

28 June 2019

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

By email: insurancereview@mbie.govt.nz

Review of Insurance Contract Law Options Paper

1. Introduction

Thank you for the opportunity to make a submission on the *Review of Insurance Contract Law Options Paper*. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. General comments

We strongly support proposals to improve consumer protection in the insurance market. Our research has found significant problems in this market, which are causing consumer detriment.

The essential requirements for a fair and functioning market are that:

- consumers can easily compare products and services
- price information is transparent
- the terms of insurance contracts are clear and fair
- consumers have access to effective dispute resolution
- there is an active regulator responsible for monitoring the market.

These requirements are not being met in the current market. We therefore welcome proposals in the options paper that will address problems and provide consumers with better protection.

3. Answers to questions

Our answers to specific questions are set out below.

Thank you for the opportunity to provide comment. If you require any further information on the points raised, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read "Sue Chetwin". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Sue Chetwin
Chief Executive

Responses to options paper questions

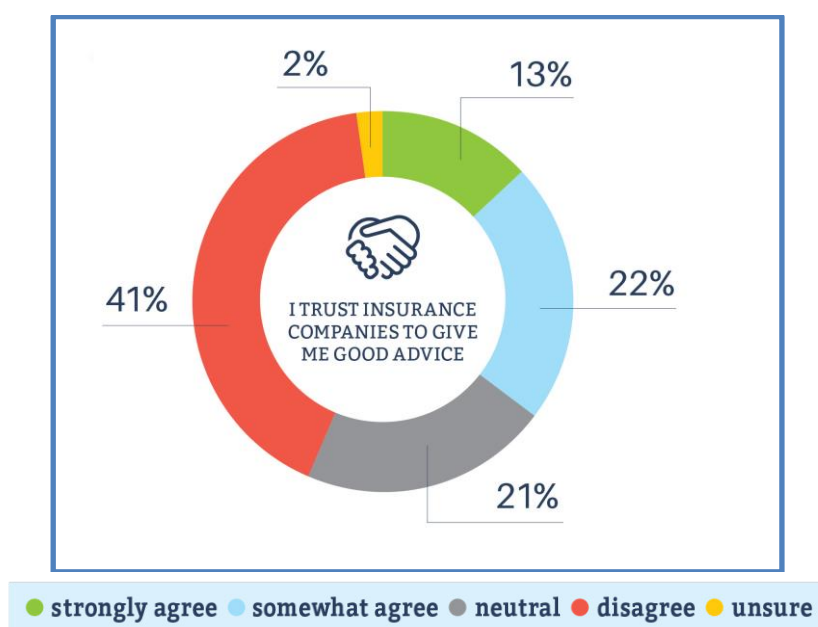
Question 1: Do you have any feedback regarding the objectives for the review?

In general, we support the objectives for the review.

In regard to objective one (participants in the insurance market are well informed and able to transact with confidence), our research shows consumers currently do not feel they can participate with confidence.¹

Only 13 percent of consumers in our latest survey strongly agreed they could trust insurance companies to give them good advice (Figure 1).

Figure 1: Proportion of consumers who trust insurers to provide good advice



Question 2: Do you have any 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?

Of the options proposed, we support abolition of the duty of disclosure for consumers and the introduction of a new duty to take reasonable care not to make a misrepresentation (option 1).

As stated in our previous submission, consumers are not experts in insurance and are not in a position to judge what an insurer might consider material. As a result, we do not support imposing a duty to disclose what a reasonable person would know to be relevant (option 2).

¹ Our data are from a nationally representative survey of 1069 New Zealanders, aged 18 years and older, carried out online in December 2018.

The change proposed in option 1 would mean the onus is no longer solely on consumers to gauge what an insurer might consider relevant. Instead, the onus would appropriately fall on the insurer to ask questions to ensure it had the necessary information to underwrite the risk.

We consider this option would deliver the greatest benefits to participants in the market and result in a significant reduction in the number of disputed claims.

