
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: Friday, 28 June 2019 3:52 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?

We strongly support the objectives for the review. We support reforms that seek to ensure consumers are adequately informed about insurance products and their rights, and are confident in enforcing them, and that insurers are informed about the risk they are taking on in transactions.

Preamble question 2

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

We agree with the description of the status quo and the problem definition in the options paper. Our cases indicate that the most common reason for a complaint about insurance is a decision by a bank to reject a claim due to alleged non-disclosure.

The research findings described in paragraphs 16-32 of the options paper are consistent with our experience from the cases – that consumers do not understand the duty of disclosure and its implications, and that instances of non-disclosure can have disproportionate consequences.

We agree with the criteria for determining reform options outlined in paragraph 33.

We support option 1 as the preferred option for improving the rules about disclosure. A duty to ‘take reasonable care not to make a misrepresentation’ represents a fairer onus on consumers than the status quo where consumers often do not know about the duty to disclose or do not understand the extent to which they should disclose information.

In our view, it apportions responsibility more fairly between the insurer and the insured for this critical exchange of information. It requires the insurer to identify the information that is needed to assess the risk and the insured to answer the insurer’s questions accurately.

We prefer option 1 to option 2 which retains an active duty on consumers to anticipate the information that insurers might need. We prefer option 1 to option 3 because a requirement on insurers to check medical records in every case will add compliance costs that are likely to be passed on to consumers.

We acknowledge that option 1 could require more time and resources from insurers in designing questionnaires, and that this could result in costs being passed on to consumers, but we agree that this is likely to be a one-off cost through insurers designing a comprehensive questionnaire.

We agree that this may require consumers to invest more time and resources in completing comprehensive questionnaires when they apply for cover. However, in our view, this inconvenience is likely to be minimal compared to the questionnaire process that is already required under the status quo.

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?

We agree with the proposal to introduce a statutory requirement that requires insurers to warn insureds of the duty to disclose in writing before a contract is entered into.

One area that could be improved is the process and guidance used to explain the importance of the duty to disclose to consumers.

The application process can be overwhelming and confusing, so it is important clear information is provided along with time to process it. This may be better suited to guidelines that support legislation which note:

- Consumers should be clearly advised that they have a duty to disclose all relevant information (and that they should check their medical records if they are unsure) and that future claims may be denied if the information has not been provided accurately.
- Consumers should be given some time and space to complete the information before going through the answers with the financial advisor who is managing the application.
- Consumers could also be offered the opportunity to authorise access to medical notes to insurers if that is easier.

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, we consider insurers should be clear with consumers about when, how and why they are accessing third party records.

Preamble q 5

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

N/A

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?

We agree that small businesses often have a similar level of knowledge and resources as individual consumers. We therefore support the proposal for small businesses to have the same duty as consumers.

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?

N/A

Preamble question 8

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

We support option 1 for disclosure remedies which would allow insurers to avoid contracts for deliberate or reckless material non-disclosures or misrepresentations. We agree that this will incentivise care and accuracy when filling out applications and enables both parties to be returned to the position they would have been in if they had had all of the information at the time of the application. We agree that this reflects current best practice where some insurers already use a range of proportionate remedies, including approaching the claim the way the insurer would have approached it if it had had all of the relevant information at contract formation.

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?

If a claim is not connected to a material non-disclosure or misrepresentation (that is not deliberate or reckless), we support a requirement for insurers to pay on that claim. The insurer can then cancel the policy or impose additional terms using the proposed disclosure remedies.

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?

N/A

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?

N/A

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?

N/A

Preamble qn 13

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

Yes, it make sense to bring the Insurance Law Reform Act 1977 into line with any new remedies for an insured's failure to disclose.

Preamble qn 14

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

N/A

Preamble qn 15

What is your feedback on the UCT options?

We agree with the assessment criteria in paragraph 80 and support option 1 as the preferred option for addressing potential unfairness created by the current insurance-specific exceptions in the Fair Trading Act. We consider this strikes a fair balance between better protecting consumers from unfair insurance terms and enabling the specific features of insurance contracts to be recognised.

Explanatory text for question 15

Preamble question 16

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

N/A

Explanatory text for qn 16

Preamble qn 17

What is your feedback on the options?

N/A

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?

N/A

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

N/A

Preamble qn 20

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

N/A

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?

N/A

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?

N/A

Preamble qn 23-24

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

N/A

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?

N/A

Preamble qn 25

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

N/A

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?

N/A

Preamble question 27

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

N/A

Preamble qn 28

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

N/A

Preamble qn 29

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

N/A

Preamble qn 30

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

N/A

Your name

Nicola Sladden

Your organisation

Banking Ombudsman Scheme

Your email address

In what capacity are you making this submission?

other

Other capacity

Dispute Resolution Scheme

Use of personal information - intro

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

yes

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.