



27 June 2019

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation and Employment
P O Box 1473
Wellington 6140

Majestic Centre, Level 24
100 Willis Street
P O Box 24 031, Wellington 6142
Tel (04) 474 3178
Fax (04) 470 9151

Email to: insurancereview@mbie.govt.nz

Re: Insurance Contract Law Review Options Paper

I am writing to you regarding the Options Paper, entitled *Insurance Contract Law Review* ("Options Paper") released in April 2019.

Cigna and OnePath ("Cigna") protect more than 450,000 New Zealanders with insurance policies. Our products and services include life, trauma, income protection, funeral and travel insurance. We fully endorse the review of New Zealand's current insurance contract law to advocate fair, efficient and transparent outcomes by ensuring that insurers and customers are well-informed and able to transact confidently in the insurance market, minimising barriers for insurers and protecting customers' interests.

The Options Paper provides a valuable opportunity to simplify understanding around the current law for both customers and insurers. This is particularly relevant, given the important role insurance plays in New Zealanders' lives. The initiatives to remove the complexity surrounding insurance law, and addressing long-standing issues with the current legislation are viewed positively by Cigna.

We are a member of the Financial Services Council and the Insurance Council of New Zealand. We broadly support the submissions made by both these organisations.

We wish to concentrate our comments on a number of fundamental issues and also on a number of issues that directly affect Cigna.

1. Duties to disclose information

Consumer Disclosure

- **A duty to take reasonable care not to make a misrepresentation**
 - **Cigna view:** Agree with replacing current duty of disclosure with a duty to take reasonable care not to make a misrepresentation. Insurers must ask clear and specific questions to identify important information required to underwrite the risk and customers must answer truthfully and accurately as is reasonable.
- **A duty to disclose what a reasonable person would know to be relevant**
 - **Cigna view:** No objection but does not help to remove uncertainty for customers around what should be disclosed.

- **A requirement for life and health insurers to use medical records to underwrite**
 - **Cigna view:** *Generally object. This is likely to add significant (compliance) costs to insurers and customers. Could also generate further confusion for the customer around what should be disclosed upfront and what the insurer will access. Offers of cover for customers may be delayed as insurers seek to obtain full records, possibly from multiple providers (no central registry of medical records). Customers will likely have to disclose medical symptoms even if they haven't been to a doctor.*

Business Disclosure

- **A duty to disclose what a reasonable person would know to be relevant**
 - **Cigna view:** *No objection - this reflects the need for a higher standard of disclosure to be applied to businesses than consumers, as they have increased knowledge and resources and are more likely to use brokers.*
- **A duty to make fair presentation of risk**
 - **Cigna view:** *No objection.*
- **A duty to take reasonable care not to make a misrepresentation**
 - **Cigna view:** *No objection.*

Disclosure Remedies

- **Disclosure remedies based on intention and materiality**
 - **Cigna view:** *Agree that proportionate remedies encourage fair and reasonable outcomes, supporting an effective insurance market. Distinguishing between deliberate or reckless non-disclosure compared to other non-disclosures would discourage fraudulent behaviour and encourage customers to be responsible and diligent.*
- **Disclosure remedies based on intention and materiality; no avoidance for non-fraudulent material non-disclosure**
 - **Cigna view:** *Broadly no objection but need to recognise that the insurer (and other customers) may be disadvantaged as a result of a customer's carelessness which is unfair and disproportionate. It does not encourage customers to be careful and diligent when providing information.*
- **Disclosure remedies based on materiality only**
 - **Cigna view:** *Generally object as does not discourage intentional non-disclosure or misrepresentation.*
- **Misrepresentation Provisions in the Insurance Law Reform Act 1977**
 - **Cigna view:** *Agree with aligning current remedies for misrepresentation in the Insurance Law Reform Act 1977 with any new remedies for insured's failure to disclose as both have a similar effect.*

2. Unfair Contract Terms (UCT)

- **A tailoring of generic UCT provisions to insurance**
 - **Cigna view:** *No objection in principle but need to recognise that current exemptions reflect the unique nature of insurance contracts and protect legitimate interests of insurers through enabling accurate assessment and pricing of risk. Removing these exemptions would lead to higher premiums or limited cover.*
- **A reliance on generic UCT provisions**
 - **Cigna view:** *Generally object as current exemptions protect the legitimate interests of insurers through accurate assessment and pricing of risk, while reflecting the unique nature of insurance contracts. Removing these exemptions and relying on generic UCT provisions would lead to higher premiums or limited cover.*
- **Complete exemption of insurance contracts from UCT provisions and reliance on conduct regulation**
 - **Cigna view:** *Generally object as unfair contract terms need to be addressed separately from unfair conduct – may not provide sufficient customer protection and increase confusion, impairing effective functioning of the insurance market.*

