
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 2:47 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?

1. You may be interested in some feedback from the “coal face”.
2. I have been a financial adviser for over 42 years. In that time, I have assisted clients purchase thousands of insurance policies (Life, Total and Permanent Disablement (TPD), Trauma, Income Protection and Health Insurance). I’m submitting on behalf of five AFAs and a company with a total of 11 people.

Preamble question 2

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

3. In the first 20 plus years of my career, when a client wanted to proceed with some insurance cover, as a rule I would ask my client the various questions on the application form and then physically write in the answers for them. By doing this I would invariably “tease out” answers to questions that clients may not have considered important. If I left the client to fill out the questions themselves, often many things would be left out, but with no intention or thought to mislead on their part. That’s just the way it is. For example, where there were a number of questions about health-clients would often tick “no” to everything, where I would delve a little deeper and ask such questions as “so, you’ve never been to a hospital ever or seen a specialist or been to your GP in the last 5 – 10 years – surely you have?” and then more information to add to the application would be forthcoming. Colleagues confirm similar stories.
4. Some time back we were advised by our Professional Indemnity insurers that we should desist from this practice and not help clients fill out application forms, and that the client should fill them out in their own handwriting.
5. One provider that we deal with, in order to counter this directive, suggested that we get a separate letter signed by the client saying that they have allowed us to fill out the questions but that everything they have told us has been accurately recorded on the application form. I’m still not sure how a mediator would view this should there be an issue.
6. Where declination of claims’ issues arise - is when a claim is turned down because of non-disclosure.
7. There will be instances where the lawyer of the potential claimant, prompts the client to suggest that the client had told the insurance adviser that they had some condition, but that the insurance adviser had told them that they didn’t need to worry about it and that they didn’t need to put it on the form. It becomes a “he said/ she said” scenario. If the claimant is believed, because the adviser is deemed to be an agent of the insurer, then that information is deemed to be known by the insurer and then this is a way of claimants trying to win their case.
8. As it turns out, in my long career (and no doubt because we have assisted in filling out thousands of application forms) I have only had one claim turned down for non-disclosure. This was when the application form had been filled in by the wife of the client and they had both omitted to tell the insurer that he had had some particular medical history. Consequently, he became incapacitated from an illness that resulted from the original condition. From memory, the application form had been posted back to me and regardless, I had no knowledge of the previous condition. Had I assisted the client to fill out the forms, I’m sure the non-disclosure would not have occurred.

