



Introduction

Citizens Advice Bureaux New Zealand (CABNZ) Ngā Pou Whakawhirinaki o Aotearoa welcomes the opportunity to comment on the Insurance Contract Law Review Options paper.

We work to empower individuals to resolve their problems and to strengthen communities. The person-to-person service provided by over 2,300 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand. From 84 locations around New Zealand, the CAB provides individuals with a free, impartial and confidential service of information, advice, advocacy and referral.

In the 2017 / 2018 financial year we had over 500,000 interactions with clients, including over 200,000 in-depth enquiries where we offered information, advice and support across the range of issues that affect people in their daily lives. This includes around 2,100 in-depth enquiries about insurance.

We use our experience with clients to seek socially just policies and services in Aotearoa New Zealand. Our submission is based on information from analysis of enquiries made to CABs. It focuses on aspects of the review that impact on consumers, as this reflects the majority of CAB clients seeking help with insurance matters. Client stories have been used to illustrate points made. Identifying details have been removed from the examples provided but the essence of the clients' circumstances and experiences remains.

Feedback on the Insurance Contract Law Review Options Paper

What is your feedback regarding the objectives for the review?

CABNZ supports the addition of objectives which promote protections for consumers (amendments to objective 1 and 2, and the addition of objective 4). Our client enquiries show that lack of 'insurance literacy' and power imbalance in the insurance relationship has a negative impact on many insurance consumers.

Duties to disclose information

What is your feedback in relation to the options for disclosure by consumers? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option (including the status quo) do you prefer and why?

Many people who come to the CAB have not understood what the duty of disclosure actually means, neglect to meet these requirements and then feel aggrieved when a claim is declined as a consequence. The problems from a consumer perspective are well defined in the options paper.

Client's father passed away in a vehicle accident. He had previously had a heart attack and not disclosed this at the time of taking out life insurance. The insurer has declined to pay out on the policy because the coroner found that the accident was caused by the heart attack. Client wants advice about how to dispute the insurer's decision. #47 .4

Client has defaulted on his loan repayments but has repayment insurance. However, the insurance company will not pay out as they say he had a pre-existing medical condition which he did not tell them about and now his goods may be repossessed. What can he do? #201.3

From the enquiries made to CABs it seems that non-disclosure is a common reason given for declining claims against life insurance and health insurance policies. The consequences of not providing full information when taking out a policy can be significant, especially given that people generally take out life insurance to protect themselves or their loved ones from debt should an adverse life event occur.

My father in law died 2 months ago. He had life insurance but the claim has been declined due to non-disclosure, despite the cause of death having nothing to do with the undisclosed information. How I request the underwriting guidelines used by his insurer? What law might this come under? Can you give me any other advice? #82.4

The insurance company is refusing to pay out client's mother's life policy because they claim she had not disclosed a pre-existing heart condition. Other health conditions and risk behaviours had been declared. What can the client do? #62.3

Client has had health insurance for over 2 years. His claim has been declined because it concerned a pre-existing condition. Client is not happy about this because he thought all his conditions were covered at the time he bought the health insurance and that is why he bought it. He asked what he could do. #30.5

Which option (including the status quo) do you prefer and why? Are there other options that should be considered?

CAB supports option 1: Duty to take reasonable care not to make a misrepresentation. This option puts the onus on the insurer to be clear about what information they need to underwrite a policy, rather than the consumer having to 'guess' or anticipate this. Requiring the insurer to ask questions of the consumer would also have the benefit of transparency to the consumer.

CAB also supports option 3 used in conjunction with option 1, assuming informed consent is sought by the insurer and given by the insured prior to medical records being accessed. In this situation, informed consent would need to include understanding about the extent and nature of medical records sought by the insurer. CAB asserts that an insured persons non-compliance with such a request should not in itself be cause to decline a policy, or negatively impact the cost of premiums for that person, without good reason, and the reason should be clearly explained to the insured.

Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified?

Costs and benefits of option 1

- It is suggested that the necessity to draft and ask questions to obtain the disclosure information needed may increase compliance costs for insurers which in turn could raise the cost of insurance premiums. However, it is also noted that drafting questions would likely only incur a once-off cost so why will that increase compliance costs?
- The issue identified in the third bullet point with regard to potential inability to identify all information needed, this issue could be mitigated at least in terms of health information, by incorporating option 3 into option 1 as suggested above. It is concerning that seeking medical records would increase compliance costs for insurers however, because this is highly likely to have a detrimental impact on the cost of premiums.

Costs and benefits of option 2

- The costs of option 2 provide the rationale for CAB's lack of support for this option.

Costs and benefits of option 3

- CAB does not support extending this option to a general requirement to access relevant third party records as proposed in the last dot point of costs due to the lack of transparency this introduces, action which is contrary to objectives 2 and 4.

- This option would also not address non-disclosure problems for clients who do not use traditional medical practices or have inconsistent history of participation in the health and medical system.
- As noted above, it is concerning that seeking medical records would increase compliance costs for insurers because this is highly likely to have a detrimental impact on the cost of premiums.

Design options for all consumer disclosure options

CAB agrees with both design option 1 and design option 2, as they both achieve the objective of transparency at all points in the lifecycle of an insurance policy. Warning consumers of their duty to disclose (design option 1) would naturally occur prior to posing the questions that would assist the insured to take reasonable care not to make a misrepresentation (consumer disclosure option 1).