Our survey research found having a claim unreasonably declined was the most common problem for consumers. Overall, 24 percent of consumers said they'd had a problem with an insurer. Of those, 25 percent had a claim unreasonably declined (Figure 2).

Figure 2: Commonly reported problems in the insurance market



Question 3: Should insurers be required to warn consumers of the duty to disclose? Why/why not? Should insurers be required to warn all insureds of the duty to disclose, including businesses?

We support insurers being required to warn consumers of the duty to take reasonable care not to make a misrepresentation. We consider such a warning may help consumers understand the need to take care to ensure the information they are providing to their insurer is accurate.

Question 4: 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, insurers should 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.

One of the objectives of the review is to ensure interactions in the insurance market are fair, efficient and transparent at all points in the lifecycle of an insurance policy. We consider such a requirement would be consistent with this objective.

Question 8: What is your feedback in relation to 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?

We support the introduction of disclosure remedies based on intention and materiality. However, we do not support insurers being able to avoid a contract in the case of non-fraudulent material non-disclosure as we consider it would lessen the onus on insurers to make appropriate inquiries before underwriting a risk.

Of the options proposed, we therefore support option 2.

We do not support the introduction of disclosure remedies based on materiality only, as this option may mean consumers who intentionally concealed material information from an insurer would be treated the same as those who had unintentionally failed to provide the information.

Question 9: Is it fair to require insurers to pay claims that are not connected to a non-disclosure or misrepresentation, even if the insurer would not have entered into the contract had they known the facts?

Yes, we consider it is fair to require insurers to pay claims that are not connected to a non-disclosure or misrepresentation, even if the insurer would not have entered into the contract had they known the facts. We consider this strengthens the onus on insurers to make appropriate inquiries before underwriting a risk.

Allowing insurers to decline claims in these situations results in consumers being unfairly penalised. For example, in a case reported by the Insurance and Financial Services Ombudsman, an insurer was entitled to avoid a trauma policy when the customer made a claim, after being diagnosed with breast cancer, because she **hadn't told the insurer** about unrelated conditions (knee pain and depression).²

Question 10: 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? Why/why not?

No, we consider this would reduce the onus on insurers to make appropriate inquiries before underwriting a risk.

Question 11: 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?

If there is good evidence a consumer has acted fraudulently or intentionally misled the insurer, we consider it would be reasonable to require the insured to repay claims money.

² See case 132339, <https://www.ifso.nz/case-studies/>

Question 12: Do you agree that section 35 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?

Yes, we agree section 35 should not apply. We also agree the insured must still have rights in relation to misrepresentation by the insurer.

Question 13: Do you agree with the proposed change to the misrepresentation provisions in the Insurance Law Reform Act 1977? Why/why not?

Yes, we agree there is no reason to differentiate between the remedies.

Question 14: Which of the terms in Table 4 are unfair? In your opinion, are they exempt from the unfair contract terms prohibition?

We consider all of the terms in Table 4 could be potentially unfair and exempt from the unfair contract terms prohibition.

We agree the insurance-specific exceptions can potentially capture much of the content of an insurance contract and significantly limit what action can be taken against unfair terms.

Question 15: What is your feedback on the UCT 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?

We strongly support the exceptions being removed (option 2). We consider this to be a better approach than tailoring generic unfair contract terms provisions to insurance (option 1).

