
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: Tuesday, 25 June 2019 1:51 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?

The objectives should go further & deal with issues relating to both brokerage & fees. At present when quoting or binding non life insurance products the broker/intermediary/agent does not have to disclose the brokerage &/or the fees they charge. In disclosing both the broker/intermediary/agent would detail the true cost of insurance (what the insurer gets) & allay any fears that the broker/intermediary/agent was pushing the client to place business because of a greater earned income from the insurer used. This is a requirement for other financial products such as mortgagee advisers/brokers/agents. It should be a requirement in the quoting & placement of "any" insurance product.

As an executive that works in the insurance industry in an operations, product design & pricing capacity I am extremely concerned at the financial literacy of our general public.

I am a strong believer that we should take the opportunity to implement laws that work to protect the rights & interests of the those that are the most at risk. Introducing a level playing field that deals with brokerage income and incentives for product placement will go a long way to do this.

Preamble question 2

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

I am not sue the use of "reasonable" is workable.

It is open to interpretation.

Information is gathered for two reasons.

Firstly to asses the level of trust an organisation can have with an individual (criminal convictions, fraud, bankruptcy). If the agreement is to be based on the principles of "upmost good faith" then the insurer assess trust.

Secondly it collects information to base a cover option, a price, an excess, a restriction. Risk specific information will be handled & priced by insures different ...largely based on the risk appetite & pricing considerations that they will have in play at the time.

This means that the collection of information will largely be prescriptive. ...meaning given information X & Y we will decide "z" 100% of the time.

The use of "reasonable" in the description of what any "reasonable" persona would have known leaves things open & does little to protect the consumer. If anything it leaves the door open to working in the current environment.

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.

& the warnings should be prescriptive, complete & represent everything that is of a concern.

Insurers are the experts, not the public. It is not the public that is to "interpret" relevance. This is the domain of the insurer. The insurer should be very prescriptive/precise about what they deem to be relevant.

This should be a legislation that is designed to protect the consumer.

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.

They should tell the client :

- what information they will collect.
- how they will use that information.
- how that information will be stored.
- what rights the insured has with regards that information.

They should also ask the client for authorisation to

- share that information (whilst telling them with whom it will be shared).
- access their information from third parties.

Insurers share claims information with the ICR database.

Preamble q 5

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

No.

Individuals & business should have the same level of protection under the act.

To introduce a discrepancy introduces complexity.

The law should be simple, easy to understand & easy to administer, & police.

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?

Please see above.

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?

Please see above ...this opens up the door to complexity.

Good law making/drafting requires simplicity to reign of complexity.

One law/rule for all.

Preamble question 8

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

Reducing the insurers avoidance to reckless or deliberate non disclosure would make things black & white.

Easy to administer and easy to police.

Where interpretation enters in we will have an increase in grey area reporting & the industry will open itself up to issues.

Our goal should be to improve consumer confidence, a clean black & white interpretation will do this for us.

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.

Materiality should govern the management of the loss event.

The only issues that should impact a coverage issue are reckless/deliberate disclosures or facts that are directly related to the loss event.

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?

Only if the insurer can show up front that given the disclosure of information "X/Y" that decision "Z" would have been arrived at 100% of the time.

Otherwise the insurer could be seen to be making up the cost to insure the event uncovered/disclosed in the course of the loss/event investigation.

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?

If the contract has been voided, then there was never any cover in place. In which case the insured should be refunded all monies/premium paid.

In this environment the insure should refund all monies paid to them in full.

The same rule should apply to all parties.

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?

Preamble qn 13

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

Preamble qn 14

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

Preamble qn 15

What is your feedback on the UCT options?

Explanatory text for question 15

Preamble question 16

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

Explanatory text for qn 16

Preamble qn 17

What is your feedback on the options?

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?

Should consumer insureds be treated differently from commercial insureds in relation to these issues?
Preamble qn 20

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

Explanatory text for qn 21

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

Preamble qn 23-24

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

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?

Preamble qn 25

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

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?

Preamble question 27

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

Preamble qn 28

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

Preamble qn 29

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

Preamble qn 30

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

Your name

Your organisation

N/A

Your email address

In what capacity are you making this submission?

other

Other capacity

individual & industry professional

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.