AIA New Zealand

Sovereign House, 74 Taharoto Road, Takapuna, 0622
Private Bag 300981, Albany, Auckland 0752
T: +64 9 488 8800
F: +64 9 488 8810
aia.co.nz

5 July 2019

Ministry of Business, Innovation and Employment

Attention Financial Markets Policy - Building, Resources and Markets

By email insurancereview@mbie.govt.nz

Review of insurance contract law - submission of AIA New Zealand and Sovereign

This submission is made on behalf of AIA International Limited, New Zealand branch, and Sovereign (jointly referred to in this submission as **AIA**), in response to MBIE's April 2019 Insurance Contract Law Review: Options paper (the **Options Paper**).

About AIA New Zealand and Sovereign

AIA New Zealand is a member of the AIA Group, the largest life insurer in the world by market capitalisation and solely focused on the Asia Pacific market. AIA Group is headquartered in Hong Kong and has a presence in 18 markets in the Asia-Pacific region, including Singapore, China and Australia. Established in New Zealand in 1981, AIA operates in New Zealand as a branch of AIA International Limited, a company incorporated in Bermuda. It is ultimately owned by AIA Group Limited, which is listed on the Hong Kong Stock Exchange.

On 2 July 2018, AIA International Limited completed its acquisition of Sovereign. Sovereign is New Zealand's largest life insurer and has been in business in New Zealand for over 30 years.

AIA New Zealand and Sovereign together offer a range of life and health insurance products that meet the needs of over 646,000 New Zealanders. AIA New Zealand and Sovereign are committed to an operating philosophy of *doing the right thing, in the right way, with the right people*.

About this submission

We support the efficient and effective operation of the insurance market in New Zealand, and welcome the opportunity to submit in response to this review. We consider that it is important to ensure that any issues with the current legal framework are clearly identified, and that any reform is tailored to address these issues. Given the importance of ensuring that any reforms are effective, and will not result in unintended consequences, we also consider it important to ensure that sufficient time is allowed for further consultation on MBIE's preferred options, for the subsequent development of any proposed legislative reform, and for the implementation of those reforms.

We set out our views on a selection of the specific questions posed in the Options Paper in the attached schedule. We look forward to continued opportunities to engage with MBIE as any proposed reforms progress.

Confidentiality / release of information

This submission contains some information that is confidential, as identified in our response. We kindly request that if a request under the Official Information Act 1982 for this submission is received, the indicated confidential information is withheld.

Please feel free to contact us should you have any questions in relation to our submission or would like to discuss any aspect further.

Yours sincerely

Kristy Redfern
General Counsel
AIA New Zealand and Sovereign

Duties to disclose information

Options in relation to disclosure by consumers

Question 2
What is your feedback in relation to the options for disclosure by consumers? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option (including the status quo) do you prefer and why?

Option 1 – Duty to take reasonable care not to make a misrepresentation and Option 2 – Duty to disclose what a reasonable person would know to be relevant

This submission addresses Option 1 and Option 2 together, as we consider that there are two common aspects to these options:

(a) Whether insurers should be limited to claiming non-disclosure where a consumer has failed to properly answer a specific question from the insurer; and

(b) The standard of the consumer's duty of disclosure.

Should insurers be limited to situations where a specific question has been asked?

Option 1 requires insurers to ask questions of consumers. We understand from this that insurers would be limited in claiming non-disclosure to circumstances in which a consumer has failed to properly answer one of these questions.

By contrast, we understand from the Options Paper that there would be no requirement to ask questions under Option 2, and insurers would not be limited to claiming non-disclosure where a consumer has failed to properly answer a question from the insurer.

We support a requirement on insurers to ask questions, with the insurer limited to raising non-disclosure in the context of the consumer's answer to the questions, for the following reasons:

1. A requirement for the insurer to ask questions would be consistent with our current approach as we do not expect consumers to provide us with information outside of the answers to questions we ask.

2. We consider that there are very few material circumstances that arise that are not covered in our application form questions.

