
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 4:04 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?

Kia ora koutou,

Just to begin, I have no special expertise, am just a regular citizen. I live in Christchurch, so have had more than a bit of education regarding insurance contracts over the past few years.

I personally had a fantastic experience regarding my quake claims, both with EQC and my insurance company, but I watched friends go through absolute hell (not sure I can name specific insurance companies without getting in trouble) and shyster lawyers, engineers, valuers, etc.

From that experience, I raise 2 issues:

First, if you are vulnerable, either mentally or financially, either in terms of age or being a single woman, you can end up being disadvantaged. If you cannot come up with the money (at least \$50,000) for a very good lawyer, your prospects may be severely affected. You're already going through what is likely the worst situation in your life, you don't need the stress of battling your insurer on top of it. We need a better system to handle this.

Second, I have heard that many states in the US require insurers to settle within a relatively short time-frame (I think it's typically a year), then interest starts to accrue until there is a settlement. I don't see something like that in these proposals and it seems a jolly good idea to me. Otherwise, there is every incentive to stall and delay. The insurer's assets are still invested and accumulating returns and the customer is getting more stressed and desperate.

Now to answer your queries:

1) I fully agree with these objectives. Good on ya for dealing with these problems that have been allowed to go on for far too long.

Preamble question 2

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

2) Could you not have both Option 1 and 2. There should be a duty to not misrepresent; that is active fraud and should be discouraged. At the same time, there is a duty to disclose what a reasonable person would know to be relevant. That does introduce uncertainty and subjectivity, but there should be a duty on the part of the customer to disclose something that is arguably relevant. You don't want active misrepresentation and neither do you want active withholding of relevant information.

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?

3) Yes, insurers have a duty to make customers aware of this requirement and consequences of failure to do so.

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?

4) Yes, I think this would improve exchange of information, transparency, and customer information of the process.

Preamble q 5

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

5) I don't have any experience in this area, but the UK law seems an improvement to what we apparently have now.

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?

6) Small business should be treated differently.

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?

7) Employee count seems a good measure. A financial amount will be eroded by inflation. Also the type of policy or the 2 out of 3 option.

Preamble question 8

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

8) I agree with Option 1 as it seems much fairer than the current situation. Option 2 seems unfair to insurers as they wouldn't have issued the contract originally (of course they would say that, wouldn't they?). I'm confused about Option 3 as it seems to relate to material information, but then in the costs sections says the insurer would have made changes to the cover if the information was disclosed. So is it material information or not?

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?

9) Yes, if the claim is not related to the non-disclosure/misrepresentation. It's not material to the claim, so the claim should be honoured.

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?

10) Insurers should be able to renegotiate the contract going forward based on the new information, but not recoup past charges unless the non-disclosure amounted to fraud. In that case it's highly unlikely the insurer would want to continue the contract.

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?

11) Again, I would only consider this remedy for the insurer where the customer's behaviour was fraudulent and intentional and related to the claim and I would require the insurer to refund all premiums received plus market rate (corporate bond rates) interest for claims disavowed. The customer will have a black mark throughout the insurance community and that's enough.

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?

12) Yes, agreed. Insurers are in a much more powerful position vis-a-vis customers, so the remedies proposed here should be enough. Contracts are typically between parties of relatively equal bargaining position - a very different situation.

Preamble qn 13

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

13) Yes, agreed.

Preamble qn 14

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

14) I'd say they all are unfair. The customer is at a disadvantage in every case through no fault of their own.

Preamble qn 15

What is your feedback on the UCT options?

15) I don't really understand these subtle differences, but I am concerned that Option 2 seems to allow the exclusions as long as the term is transparent even though it's unfair. We need to balance reasonable exposure for the insurer with fairness for the customer who has paid for the cover and had a reasonable expectation of coverage in the circumstances. So perhaps I favour Option 1, but I found these subtle difference confusing...much like insurance policy contracts themselves.

Explanatory text for question 15

Preamble question 16

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

16) Bingo! Yes please! I agree with all of these. I find it easier to understand contracts drafted by personal lawyers than the standard insurance policy contracts and yet the later are potentially every bit as important to me financially.

Explanatory text for qn 16

Preamble qn 17

What is your feedback on the options?

17) It seems the new regulatory regime regarding licensing and indemnity insurance for brokers will help considerably. I can see the insurer's problem, that there are problems due to intermediary agents. It seems that Option 2 or 3 seems the clearest and easiest way to address the problem and also differentiating between commercial and non-commercial customers.

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?

18) This requirement doesn't seem particularly onerous and would assist insurers in determining their risks appropriately.

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

19) Yes

Preamble qn 20

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

20) It doesn't seem fair to me that an insurer could avoid a claim when the exclusion is not related to the claim event. The UK option seems better.

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?

21) Agree with Law Commission

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?

22) Yes

Preamble qn 23-24

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

23 & 24) This is highly technical and out of my league. It seems to me to be an issue when the insured is insolvent and so perhaps the changes just need to apply in that circumstance.

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?

25) Option 2 seems better - codify the duty as state in *Young v Tower* (an absolutely appalling case) whilst leaving flexibility for later court rulings.

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?

26) Seems like a good idea.

Preamble question 27

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

27) Ditto

Preamble qn 28

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

28) Too technical for me.

Preamble qn 29

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

29) Sounds good.

Preamble qn 30

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

30) Definitely.

Your name

Kay

Your organisation

Robertson

Your email address

In what capacity are you making this submission?

individual consumer

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.