement policies under repealed Acts	
77	Provisions as to settlement policies	Not carried over
	Annual statement, etc, by company	
78	Company to furnish annual statements of all its policies *[Repealed]*	N/A
78A	Minister may alter form *[Repealed]*	N/A
79	Company to furnish separate statements of New Zealand business *[Repealed]*	N/A
79A	Chief Executive of the Ministry of Economic Development may require further information *[Repealed]*	N/A
80	Penalty for non-compliance with Act	Cl 139 See part 5 of commentary
	Various templates etc in schedules	Not carried over See part 5 of commentary
	Life Insurance Amendment Act 1920	
2	Reversion or vesting of policies assigned to husband, wife, civil union partner, de facto partner	Cl 158-189 See part 5 of commentary
	Industrial insurance	
7	Interpretation	We understand not needed
8	Industrial companies to deposit forms with Minister	
9	Industrial insurance policies to contain approved provisions	
10	Non-forfeiture of industrial policies	

	EXISTING PROVISION	COMMENT OR BILL PROVISION
12	Minister may require additional information	
13	Governor-General may make regulations	
14	Penalties on company making default	
16	Fine on false statement	
	Life Insurance Amendment Act 1925	
2	Definition of expression person insured	Cl 160
5	Special provision for vesting policy of limited value in person who proves his or her title thereto without requiring probate or letters of administration	Cl 160

Marine Insurance Act 1908 to be kept separate. See part 7 in relation to redundant provisions to be repealed