
From: Insurance Review
To: no-reply@mbie.govt.nz
Subject: RE: Response to Review of insurance contract law comprehensive form

From: no-reply@mbie.govt.nz [mailto:no-reply@mbie.govt.nz]
Sent: Wednesday, 26 June 2019 5:26 p.m.
To: Insurance Review
Subject: Response to Review of insurance contract law comprehensive form

Preamble question 1

Do you have any feedback regarding the objectives for the review?

In part, the review objectives appear to avoid many issues that impact the insured individual at a practical level. ie: So many issues can only be resolved by legal involvement that most insured people cannot afford and I notice that many legal 'case' examples do not rule in favour of the insured. Whilst you may be trying to rectify that (when a ruling is unfair) I don't believe this review is going to touch the surface. This is because basic, 'simple' failures are occurring within insurance companies eg: the requirement for insurance companies to communicate with the insured. There is so much blocking created by insurers and with no effective vehicle to monitor the insurers performance. So these objectives assume that new policy will assist the insured (where appropriate) but it relies too heavily on an assumption that insured people can afford to challenge an insurer under any policy ... whatever it is. Just about every rule in the current code of fair practice is being broken by mine. Thus, unfortunately, the objectives come across as predominantly driven by business, for business.

Preamble question 2

Do you have feedback in relation to the options for disclosure by consumers?

Whatever is decided in this regard, the insurance industry should be required to use their best endeavours to ensure understanding with their insured. So what is that? Again, your sub questions below are not in the knowledge realm of the average insured person. Yet perhaps they should have been? That is in itself an impact. You could surely take another complex policy organisation that genuinely DOES want to collect the right information and use that as a role model. For example, how does IRD improve understanding with 'ordinary' people? They do this with various example scenarios presented to the reader.

Explanatory text for qn2

Preamble qn 3 and 4

Should insurers be required to warn consumers of the duty to disclose? Should insurers be required to warn all insureds of the duty to disclose, including businesses?

Yes they should warn them. Why wouldn't they give such guidance?

It is 'guidance' (supposedly for mutual benefit) yet the concept is presented here as a concept around 'threat' by the use of the word 'warn'.

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?

Yes.

Preamble q 5

What is your feedback on the options in relation to disclosure by businesses?

Inadequate information to answer this.

Explanatory text for question 5

Preamble q 6

If we have a separate duty of disclosure for businesses, should small businesses have the same duty as consumers? If so, how should small businesses be defined?

Inadequate information to answer this.

If a duty of fair presentation is adopted, should businesses be allowed to contract out of the duty? What are the pros and cons? If businesses are allowed to contract out the duty of fair presentation, should the duty apply to all businesses?

Why would this be a good idea and for whom? It isn't clear in the Options paper.

Preamble question 8

What is your feedback in relation to the disclosure remedy options?

Explanatory text for question 8

Preamble question 9

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

Yes, it is fair. It is fair because of the underlying / over riding purpose of the insurance and the opportunity for understanding at its inception and acceptance. (assuming you give them that opportunity).

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?

No. Again, insurers need to have the right information available to them in the first place, but then their opportunity should be gone after acceptance.

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?

This is tricky. I would think that adequate warnings need to be in place from the outset, so that the insured is aware that such monies may need to be returned in certain circumstances.

Do you agree that section 35 of Subpart 3 of 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?

Too complex

Preamble qn 13

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

Too complex

Preamble qn 14

Which of the terms in Table 4 are unfair? In your opinion, are they exempt from the unfair contract terms prohibition?

"Are they exempt from the unfair contract terms PROHIBITION' is an awful sentence. Are they exempt from being prohibited?

Preamble qn 15

What is your feedback on the UCT options?

The exceptions clarify what cannot be deemed to be unfair, so they are clearly needed.

Explanatory text for question 15

Preamble question 16

What is your feedback on the options to help consumers understand and compare contracts?

Include options three, four and five. The word 'option' implies an 'either/or' scenario to many submitters. The above question is poorly presented. In addition, the thinking around this is far too entrenched in the concept of words rather than how words are strung together to form meanings! Going back to my IRD scenario, some examples should be provided to consumers. Those examples should flag up the LIMITATIONS of policies. (and that comment applies sensible boundaries). eg: "XYZ took out renters insurance but they were surprised to find that their carpets were only covered for malicious damage". The tenant said the spill was accidental. Because the damage couldn't be proven to be malicious, their claim was declined."