9. Therefore, in my experience, it definitely assists insurance companies in getting full disclosure when advisers help clients fill in the application forms in the adviser's own writing when they are doing a paper-based application.
10. So, one suggestion could be that Professional Indemnity insurers should not desire that clients fill in paper-based forms in their own handwriting.
11. My experience would show that when advisers fill out insurance applications, more relevant health information is recorded. Appropriate wording authorising this could be inserted in application forms for a client to sign off.
12. Some non-disclosures with insurers relate to when there have been boxes to be ticked in an application form. They might only require a "yes" box to be ticked and not a "no" box for example. This is not a good idea and maybe the rules should be changed to require each question to be answered or ticked – Yes or No. It sounds simplistic, but it's an issue.
13. Other non-disclosure issues are often to do with previous high blood pressure or high cholesterol levels. Often questions relating to these conditions may be merged in with other general health questions but really should be specifically asked. More often than not, it would appear that clients don't actually know that they have high cholesterol or high blood pressure. For example, they go to see their GP and then, get sent off for a routine blood test. The doctor never comes back to them with the results because the levels are within an acceptable range (for the doctor), albeit at a level that an insurance company would consider "high". However, the patient has not been told their cholesterol is high. When there is a claim later on the insurer discovers from the client's medical notes that the cholesterol was "high", but the client had no knowledge of this. Likewise, with blood pressure readings. Most people have no idea what their blood pressure is and again, doctors don't always tell patients that it is higher than normal.
14. Likewise, removal of moles might be an issue. A biopsy is done and there may be some minor issue discovered but the doctor doesn't necessarily inform the patient. The patient has no knowledge that they may have had a slightly suspect reading for a mole removal. Specialists often do not copy patients in on letters back to GPs, so patients often do not know what's happened. Subsequently when there is a claim for a melanoma for example, the insurer might decide that there might have been some pre-existing problem and decline the claim.
15. Another common issue appears to be when a patient sees a doctor about not sleeping, for example. The doctor asks whether the patient has been under any stress at all. The answer is invariably yes. Everyone is under stress! There's good stress and bad stress. The doctor notes this on the records, the patient's sleep habits improve and she forgets she even saw the doctor. She buys some insurance later, forgets to note this visit and years later the insurance company discovers that the patient had had some "mental illness" condition because of the word "stress".
16. What I am trying to tell you is that there can be medical issues that patients simply don't know they have got and the insurance companies don't necessarily drill down on these types of question.
17. Better questions might be a simple solution. For example, it might be more beneficial to require insurers to ask – "have you had any blood tests at all in the last 5 or 10 years?". Then if the client has – the insurer should ask for them. The insurance companies are not wanting to increase their costs by writing to the client's doctors and requesting a medical report in all cases because by definition, the premiums will increase but, if the client can be asked to furnish this information themselves then this extra cost would not lie with the insurance company.
18. The advent of such things as "manage my health" means that clients can get access to lots of medical data and furnish that to the insurance company without the insurance company having to pay a doctor \$250 or so to do a report. For example, we helped a client organise some insurance last week and they printed out their "manage my health" records and we attached this to their application form. A wonderful way to give the insurer plenty of information.
19. Other health conditions that seem to become non-disclosure issues would appear to be "joint" issues. Many clients don't necessarily understand what a "joint" problem is. Insurer's should spell it out by asking "have you ever had a problem with your knee, hip, shoulder, elbow, ankle, wrist, neck, back...." versus simply asking "have you had any joint issues?" and then requiring a further more

detailed questionnaire to be filled in.

20. So maybe the regulations should be changed to require certain questions to be asked more explicitly.

21. Clients should be made aware very clearly of the need to fully disclose all medical history and the consequences for not doing so. Often the disclosure is on the last page of the application form and is in relatively small print and I suspect it is often not fully read.

22. In our own practice, after a client has filled in an application form for us to on-send to an insurer, we send the client a hard copy with various warnings regarding non-disclosure and for the client to check what has been written and to let us know immediately in writing if there is anything that has been omitted or if any medical situation arises between the time of signing the application and the time of acceptance. I doubt whether all advisers would do such a thing but maybe that should be law too. Or maybe the insurance companies should be required to send a copy of the application out with the policy document.

23. I feel that clients signing up insurance policies online is a potentially dangerous practice. The tendency to not disclose everything must be considerable and I'm sure the statistics will start to bear this out with more non-disclosure issues as time passes and as more policies resulting from online applications become claims. Likewise, the bank type application forms that might be fairly light on requirements will most likely create potential non-disclosure issues and claims being turned down. There is an expression in our industry - "underwriting at time of claim versus underwriting at time of application" and this is a very dangerous practice and is not good for the consumer.

24. One other issue that I understand was in the Insurance Law Reform Act 1977 regarding potential voiding of a Life policy, possibly is relevant.

My understanding is that under the current Act, a company cannot void a life policy by reason of any statement in the proposal unless the statement –

- Was substantially incorrect;
- Was material; and
- Was made (i) fraudulently; or

(ii) within three years prior to the earlier of the date of death or date on which the policy is sought to be voided.

'Fraudulently' means that the statement was made:

- Knowing it to be incorrect;
- Without believing it to be correct; or
- Recklessly, without caring whether it was correct or not.

The wording indicates a "Life Policy" not being voided.

Back in the 1970s, most of the policies were just "life" policies so in any review, policies should refer to "Life, TPD, Trauma, Income Protection and Medical insurance policies too.

The wording in the Act is actually quite adequate I believe as long as all associated policies are included.