3. Understanding and Comparing policies

- **A requirement for plain language insurance policies**
 - **Cigna view:** *Agree that plain language insurance policies will enhance customer understanding and contribute to good customer outcomes but standard should be defined – plain language for one person may require explanation for others. Also note that strict definitions of medical terms may be required for some policies so need to be precise around what is covered and what is not.*
- **A requirement for core policy wording to be clearly defined**
 - **Cigna view:** *Broadly no objection, but there may be potential inconsistencies in determining which words, phrases, terms in a policy wording constitute “core”.*
- **A requirement for a summary statement to be provided**
 - **Cigna view:** *Broadly no objection, but there may be difficulties in summarising a policy document while simultaneously capturing technicalities. Over-reliance on summary statements may cause customers to overlook important details outlined in the policy documents.*
- **A requirement for insurers to work with third party comparison platforms**
 - **Cigna view:** *Generally object as there are risks involved – these third parties are not regulated and there is no proof that their current practices are aligned with good customer outcomes. For life insurance companies one of the current issues is comparison websites/tools lead to companies adding extra features on to their products, which result in a better rating but not necessarily a better customer*

outcome. Also, comparing products on price can lead to customers not getting the right amount or the right type of cover.

- **A requirement for insurers to disclose key information**
 - **Cigna view:** *No objection.*

4. Miscellaneous Issues

Insurer deemed to know matters known by its representatives

- **Retain status quo – an intermediary (such as a broker) that receives commission from the insurer is deemed to be a representative of the insurer, and know matters known to the representative before the insurer accepts the insured’s proposal (s10, Insurance Law Reform Act 1977)**
 - **Cigna view:** *Generally object as while the customer does not bear the risk of an intermediary’s failure to pass on information, it is unfair for an insurer to bear the responsibility and associated cost of an intermediary’s neglect. Plus the customer signs the application form confirming all material matters have been disclosed.*
- **Provide for some intermediaries to be agents of the insured**
 - **Cigna view:** *Broadly no objection to the proposal.*
- **Impose a statutory obligation on intermediaries to pass on information to insurers**
 - **Cigna view:** *Agree- if an intermediary fails to pass on relevant information, insurers and customers are able to seek appropriate redress against them for failing to meet a statutory obligation.*

Exclusions with no causal link to loss

- **Remove certain types of exclusions from the operation of section 11**
 - **Cigna view:** *No objection.*
- **Exclusion does not apply if insured can show non-compliance with the exclusion could not possibly have increased the risk**
 - **Cigna view:** *No objection.*

Failure to notify claims within time limits

- **Provide that Section 9 does not apply to time limits under claims made policies**
 - **Cigna view:** *No objection.*

Third party claims for liability insurance money

- **Allow plaintiffs to claim from insurers directly**
 - **Cigna view:** *Agree, this would resolve the issue of defence costs and ensure our approach is consistent with other common law jurisdictions.*

Duty of utmost good faith

- **Retain status quo**
 - **Cigna view:** *No objection.*
- **Codify the duty of utmost good faith**
 - **Cigna view:** *Agree, as this would emphasise the importance of the duty, regardless of any other changes that are made to the regime, increase clarity and support the restoration of confidence and trust in the industry.*

Legislative drafting issues

- **Consolidation of insurance statutes**
 - **Cigna view:** *No objection.*
- **Repeal of redundant provisions**
 - **Cigna view:** *No objection.*

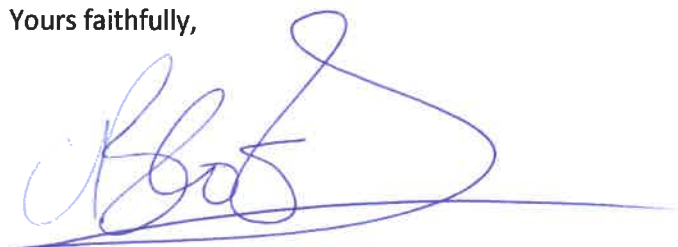
Other miscellaneous issues

- **Deferral of payments of premiums by intermediaries**
 - **Cigna view:** *No objection to retaining the status quo.*
- **Registration of assignments of life insurance policies**
 - **Cigna view:** *No objection to removing the paper-based requirement under the Life Insurance Act 1908.*
- **Life insurance payments for the death of minors**
 - **Cigna view:** *No objection.*

Conclusion

Thank you for the opportunity to submit on the Options Paper. We look forward to further discussions.

Yours faithfully,



Gail Costa

Chief Executive Officer

Cigna NZ and OnePath NZ