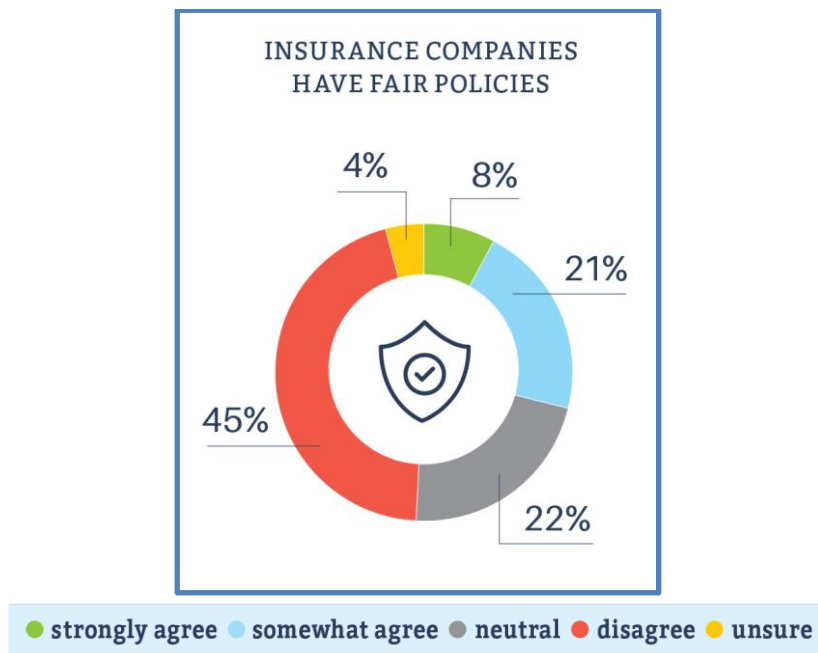
We oppose option 3. Insurance contracts do not require special status and we do not think there is a valid reason for exempting them from the provisions of the Fair Trading Act. The act already provides adequate protection for traders by allowing the use of terms that are **reasonably necessary to protect the traders' legitimate interests**.

As mentioned in previous submissions, insurance policies that contain unfair terms are causing consumer detriment. Our latest survey found only eight percent of respondents thought insurers always offered fair terms (Figure 3).

The current exemption for insurance is also one of the key reasons why "junk" insurance – policies that offer little or no real benefits to consumers – continue to be sold. In any other industry, the types of terms used in these policies would be open to challenge as unfair.

As previously submitted, examples of junk insurance policies include mechanical breakdown insurance, credit card repayment insurance and funeral insurance. Our analysis has found these types of insurance, which are heavily promoted, often contain unfair terms.

Figure 3: Consumer views on the fairness of insurance policies



Question 16: What is your feedback on the options to help consumers understand and compare contracts? 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 options do you prefer and why?

We strongly support the introduction of a requirement to provide a summary statement (option 3). We also support requirements for plain language policies (option 1) and for core policy wording to be clearly defined (option 2).

Our research found only 18 percent of consumers felt confident they fully understood their policy (Figure 4). One in four also found comparing insurance companies and policies difficult (Figure 5). Life insurance policies were the most difficult to compare, **with only 13 percent of consumers reporting they were "very easy" to compare.**

These findings provide further evidence consumers find it difficult to shop around and make an informed choice about which policy best meets their needs.

We consider a summary statement would help consumers by better enabling them to understand the core cover provided by a policy and make comparisons between insurers. A majority of consumers want this information. Our research found 86 percent agreed a single-page summary would be useful.

We also support requiring insurers to work with third party comparison platforms (option 4). In our view, the ability of consumers to make informed choices and assess value for money is hampered by the difficulty of comparing offerings from different providers.

We believe consumers' ability to navigate the market would be enhanced if they were able to more easily compare the products on offer. An independent comparison site would be an effective way to help achieve this.

As noted in our submission on the "Conduct of Financial Institutions Options Paper", we also consider insurance companies should be required to provide data on other matters

such as claims processing times and the ratio of claims paid. Requiring such information would help to increase transparency and improve the operation of the market.

