
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 10:35 a.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?

The objectives are appropriate. However, there is one distinguishing issue that must be made - there are two fundamental insurance products:

1) Annually renewable contracts - these contracts can be altered by the insurer each year and events occurring during the past year gives the insurer the right to cancel or adjust the contract terms, e.g. car insurance, where premium, excess and terms for the next year can be varied according to the cost and circumstances of the claim event.

2) Guaranteed renewable contracts - this is insurance that can be renewed as long as the insured wishes to keep it, e.g. life, disability or health insurance. Once issued, only fraudulent statements, or mis-statements, can affect the insured at claim time.

Preamble question 2

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

Considering the differences mentioned above:

Option 1 - I suggest lawyers will benefit more than consumers. Insurers would help themselves if they had greater consumer feedback on their application questions, and/or having expert assistance with their questions.

Option 2 - This is the best of the 3 but I'd suggest this is expanded with having one significant question asked in the application, like: "If you have any concerns about whether you have told us what we require to know, would you like one of our qualified staff (underwriters) contact you?" Some insurers have "teleunderwriters" and they can/do help prevent non-disclosure or mis-statement.

Option 3 - The cost/benefit of this is unwarranted if Option 2 is adopted. Using a service like Konnect charges at least \$150 each medical request and a huge percentage of insurance applications do not require this information, nor do underwriters have the time to read everyone's medical files. Consumers would also have to wait too long to get an answer.

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?

Yes for all. Most businesses in NZ are small and they typically don't have the resources required to know what they should. Medium to large businesses could pay for this assistance but it is easier to make this clear to everyone upfront.

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, again for the reasons above - where possible, one process for all is best.

Preamble q 5

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

My response relates to life, health and disability insurance. These products are purchased by businesses to insure key staff members and to offer insurance benefits for their staff. Insurance of this nature are usually arranged by insurance brokerage firms who have well-qualified experienced brokers on behalf of consumers.

Disclosure is also very important here also, especially when legal contracts and financial underwriting is required. The legal and accounting profession understand the need for disclosure but who they are may be representing should also be fully informed.

I favour Option 2 for these insurance products, again because, they are comparatively "guaranteed renewable" products.

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?

As mentioned, in regard to life, health and disability insurance products, disclosure requirements should be standard to everyone.

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?

There should be no contracting out for guaranteed renewable products.

Preamble question 8

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

Of the 3 remedies, my preference is Option 1. I base this on my experience over the past 10 years, I have been assisting the public and consumers to resolve life & disability insurance claims.

Option 2 is too costly and I do not like Option 3.

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?

Yes, that has always been a risk and it balances out over time.

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?

Yes, this works in practice and I see no reason for unnecessary change.

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

Consumer clarity is also good, however...if a claim is clearly fraudulent then that is a different issue.

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?

I would not like to express an opinion.

Preamble qn 13

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

To repeal many of this Act's provision would be a mistake. I totally agree that insurers should never rely on minor, non-fraudulent mis-statements to avoid claims.

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 should 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?

Preamble qn 30

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

Your name

Brian Klee

Your organisation

Klee Consulting Services Limited - www.insuranceclaimsupport.co.nz

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?

We intend to upload submissions to our website. Can we include your submission on the website?

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.

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.