Providing a warning may also serve to remind insureds of their responsibility to disclose relevant information throughout the lifecycle of their policy.

Client had taken out a life insurance policy several years ago, and recently had a mild heart attack. Client wanted to know if he needed to tell the insurance company about his cardiac event, as he'd had no health issues when he took out the policy #71.4

Some months ago, client informed his insurance company that his wife has a terminal illness and was not expected to live long. The company advised him as to what forms to complete. However, his wife is still alive so he is wondering what he should do. #25.4

Options in relation to disclosure remedies

What is your feedback in relation the disclosure remedy options? In particular: Do you agree with the costs and benefits of the options? Do you have any estimates of the size of those costs and benefits? Are there other impacts that are not identified? Are there other options that should be considered? Which option do you prefer and why?

One of the reasons insurance companies require there to be legal remedies to non-disclosure is because the current law does not support consumers' understanding of the duty of disclosure, nor does it facilitate them to disclose the information required. Successfully addressing this problem as already discussed should have the consequence of reducing the number of situations where remedies for non-disclosure are needed.

CAB supports remedies that are proportionate to the impact the non-disclosure had on the insurer. While we do not endorse deliberate or recklessly fraudulent behaviour, it appears that option 3 best meets this criteria and is most consistent with objective four of the review. Although not included as a benefit Table 3, option 3 would also have the same benefits of proportionality as described for options 1 and 2 in as far as it ensures that both parties are no better or worse off than if they had all the facts at the time of the application.

Unfair Contract Terms

Objectives 1, 2 and 4 of this review intimate that unfair contract terms in insurance policies should be disallowed. Insurance policy documentation is generally complex, employing language that many consumers are unfamiliar with. If one applied the principle that sits behind the rule of contra proferentem, one would have to fall on the side of consumers' experiences when considering whether or not insurance contract terms are potentially unfair.

From analysis of enquiries to CABs, it appears that the weight of power is tipped very strongly in the insurer's favour when claim applications are considered, with generally little regard given to the individual circumstances of each insured person. CAB considers that all examples provided in Table 4 constitute unfair contract terms and should therefore be able to be challenged as such.

CAB supports Option 2, relying on the provisions of generic unfair contract terms as set out in the Fair Trading Act to cover insurance contracts. We are concerned that this is likely to have a negative impact on cost to consumers but agree that it is likely to improve consumer choice of fairer insurance products and suggest that market forces may positively impact cost in the long term.

Understanding and comparing policies

Analysis of enquiries to CABs attest to the accuracy of the problem definition in the options paper.

CAB supports a combination of options 1, 2, and 5, assuming that if option 1 is achieved, then the 'costs' identified for option 2 will be minimal, and the requirements of option 5 would be assisted by the use of plain language.

CAB supports the ability of consumers to be able to make comparisons of different policy options but we do not have a view on how best to facilitate this. We do agree that the issues identified in table 6 will have a bearing on the approach taken.

General comment

Several of the options discussed are likely to result in increased cost to consumers if implemented. This is a great concern to the CAB. We note the MBIE criteria for determining options to address the problems identified included that costs are minimised. Rising costs are already an issue for consumers across all types of insurance, and particularly house insurance and health insurance for older people. While we need insurers to stay in the market (objective 3) we also need consumers to be able to afford the cost of purchasing insurance, and to be able to purchase insurance of an appropriate cover value for their needs.

Client has had a house insurance policy with the same company for many years and recently received a letter advising a 30% hike in premiums. He wants to see a breakdown showing how the increase was arrived at but the insurance company have not been very helpful. #118.3

Client's home insurance premium has doubled in cost. The company has sent information setting out the reasons why but he doesn't understand it. Can we help? #143.1

Client has a life insurance policy because she still has a mortgage on her home. Because of rising costs, she has halved the value of her cover, but the premiums still went up. She has now turned 60 and the insurance company has contacted her to say that the premiums were to go up again. She thinks this is outrageous. #49 .4

Client has had medical insurance for many years and has never made any claims (client is aged over 70). It is becoming very expensive and she needs some advice whether to keep the policy going or cancel it. #47.5

Client came in asking questions about health insurance: how can he reduce the cost? What is he covered for? #55.5

Client has pet insurance and the premium has doubled. She has spoken to the company, but got no satisfaction as to the reason for the increase. #1.3

CAB agrees that the changes to Insurance Contract law identified in the options paper are needed, but asserts that every effort should be made to ensure action to achieve the changes are cost neutral for consumers.

Miscellaneous issues

Insurer deemed to know matters known by its representatives

CAB supports the status quo for consumer insureds, because this reflects the weight of power resting with insurers, and the professional abilities of insurance brokers and other such intermediaries. CAB does not have a view in regard to business insureds.

Options in relation to exclusions with no causal link to loss

Analysis of enquiries to CABs suggest that some insurance consumers feel a sense of injustice when their claim is declined for reasons that had nothing to do with the loss experienced. We therefore support that an insurer is unable to decline a claim just because an unrelated circumstance subject to a policy exclusion happened to exist when a loss was suffered.

Remaining miscellaneous issues

CAB does not have sufficient client evidence to be able to form a view on remaining content of the options paper.