I wonder whether there have been instances of companies voiding policies without reference to the wording in the current Act or because the policies being voided are not "life" policies. In other words, if it's a Trauma policy, it does not come within the above definition, and therefore could be voided should there be some non-disclosure.

If a client forgets or isn't aware of some previous medical condition, the current Act necessitates those three requirements, and unless they can all be proven, I would have thought that the "life" policy could not be voided.

So, just change the wording slightly.

25. One other issue is my understanding that dispute resolution schemes (which may not be in the ambit of any new reforms) will only get involved in resolutions up to a certain level of cover. (\$200,000 for lump sum payments and \$1,500 per week for Income Protection payments). This is ridiculous and dispute resolution should relate to any level of cover.

26. You should be aware that over these past 42 years advising and assisting clients in purchasing various insurance solutions, my financial advisory company and I have also helped facilitate tens of millions of dollars in insurance claims.

As noted earlier, I have had only one client's claim turned down for non-disclosure and this was

justified. There have been only three claims in 42 years I can think of that justifiably haven't been paid out due to the condition not meeting the policy wording.

27. The insurance companies who deal with intermediaries have been excellent to deal with and are definitely client centric. In my long experience, they try to find reasons to pay claims versus the other way around.

28. The good companies will also honour claims years after claimable events and years after the policy wording might indicate a no claim situation.

You don't want to legislate for a time limit on life companies' claims unless it's a really long limit – like 15 years. You will create more problems than you are trying to solve.

You should also be aware that there are numerous examples of advisers unearthing these potential historical claims. Every year, for example, it seems that one of our company's advisers discovers a client who has had some health scare and therefore a potential claim some time earlier. One example just this week has seen one of our advisers inform a client that his insurer is going to pay out a large lump sum Trauma claim on an historical melanoma removal. The adviser had "pricked up his ears" at some comment his client had made, a claim was submitted and the company has honoured its contract for a melanoma that was removed several years ago and well past when it was required to be notified to the insurer.

Here's an example of a testimonial from a client who had a serious cancer 13 years previously and whom we assisted in this regard: "...I had taken out a policy many years ago with another adviser...It was after I had left the other adviser and was having a financial review with Blair that he thought MacKay's may be able to help with an historic potential Trauma claim which dated back 13 years. Chris and his team went in to bat for me and my family in getting a pay-out, which has directly enabled me to start up my own business and become self-employed...".

29. If more of the population were dealing with qualified and accredited financial advisers versus with bank tellers and via online sites, there would be less problems and more good customer outcomes as above.

30. Insurance wordings and definitions other than straight forward life insurance policies can be complicated and you can't simply put them all on one piece of paper in plain English as the naïve people at Consumer are suggesting.

Some Trauma Critical Illness policies for example cover 40 or so specified conditions with various medical definitions spelled out. The policy documents are pages long and couldn't be condensed to a one pager, unless you want insurance companies to limit their cover offering and for Kiwis to not have the extensive cover that they currently are able to enjoy.

31. This is why you have financial advisers and insurance brokers. To assist clients in their understanding of, and claiming on, sometimes very complicated contracts. It's the same reason you go to a conveyancing lawyer when buying or selling a house. Or to a doctor or dentist. Good professional advice from qualified financial advisers is what your review should also be promoting.

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?

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?

Preamble q 5

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

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?

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?

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?

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?

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 be hard and unfair to the insured? Why or why not?

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?

32. The current process of an owner and new owner of a policy signing a form is perfectly adequate. In the old days, the policy document was also required. This was sometimes problematical. Nowadays, a singular form, unattached to a policy document is accepted by most companies. It aint broke. Don't fix it.

Preamble qn 30

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

33. Good idea. Increase the amount to \$12,000 (plus CPI increase each year). This is about what a funeral costs. Just be careful though. We do have a large number of children killed every year by parents or step-parents. That's what I had been led to understand was why the figure had been set pretty low. So that parents couldn't engineer a benefit from a child's death.

Your name

Chris MacKay

Your organisation

Chris MacKay Financial Planning Ltd

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?

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.