Standard of consumer's duty

Under Option 1, consumers would have a duty to take reasonable care not to make a misrepresentation. This mirrors the approach in the United Kingdom.

Under Option 2, consumers would have a duty to disclose what a reasonable person would know to be relevant. This mirrors the approach in Australia.

We consider that Option 2, when compared with Option 1, is unlikely to be as straightforward for consumers and insurers to interpret and would not actually assist consumers to clarify what needs to be disclosed. This is because Option 2 requires the consumer and insurer to form a view as to the standard of disclosure expected from the "reasonable person". It follows that we do not believe that Option 2 will address the concern with the status quo highlighted by MBIE, namely that most consumers do not know how underwriting decisions are made and would not appreciate nuances in their medical history which could alter decisions on coverage.

We submit that a modified version of Option 1 should be adopted: that a consumer must not make a misrepresentation in response to the questions that are asked. The key reasons for this are as follows:

1. Under Option 1 proposed by MBIE, if a consumer makes an innocent misrepresentation (i.e. they take reasonable care not to make a misrepresentation, but nevertheless make a misrepresentation), they will not be in breach of their duty of disclosure. This is inconsistent with the nature of insurance, namely that the consumer is in the best place to understand their history, and that it is critical that all information requested by the insurer is provided to the insurer.

2. If insurers are required to prove that a consumer has acted unreasonably in relation to a misrepresentation, it is likely to be challenging and lead to additional costs that are likely to be borne by insurers and (ultimately) other consumers. This is because an insurer will be required to investigate the consumer's actions and compare those actions against the standard of a reasonable person, and seek to prove that the consumer was unreasonable if there is a dispute. Generally, the correct information and the reasons for answering a question in a particular way will only be known to the consumer in question.

3. Option 1 as proposed by MBIE would put insurers in a significantly inferior position in comparison to other parties at general law in New Zealand. In any other situation, if a party makes an innocent misrepresentation, this will give rise to an action in misrepresentation. However, under Option 1 proposed by MBIE, insurers will not be able to rely on an innocent misrepresentation in respect of an insurance policy. In our opinion, it is not preferable to have such a discrepancy between insurance law and other law in relation to misrepresentation.

4. A modified version of Option 1 would also be consistent with objective two of the Options Paper: ensuring interactions in the insurance market are fair, efficient and transparent at all points of the lifecycle of an insurance policy.

Option 3 – Require life and health insurers to use medical records to underwrite

AIA submits that Option 3 is likely to be highly difficult to implement in a practical and efficient manner, and is likely to result in little benefit to the majority of consumers at a high cost to insurers, and ultimately consumers.

The reasons for our submission are as follows:

1. First, there are multiple difficulties with obtaining medical records:

   (a) If a consumer has moved medical practices (as many people do during their lifetime) or attends several medical practices, their medical records are unlikely to be in a single file. Insurers will be required to obtain records from multiple practices. In addition, consumers may not be able to recall all the medical practices they have attended throughout their lives.

   (b) Consumers who have received treatment under different DHBs are unlikely to have consolidated records. In our experience, DHBs do not have strong practices in place for communicating with each other.

   (c) Where a medical practice has been disbanded or a general practitioner has retired, it is possible that relevant records may be lost in the process. Further, there are situations where a consumer may not have medical records available at all – for example, if they are a new migrant. It is not clear whether insurers would be required to obtain medical records from overseas, but we submit that this would be unreasonably onerous. There is an additional issue if such records are not in English.

   (d) There is also likely to be significant resistance from the medical profession to the repeated and regular request for medical records.

2. Second, even once medical records are actually obtained, there is no standardised digital format for medical records in New Zealand. Consequently, insurers are required to obtain and manually review scanned medical records. We understand that the average length of medical records obtained by insurers in 2017 was 55 pages, up from the previous average of 42 pages. Accordingly, requiring insurers to obtain and review these records would have serious consequences for operational efficiency and cost. In addition, turn-around times in respect of underwriting are likely to increase.

