

28 June 2019

Mr Daniel O'Grady
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Financial Markets Policy
Building Resources and Markets
Ministry of Business Innovation & Employment
PO Box 1473
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By email: insurancereview@mbie.govt.nz

Tēnā koe Mr O'Grady

Re: Improving Insurance Contract Law

Thank you for the opportunity to provide feedback on proposed changes to insurance contract law.

Background

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry and addiction, supports and enhances clinical practice, advocates for people affected by mental illness and advises government on mental health care.

The RANZCP has more than 6500 members, including around 4900 fully qualified psychiatrists and over 1500 doctors training in the field of psychiatry. Of those, there are over 800 New Zealand members including 180 doctors training in the field of psychiatry.

The RANZCP has previously met with the Ministry of Business Innovation & Employment, in 2018, to discuss our concerns relating to the barriers and discrimination encountered by people living with mental illness when they seek insurance. The relationship between the insured and insurer needs to be fair and transparent. We welcome your review of contract law and your proposal to address duties to disclose information and make insurance contract terms fairer.

The RANZCP's New Zealand National Committee's (Tu Te Akaaka Roa) submission focuses on improving contract law provisions so the needs of people living with mental illness are considered within the new proposals.

Response to Ministry of Business Innovation & Employment's (MBIE) Review

A. The Four Objectives of the Review

The New Zealand National Committee supports the four objectives identified by MBIE:

1. Insurers and people getting insurance are well informed and able to transact with confidence
2. Interactions are fair, efficient and transparent
3. Barriers to insurers providing insurance are minimised
4. Consumers are protected.

Progressing these four aims will improve consumer satisfaction with the insurance industry. We suggest that achieving these objectives may be expedited if insurance staff are given more training to understand the

nature of claims made by people with mental health conditions, allowing staff to differentiate between minor and more serious mental health conditions, resulting in fairer outcomes for those seeking insurance cover and making claims.

B. Disclosure of Information to Insurers

Currently in New Zealand it is incumbent on the consumer to provide all material information to an insurer when taking out insurance. What is material depends on the risk and whether a prudent underwriter would take on the risk and, if so, on what terms. However, with no or little knowledge of insurance practices the consumer is unable to determine what information is “material” to their cover. Improved transparency around the product definitions and claims assessment processes, would reduce the discrimination often faced by people with mental illness applying for insurance.

We are aware of situations where a consumer who is applying for insurance, fails to disclose any mental health information that is ‘material’ to the policy. This results in the insurer refusing to pay out the claim and only reimbursing the premium. The insurer may avoid the policy whether the non-disclosure is accidental or not (Institute of Actuaries of Australia, 2017).

We concur that the current situation perpetuates a power imbalance between the consumer and the insurance industry. We support the MBIE’s proposal to reform the disclosure provisions in New Zealand. On page 9 of your paper ‘*Options Paper – Insurance Contract Law Review*’ we note that Insurers reported that they had informed consumers of the duty of disclosing information. Beyond Blue made a submission to the Australian Joint Committee on Corporate and Financial Services regarding life insurance legislation and noted that issues of non-disclosure of alleged pre-existing mental health conditions were an area of concern. Their submission also noted there was a high prevalence of claim disputes relating to non-disclosure of pre-existing mental health conditions (Beyond Blue, 2016).

Conclusion

We believe current practices discriminate against and financially disadvantage people living with mental health conditions. We strongly support the need for consumers to be aware of their rights and obligations when applying for insurance (RANZCP, 2018). We support Option One, outlined in your paper, where a consumer has to answer truthfully and accurately the questions from the insurer. As suggested in the proposed reforms, this practice might mean it takes longer to submit an insurance application but it may provide consumers with greater confidence that their insurance claim would be accepted rather than rejected due to non-disclosure.

The RANZCP also notes that if people with mental health conditions, including substance use, are to disclose information about their health status this needs to be done in a sensitive and supported manner. For example, people living with post traumatic stress disorder may find it difficult to provide information for their insurance application and may seek assistance from their mental health providers when completing the paperwork. Insurers will need to understand the implications of requesting specific information relating to mental health conditions.

Thank you for the opportunity to comment on the proposed legislative changes.

Should you have any questions regarding this submission please contact Rosemary Matthews, National Manager, on 04 472 7265 or by email Rosemary.Matthews@ranzcp.org.

Ngā mihi nui



Dr Susanna Every-Palmer FRANZCP

Deputy Chair, New Zealand National Committee – Tu Te Akaaka Roa

References

Harman, G (2016) *beyondblue Submission to the Parliamentary Joint Committee on Corporations and Financial Services* https://www.beyondblue.org.au/docs/default-source/policy-submissions/bw0392_bb-submission-to-joint-committee-corp-fin-services_nov-2016.pdf?sfvrsn=68536ea_0

Institute of Actuaries of Australia (2017) *Mental Health and Insurance Green Paper*, October 2017 <https://www.actuaries.asn.au/Library/Miscellaneous/2017/GPMENTALHEALTHWEBRCopy.pdf>

The Royal Australian and New Zealand College of Psychiatrists (2018) *Review of General Insurance Code of Practice Interim Report* <https://www.ranzcp.org/files/resources/submissions/ltr-and-sub-ica-code-of-practice-18-january-2018.aspx>