
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: Monday, 8 July 2019 10:15 a.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?

ASB supports the views and recommendations expressed in the Financial Services Council (FSC) submission in relation to this question.

Preamble question 2

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

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?

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

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?

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

Preamble q 5

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

ASB supports business disclosure Option 3 as this creates a duty of disclosure which is consistent with the consumer disclosure Option 1 (which we support).

We consider that with appropriate guidance around the interpretation of “reasonable care”, this option provides sufficient flexibility to be applied to all classes of insured (whether between consumers and businesses or between different classes of businesses). The standard of reasonable care will naturally be higher for more sophisticated parties such as businesses, particularly large businesses with access to advice.

Further, we consider that a consistent duty of disclosure that does not differentiate based on class of insured is likely to be significantly more efficient from an implementation and compliance perspective.

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?

ASB supports the views expressed in the FSC submission in relation to this question.

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?

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

Preamble question 8

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

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?

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

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?

ASB supports the views expressed in the FSC submission in relation to this question. In addition, where an insurer elects to offer reduced cover or ask the insured to cover the difference in premium, the insured should be required to seek financial advice (or waive the requirement to seek advice) in order that they can make an informed decision around what option is suitable in their circumstances.

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?

ASB supports the views expressed in the FSC submission in relation to this question.

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?

ASB supports the views expressed in the FSC submission in relation to this question

Preamble qn 13

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

ASB supports the views expressed in the FSC submission in relation to this question.

Preamble qn 14

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

To the extent there is legitimate concern that the insurance-specific exemptions to the unfair contract terms (UCT) regime is resulting in a lack of protection from genuinely unfair terms, ASB is supportive of reform. However, any reform must strike an appropriate balance between protecting consumers from genuinely unfair contract terms; while protecting the legitimate interests of the insurer in accurately assessing and pricing risk.

Any reform should also take into account the potential introduction of principles-based conduct duties, which deal with issues such as treating customers fairly and designing products in a way that promotes good customer outcomes.

Preamble qn 15

What is your feedback on the UCT options?

See response to question 14.

Explanatory text for question 15

Preamble question 16

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

Explanatory text for qn 16

Preamble qn 17

What is your feedback on the options?

ASB does not support Option 2 on the basis that this option results in an unacceptably poor outcome for the customer and is counter to the policy objectives of ensuring that customers are able to transact with confidence.

Under this option, an intermediary's failure to pass on material information to an insurer may result in the insured's claim not being paid or the policy being cancelled or materially altered, sometimes long after the policy was originally entered into. The customer would then have to seek redress from the representative which is unlikely to adequately compensate the customer for the damage caused by their policy being avoided or materially altered. In addition to this option resulting in a poor outcome for the insured, it is also likely to reflect poorly on the insurer.

ASB considers that contractual rights of redress between the insurer and the representative can and does provide appropriate protection for dealing with instances where a representative fails to pass on material information to the insurer.

We do not consider there is justification for consumer insureds and commercial insureds to be treated differently.

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?

See response to question 17.

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

Preamble qn 20

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

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?

ASB supports the views expressed in the FSC submission in relation to this question.

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?

ASB supports the views expressed in the FSC submission in relation to this question.

Preamble qn 23-24

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

ASB supports the views expressed in the FSC submission in relation to this question.

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?

ASB supports the views expressed in the FSC submission in relation to this question.

Preamble qn 25

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

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?

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

Preamble question 27

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

No comment.

Preamble qn 28

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

ASB supports the views expressed in the FSC submission in relation to this question.

Preamble qn 29

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

Preamble qn 30

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

ASB supports the views and recommendations expressed in the FSC submission in relation to this question.

Your name

Your organisation

ASB Bank Limited

Your email address

In what capacity are you making this submission?

business

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.