Question 3
Should insurers be required to warn consumers of the duty to disclose? Why/why not? Should insurers be required to warn all insureds of the duty to disclose, including businesses?

We support a requirement that insurers advise consumers of their duty to disclose in the proposal documents and the policy wording. This is consistent with the approach that we already take in respect of both AIA and Sovereign branded products. For example, in the Sovereign-branded long application form for life and health cover:

(a) The first sentence provides that "We understand that the questions we ask in this form may be sensitive, but it is very important that you give us all the information that may affect your application

for insurance. If we find out at a later time that you have not disclosed all material information, your policy can be avoided altogether".

(b) The application form also contains a plain-language summary of the duty, explaining:

(i) That consumers are required to be truthful;

(ii) That consumers are required to continue to disclose information up to the date the contract is concluded;

(iii) The level of detail required in answers;

(iv) What to do when in doubt as to whether something is relevant or correct;

(v) How non-disclosure affects claims; and

(vi) The effect of signing the application, including authorising the insurer to obtain information from third parties.

(c) The declaration section of the application form has a shaded box setting out the legal definition of the duty of disclosure. It states that consumers have a duty to disclose all information they know, or could reasonably be expected to know, that would influence the judgment of a prudent underwriter in deciding whether or not to insure them, and if so, on what terms and at what cost. This section also states that if a consumer fails to comply with the duty, the policy may be avoided, with no claims paid.

(d) Finally, the declaration section requires consumers to complete a tick box stating they understand the importance of full disclosure, and that they have read the "Disclosure" section of the declaration. This section asks consumers to declare that, among other matters, that they have read the notice explaining the duty of disclosure and the statements they have made are true and complete to the best of their knowledge.

Similarly, the first page of the AIA New Zealand Application for Insurance form contains a plain-language summary of the duty, and states that applicants should read this prior to completing the application form. The "Disclosures and Declarations" section of the application form explains the duty of disclosure in detail, stating that an applicant must disclose everything that they know, or could reasonably be expected to know that is relevant to AIA New Zealand's decision whether to accept the application (and on what terms). The application form also sets out the consequences of a failure to comply with the duty, including that we may avoid the policy from the date of commencement, retain premiums and recover any benefits paid. Finally, the AIA application form requires the applicant to declare that they have disclosed all material information.

We submit that it will be important to clarify that, if insurers are required to warn of the duty to disclose, this can be done in the proposal form and in the policy document.

This is because there are many interactions that take place directly between consumers and their advisers (such as brokers), without the insurer present. It would be unreasonable to hold insurers responsible for any failure by an intermediary not to advise the consumer of the duty to disclose, given that the insurer is

not typically involved in these interactions. The insurer's obligation to advise consumers of the duty to disclose should be limited to the proposal form and the policy wording.

As a matter of practice, AIA does seek to set out clear expectations for its advisers on what must be communicated to customers and follows up where we believe advisers may not be providing sufficient warning on non-disclosure. However, it is the adviser and not the insurer that should be responsible if the adviser fails to comply with a requirement to warn consumers of the duty of disclosure.

Finally, we note that any proposed reform in this area should be consistent with the ongoing work in relation to MBIE's Conduct of Financial Institutions Review and the RBNZ/FMA Review of the Life Insurance Industry, as this is a potential area of overlap.

Question 4
Should insurers have to tell consumers what third party information they will access, when they will access it and if they will use it to underwrite the policy?

AIA supports transparency in relation to informing customers of its access to third party information and seeks to be transparent with customers through clear privacy wording in its application forms.

Currently, AIA informs customers (in its application forms) that it may obtain personal information from third parties for the purpose of assessing a customer's application (e.g. doctors, counsellors, psychologists etc).