Figure 4: Consumer understanding of insurance policies

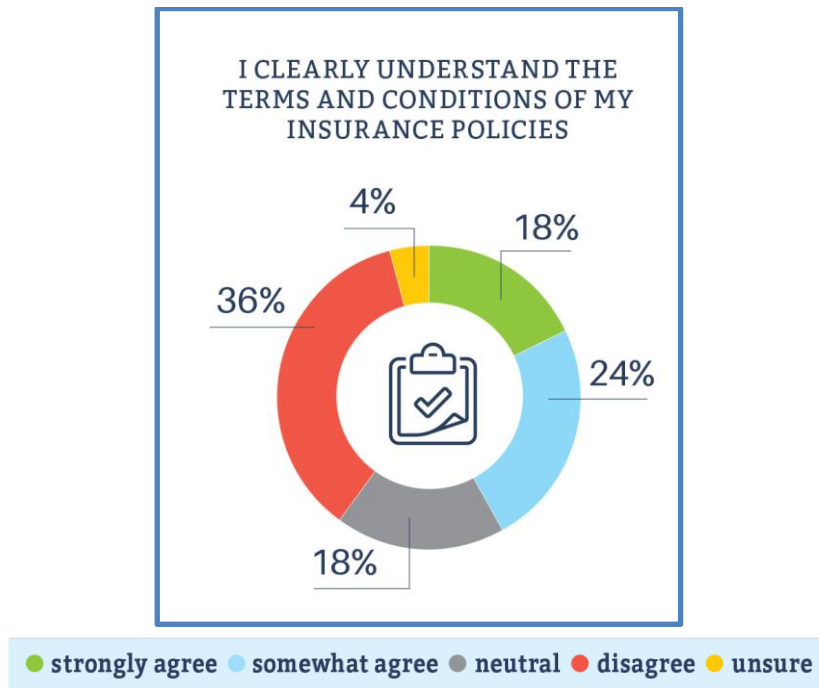
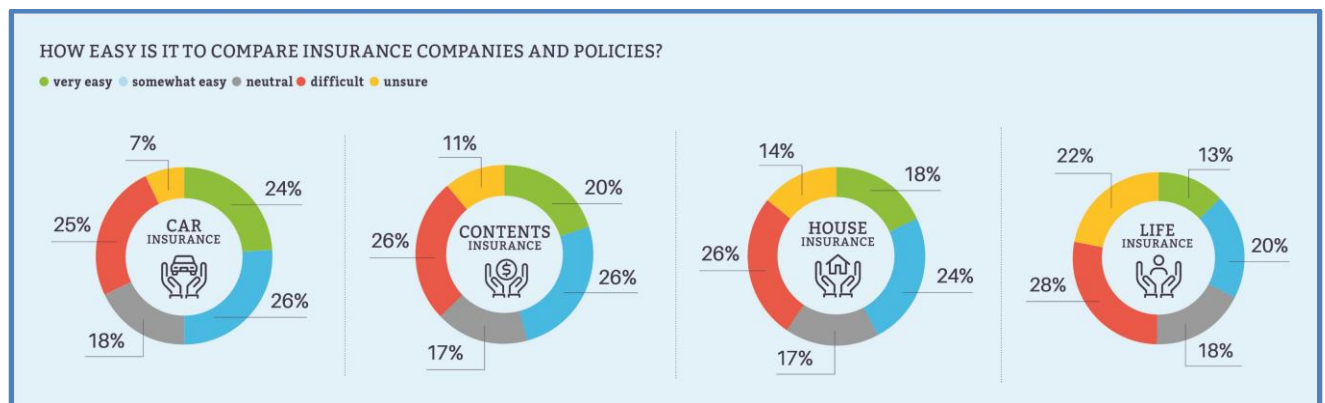


Figure 5: Ease of comparing insurance



Question 17: What is your feedback on the options in relation to intermediaries? 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?