There are other glaring holes I can't find covered at all in my policies. If a third party repairer causes damage, who is responsible? Are they the agent of the insurance company? Either way, this needs to be included in plain language. Another example, the repairer takes a key for access, who is responsible for the security of the insured property during that repair period? (This seems to be very common). This may be covered under law (?) but the insured individual may not be aware that during a claim and repair period, their property can be compromised by third party suppliers of the insurance company. I received nothing in terms of guidance on the claim/repair process when I needed to claim and was blocked from any meaningful action by the insurance company for weeks. Consumers should be allowed to easily compare policies and I do not see why this is pre-determined to be extremely costly. So many products are compared in this way and there will be a way of making that happen for insured individuals. I would certainly pay a nominal sum for that information as long as the information I received was transparent and genuinely independent.

Explanatory text for qn 16

Preamble qn 17

What is your feedback on the options?

Another issue is agency involvement, thus forming another 'layer' into the insurance business without the consumer knowing the FULL function that each plays. This may contribute to the dire communication issues and lack thereof that I have experienced. The prospective customer needs to know how these agency parties function in relation to the insured person's property. Had I known some of the issues I'd be experiencing I would never have taken out any insurance that with more than two parties involved! Insurance companies also need to include their minimum standards for communication because a lack of performance on their part ends up being a huge cost to the insured, when the insured person tries to elicit adequate communication to progress a claim and hits a brick wall. It seems there are no requirements for insurers to perform to any measurable standard, despite a code.

Explanatory text for qn 17

Can the issues with the status quo be overcome with insurers contractually requiring representatives to pass on all material relevant information? What are the benefits of a statutory obligation requiring representatives to pass on information?

There are clearly benefits to the consumer if there is a contractual requirement to pass on relevant information. A major overall problem is communication and the lack of it to the consumer insured, so a statutory obligation avoids the 'surprises' for all parties. As long as this works in ALL directions rather than favouring the insurance company.

Should consumer insureds be treated differently from commercial insureds in relation to these issues?

I don't know enough about commercial insured to comment.

Preamble qn 20

What is your feedback on the options in relation to section 11 of the Insurance Law Reform Act 1977?

One would hope best option is the option that offers the best protection to all parties, or some additional and separate insurance cover that reflects the different components of the risk(s).

Preamble qn 21

What is your feedback on the option to provide that Section 9 of the Insurance Law Reform Act 1977 does not apply to time limits under claims made policies?

I would probably lean on the advice of the Law Commission.

Explanatory text for qn 21

If section 9 were to no longer apply to claims-made policies, should there should be an extended period (e.g. 28 days) for notifying claims or potential claims after the end of a policy term?

One would hope there would be an extended time period for notice, perhaps to cover situations where the facts were unclear or unknown and/or to provide higher quality information.

Preamble qn 23-24

What is your feedback in relation to the options for section 9 of the Law Reform Act?

Cannot say.

Explanatory text for qn 23

If the option is adopted, should it apply to insolvency only? Should third parties be required to get leave of the court? Should reinsurance contracts be excluded from the application of the option?

Cannot say.

Preamble qn 25

What is your feedback to the options in relation to the duty of utmost good faith?

Perhaps to codify the duty of utmost good faith but this would need to be transparently managed in a way that did not lose the last remnants of 'fair play' for insured individuals. Without such a duty underpinning insurance company actions their accountability may be lowered even further. In terms of insured/disclosure, it is perhaps a more linear and traceable concept.

Explanatory text for qn 25

Preamble qn 26

Do you have any feedback on the proposal to consolidate non-marine insurance statutes into a single statute?

Cannot comment

Preamble question 27

Do you have feedback on our proposed approach in relation to the Marine Insurance Act 1908?

cannot comment

Preamble qn 28

Are the above provisions redundant ? Why/why not? Are there other redundant provisions in the legislation covered by this review?

Cannot say

Preamble qn 29

Do you agree with the proposed option in relation to registration of assignments of life insurance policies?

Cannot say

Preamble qn 30

Should the maximum payment amounts for life insurance policies for minors be increased? Why or why not?

cannot say

Your name

Your organisation

None

Your email address

In what capacity are you making this submission?

individual consumer

Other capacity

Use of personal information - intro

Can we include your name or other personal information in any information about submissions that we may publish?

no

We intend to upload submissions to our website. Can we include your submission on the website?

yes

You may ask us to keep your submission, or parts of your submission, confidential. If so, you'll need to attach reasons and grounds under the Official Information Act 1982 for consideration.

no

You've indicated that you would like us to keep your submission confidential. Please tell us your reasons and grounds under the OIA that we should consider.