We support transparency in relation to the disclosure of the use of third party information. However, we have the following concerns with MBIE's proposed option:

- It is not clear whether, as part of the requirement, an insurer will need to inform a consumer multiple times if it obtains multiple pieces of information from the same third party, as part of the application assessment process.
- A rigid statutory requirement may not be appropriate because the extent to which an insurer actually needs to obtain further information relating to the assessment of an insurance application is likely to vary from consumer to consumer. Accordingly, we recommend that any requirement is flexible.
- Third party information used by insurers for the purpose of underwriting may be confidential and so this will need to be considered as part of any proposed requirement.

Options in relation to disclosure by business

Question 5
What is your feedback on the options in relation to disclosure by businesses? In particular: Should businesses have different disclosure obligations to consumers? Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option (including the status quo) do you prefer and why?

AIA submits that different disclosure obligations for businesses are not required, and that a consistent approach across consumers and businesses is preferable.

Options in relation to disclosure remedies

Question 8
What is your feedback in relation the disclosure remedy options? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option do you prefer and why?

Option 1 – Remedies based on intention and materiality

In our view, adopting an option which requires insurers to prove that a non-disclosure or misrepresentation was deliberate or reckless is likely to put a potentially difficult and costly burden on insurers of proving an insured's intention.

Additionally, insurers would not be able to avoid policies where there has been a fraudulent but non-material non-disclosure. Once fraud is established, there is a loss of trust between the insurer and customer, and it is reasonable for an insurer to avoid policies accordingly.

Accordingly, we submit that Option 3 (modified as set out in our submission below) is preferable to Option 1.

Option 2 – Remedies based on intention and materiality, no avoidance for non-fraudulent material non-disclosure

AIA submits that Option 2 is not desirable. Under Option 2, insurers would not be able to avoid a policy for material non-disclosure (in the absence of fraud), even where they would not have offered cover in the first place had the non-disclosed information been known. This forces the insurer (and other consumers)

to bear the costs of one consumer's failure to provide material information. It also provides an incentive for consumers to not provide full disclosure, in the knowledge that proving fraud is difficult and that an insurer will not be able to avoid the policy even if the non-disclosure was material.

AIA submits that this result would not be consistent with objective two of the Options Paper: ensuring interactions in the insurance market are fair, efficient and transparent at all points of the lifecycle of an insurance policy.

Option 3 – Disclosure remedies based on materiality only

AIA submits that Option 3 is the option that aligns most closely with our current approach, which does not distinguish between innocent or blameworthy conduct other than in extreme scenarios such as fraud. Our view is that if we were to apply our existing legal rights indiscriminately, this may result in disproportionate outcomes for consumers in some cases. Accordingly, we work to resolve any non-disclosure issues in a fair manner taking into consideration the customer's interests.

Design options for disclosure remedies

Question 9
Is it fair to require insurers to pay claims that are not connected to a non-disclosure or misrepresentation, even if the insurer would not have entered into the contract had they known the facts?

As set out above, we work carefully to avoid disproportionate outcomes for consumers, striving to resolve issues in a fair manner and carefully assessing the materiality of any non-disclosure against both the policy and the claim. However, allowing consumers to retain cover in situations where they fail to disclose and would not have been offered cover is unfair to both insurers and to other consumers in the insurance pool. It forces the insurer (and other consumers) to bear the costs of one consumer's failure to disclose.

Additionally, consumers would have an incentive to not disclose all potentially relevant information, if insurers were required to pay claims that are not connected to a non-disclosure or misrepresentation.

Question 10
Should insurers be able to offer reduced cover or ask the insured to cover the difference in order to recoup the amount they would have charged if they had the facts? Why/why not?

AIA submits that insurers should be able to offer reduced cover moving forward. Our typical approach in this situation would be to adjust the value of the cover moving forward, including reducing it if required. Another approach we take (and depending on a customer's individual circumstances) is to offset the difference in amount against a future claim, if any. We consider these to be reasonable approaches, to be exercised at the discretion of the insurer.

Question 11
Should we clarify that where a contract has been avoided and all claims rejected, the insured is not required to refund claims money if it is not easily returnable and would hard and unfair to the insured? Why or why not?