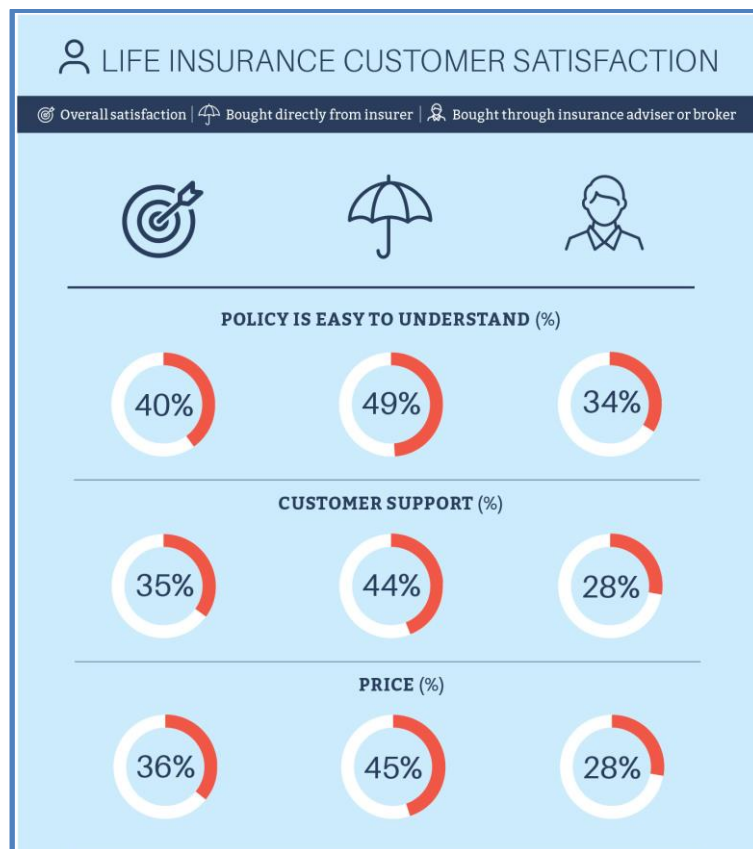
We support maintaining the status quo (option 1) because we consider insurance companies have a responsibility for the conduct of anyone who they allow to sell insurance on their behalf. We do not think consumers should be limited to seeking **redress against an intermediary for the intermediary's failures** to act with reasonable care.

Our survey research with Consumer NZ members found those who bought insurance through an adviser or broker were getting a worse deal.³ They were significantly less likely to be satisfied with the service they got compared with those who bought direct from an insurance company.

The difference was the most pronounced among respondents with life insurance policies. Just 28 percent of those who bought life insurance through a broker were happy with the customer support provided, compared with 44 percent who bought direct from an insurance company (Figure 6).

Similar differences were seen in satisfactions ratings for price and policy information.

Figure 6: Customer satisfaction – life insurance



Question 20: What is your feedback on the options in relation to section 11 of the Insurance Law Reform Act 1977? In particular, do you agree with the costs and benefits of the options?

We consider option 2 would create fairer outcomes than option 1. If a consumer can show non-compliance with a term could not have increased the risk of loss, then the insurer should not be able to rely on the exclusion.

Question 25: What is your feedback to the options in relation to the duty of utmost good faith? 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?

³ Our data are from a survey of 2426 Consumer NZ members. Ratings give the proportion of respondents who scored their provider 8, 9 or 10 on a scale from 0 (very dissatisfied) to 10 (very satisfied).

Are there other impacts that are not identified? Are there other options that should be considered? Which option do you prefer and why?

We support codification of the duty of utmost good faith (option 2) as we think it would help consumers and insurers understand the scope and limits of the duty.

Other comments

One of the stated objectives for the review is to ensure interactions in the insurance market are fair, efficient and transparent at all points in the lifecycle of an insurance policy. However, the options paper does not address the lack of transparency and efficiency of the dispute schemes.

We have previously commented on the problems for consumers with having four disputes schemes. Australia and the UK now both have a single disputes scheme. We consider a single dispute scheme would provide a more efficient and transparent process.

We also consider dispute schemes should be required to publish their decisions. In the UK, for example, the Financial Ombudsman Scheme is required to publish all decisions unless there are good grounds for withholding them.

Our research shows strong support for requiring disputes schemes to publish details about the complaints they receive. Eighty-two percent of consumers believe this information would be useful.

To improve the operation of the market, we also consider insurers should be required to provide clearer information about costs, including the amount of any premium increases when a policy is up for renewal.

Insurers in the UK must display the past year's premium in renewal notices. Research by the Financial Conduct Authority found customers presented with a direct comparison between past and future premiums were 11 to 18 percent more likely to switch or haggle with insurers.

Australia is considering similar provisions. Our survey research found 84 percent of consumers here support such requirements.

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