AIA supports this option but submits that if this design option is adopted, there should be an exception for where a contract has been avoided as a result of fraud. We consider that in these situations, an insurer should have the right to recover past claims paid out to the insured without being required to take into account the particular circumstances of the insured.

Question 12
Do you agree that section 35 the Contract and Commercial Law Act should not apply to insurance contracts? Are there any other sections of the Contract and Commercial Law Act that should not apply to insurance contracts?

AIA submits that it is critical that the law relating to insurance contracts is consistent with the Contract and Commercial Law Act. For this reason, Option 1 in relation to disclosure should not contain a test of reasonableness.

In our view, the interaction between both sections 35 and 37 of the CCLA (on the one hand) and insurance law (on the other) will need to be clarified.

Misrepresentation provisions in the Insurance Law Reform Act 1977

Question 13
Do you agree with the proposed change to the misrepresentation provisions in the Insurance Law Reform Act 1977? Why/why not?

We agree with the proposed changes.

Unfair Contract Terms

Question 15
What is your feedback on the UCT options? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option do you prefer and why?

We strongly support retaining the status quo in respect of the insurance exceptions to the unfair contract terms regime. As was recognised when the unfair contract terms provisions were introduced, insurance contracts are unique in their operation and role in society. The current exclusions were designed to reflect this unique nature of insurance contracts, and the existing regulation of the insurance industry.

We submit that the reason why insurance contracts differ from other types of contracts is that in order to operate, insurers need to have a clear understanding of the extent of risk they are accepting. Insurers attempt to define the parameters of risk, and price them accordingly, through setting particular terms. Such terms include exclusions, which may be used to ensure that insurance is only covering unforeseen claims, and ensure that all consumers in the pool are treated equally. Premiums are then priced based on these factors.

We note that insurers design exclusions based on a number of factors including the insurer's risk appetite. Such exclusions may include a stand-down period of cover for suicide related deaths, or threshold definitions of medical events which trigger cover. If unfair contract terms are applied to insurance contracts, without exception, arguably all limits to cover could be challenged and insurers would ultimately be required to offer blanket cover, which would result in a significant increase in premiums for consumers.

If those terms upon which insurers rely to accurately price risk are found by a court to be unfair, this will have an effect on the appropriateness of the level of premium set. If insurers are unable to accurately price risk, they may cease to offer cover, or increase premiums. There are clear financial pressures on insurers if policy terms cannot be enforced.

In addition, the removal of the insurance-specific exceptions are likely to have unintended consequences for reinsurance. Reinsurance contracts generally contain clauses requiring New Zealand insurers to utilise certain exceptions. If these exceptions were to be overturned in respect of an insurance policy, this would limit New Zealand insurers' ability to be protected under reinsurance contracts. The ability to obtain and maintain reinsurance is of genuine concern to the New Zealand insurance industry, and a vital part of minimising barriers to insurers participating in the insurance market (consistent with Objective 3 of the Options Paper).

We understand from the Options Paper that MBIE has a separate workstream underway in relation to considering self-enforcement of UCT provisions for standard form contracts (paragraph 74, footnote 7). We consider that consumers should not be given the opportunity to bring actions in respect of unfair contract terms provisions. The technical nature of the provisions means that they are more suitable to be operated by a regulator, and this approach is consistent with the fact that UCT provisions are aimed at standard form consumer contracts, where a number of consumers may be affected if a term is in fact an unfair contract term. Enabling consumers to bring actions based on unfair contract terms provisions is likely to lead to an increase of litigation, resulting in increased costs for insurers, which will likely result in increased premiums making insurance less accessible in New Zealand.

Option 1 – Tailor generic unfair contract terms provisions to insurance

As set out above, we strongly support retaining the status quo in respect of the insurance exceptions to the UCT regime. However, if the UCT regime is to be extended to insurance contracts, we submit that Option 1 should be adopted, and the UCT regime should be tailored to accommodate the unique nature of insurance products as far as possible.

If Option 1 were to be introduced, we submit that a broad definition of "main subject matter" should be adopted, as foreshadowed in the Options Paper. This is because insurance contracts contain a number of terms which may not otherwise meet a narrow definition of "main subject matter" or "upfront price payable", but which are nevertheless necessary for the insurer to assess and price risk.

Option 2 – Rely on generic unfair contract terms provisions

We do not support this option. It is highly likely that this approach would lead to uncertainty for insurers as to the enforceability of terms, which in turn may result in unintended consequences such as increased costs for the industry and consumers.

Option 3 – Completely exempt insurance contracts from UCT provisions and rely on conduct regulation

We do not support Option 3, and note that MBIE does not consider this to be a viable option. We submit that the considerations relating to unfair contract terms are too technical to be addressed under what is likely to be a principles-based conduct regime.

Understanding and Comparing Policies

Question 16
What is your feedback on the options to help consumers understand and compare contracts? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which options do you prefer and why?

Option 1 – Require plain-language insurance policies

As set out above, we support the intention of increasing financial literacy and consumer understanding of insurance policies, and we always aim to provide consumers with sufficient information about products and services to enable them to make informed decisions. AIA introduced our New Zealand Conduct Framework in February 2019 (**NZCF**). The NZCF sets out the AIA's commitment to customer engagement and good customer outcomes, including a commitment to communicate with customers in a clear, effective and transparent way.

Where possible, we are exploring ways to enhance our policy wordings to better aid customer understanding. However, it is important to recognise that policy wordings are legal contracts and the particular wording used by an insurer is important. It is inherently challenging to accurately translate complex insurance terms into plain language. This is especially true in the life and health insurance context, as insurance policies adopt specific medical language in order to determine when a medical event meets the threshold for claim payment.

For example, in our view, it would not be possible to accurately translate the definition of a "heart attack" into plain language, as there are a complex set of circumstances which need to occur before a consumer meets the definition and potentially triggers a claim under a policy.

A further example is trauma policies, which provide cover for numerous conditions and rely on medical definitions to objectively establish that the consumer has suffered the covered condition. Reverting to a plain language trauma policy would result in insurers losing the benefit of technical medical definitions and require insurers to rely on the diagnosis of a consumer's doctor without receiving any objective medical evidence to confirm the diagnosis. Insurers also rely on medical definitions to set minimum severity levels for some claimable conditions, which on a plain language basis would become impossible. This could lead to a material increase in claims costs and would result in insurers withdrawing or restricting the scope of their policies because the translation of policies could result in ambiguity.

For the above reasons, we work to achieve our customer understanding objective through product brochures, separate to the technical policy wording. These brochures are succinct, use simple language,

and describe policy features, exclusions and terms. We submit that it is not appropriate to require insurers to convert policy wording into plain language documents, especially given that the industry is already working to support consumer understanding through its collateral and other material that supports policy wording.

Finally, we submit that attempts to translate complex terms into plain language are likely to result in very long policy documents, and that consumers are likely to be put off by the sheer length of such documents. This is a live criticism in Australia, where insurers are required to produce plain language product disclosure statements (**PDS**) for insurance products. Commentary suggests it is questionable whether these PDS disclosure obligations have benefited consumers in Australia, with PDS documents remaining at 90 plus pages long.

Accordingly, we submit that requiring insurers to present their policies in "plain language" is unlikely to achieve improved consumer understanding at a practical level.

Option 2 – Require core policy wording to be clearly defined

We submit that requiring insurance contracts and policies to contain clear definitions for core policy terms is likely to be practically very difficult. Insurance policies differ in their wording, further modified by specific exclusions or endorsements. Premiums generally reflect the level of risk the consumer wishes or is required to be covered for. It is therefore difficult to determine which words, phrases or terms are 'core', as recognised in the Options Paper – in a legal document, any word can be a key term and small wording differences can lead to very different outcomes.

Options 3 – Require a summary statement to be provided

AIA supports the provision of summary information to consumers to enable them to better understand their insurance cover.

However, in our opinion, there are a number of open points that MBIE needs to consider further before a requirement of this kind is implemented. These include:

- The meaning of a "core policy term" needs to be clarified by MBIE.
- The information required in a summary statement needs to be of a type which is capable of being summarised in a succinct manner so as to avoid the summary statement becoming a substitute for the policy.
- The form of a summary statement should be standard across the industry, to the extent practical, to ensure that the industry provides consistent information to consumers.
- The point at which the insurer is bound to disclose the summary statement to clients needs to be clarified, i.e. when the policy documentation is issued or is it intended to be standard documentation on its website etc.

The extent to which the disclosure of summary information by an adviser to a consumer, as part of FSLAA, would meet the objective supporting this requirement.

Option 4 – Require insurers to work with third party comparison platforms

As noted in the May 2018 Review of Insurance Contract Law Issues Paper, there are already a number of comparison websites operating in the market. AIA currently works with some of these comparison websites. However, we strongly submit that it is not appropriate to require insurers to work with third party comparison platforms, as there are a number of issues that mean engagement at an industry level is more appropriate:

(a) Current comparison websites provide limited information about insurance products themselves, and so a requirement on insurers to work with these providers may not lead to an improvement in terms of consumer understanding and comparison of insurance policies.

(b) There is a concern that consumers may rely too heavily on the results of comparison platforms when those platforms do not consider each consumer's personal circumstances and resulting suitability of certain products. Further, consumers may rely on comparison platforms in lieu of seeking expert advice, and there may be a general trend in the market towards relying on comparison platforms and away from the provision of individualised advice on the appropriateness of products based on actual consumer needs.

(c) There is also a concern that third party comparison platforms will operate in their own interests, rather than in the interests of consumers.

Taking some of the existing comparison platforms as an example, AIA submits that the "star rating" system adopted by some of these platforms demonstrates why third-party comparison platforms are not viable as a regulatory requirement. The more benefits a policy offers, the better rating that policy would be likely to receive – without any consideration of the actual policy wording or the premium payable.

We submit that given the complexities involved in insurance, the most effective way to ensure that consumers understand and can compare policies is to develop plain language product collateral (as discussed earlier) and encourage and grow an accessible quality adviser network. Advisers should have the relevant expertise (now aided by the competency requirements in the new Code of Professional Conduct for Financial Advice Services) to assist consumers to compare policy cover.

Option 5 – Require insurers to disclose key information

AIA supports the provision of key information to consumers, but as with Option 3, we consider that there are a number of open points which need to be considered further by MBIE prior to implementing a requirement of this kind. These points are of a similar nature to those described in Option 3 above.

As a final point in respect of all options in relation to the understanding and comparison of policies, we submit that in addition to the work already undertaken in the industry, any conduct reforms as a result of

the concurrent Conduct of Financial Institutions Options Paper may also ensure that insurers are focussed on assisting consumers to understand their policies and/or potential policies.

Miscellaneous Issues

Insurer deemed to know matters known by its representatives

Question 17
What is your feedback on the options in relation to intermediaries? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option do you prefer and why?

We are supportive of reform in respect of deemed knowledge of insurers. The adviser model within the industry has shifted from a system where advisers were tied to insurers (with insurers providing systems, processes, training and administrative support, etc) to a system where insurers predominately sell their products through independent financial advisers. While we are working towards increasing our level of oversight and monitoring of independent advisers as we prepare for the FSLAA regime, it is less feasible to assume transfer of knowledge in all cases.

Duty of utmost good faith

Question 25
What is your feedback to the options in relation to the duty of utmost good faith? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option do you prefer and why?

We submit that the case law is unsettled in respect of the application of the duty of utmost good faith during the lifecycle of the policy (and particularly in respect of claims handling). To date, the issue (as addressed in *Young v Tower*) has not specifically been considered by a higher Court, or by any other High Court judge. Accordingly, we consider that it is most appropriate to leave the law to develop through the Courts, rather than codifying it at present. We also note the potential risk that the codification of the duty will result in a conflict with the proposed duties set out in MBIE's Conduct of Financial Institutions options paper.