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Financial Markets Policy  
Building, Resources and Markets  
Ministry of Business, Innovation & Employment  
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Submitted online to: [mbie.govt.nz/insurance-contracts](https://mbie.govt.nz/insurance-contracts)

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### **Tower Insurance submission on Insurance Contract Law Review Options Paper**

Thank you for the opportunity to provide a written submission on the Options Paper regarding the Insurance Contract Law Review, issued April 2019.

Tower is the third largest insurer of domestic buildings in New Zealand, with a market share of approximately 10% in that sector. It is the only general insurer listed on the NZX and has a subsidiary Tower Insurance Limited which is a licenced insurer. Tower offers products across the domestic and small business space in both New Zealand and the Pacific Islands.

#### **General comments**

Tower has reviewed the Insurance Council of New Zealand (ICNZ) submission and is largely in support of it, however would like to express its views on two key points and has therefore elected to make its own submission.

Although the instances of poor customer outcomes related to the design and functioning of insurance contracts law are few and far between, it must be acknowledged that the personal lines insurance industry, along with the rest of the financial services sector, is suffering from a perception issue regarding its conduct.

There are too many stakeholders who, rightly or wrongly, hold the perception that insurers have internal processes and organisational cultures that are designed in a way that doesn't put the customer at the heart of how the business is operated.

When it comes to trust, perception is reality. We know that as an industry we need to continue to change and go further for our customers and communities. By building on the existing strengths in the industry we know this can be achieved. Our plans and actions need to ensure that we cement personal lines insurance as a critical, reliable and trusted product and service for the benefit of consumers, communities, and the economy as a whole.

As can be seen from the two key elements highlighted in this submission, Tower is already making substantial progress as we strive to take an industry leadership position, built on our belief that people deserve better.

## Options in relation to disclosure by consumers

### Option 1: duty to take reasonable care not to make a misrepresentation

34. This option would abolish the duty of disclosure for consumer insureds and replace it with a duty to take reasonable care not to make a misrepresentation. Insurers would have to identify, through questions, the information they need to underwrite the risk. Consumers must answer truthfully and as accurately as is reasonable.
35. Whether or not a consumer has taken reasonable care would take into account factors such as how clear and specific the insurer's questions were and whether an agent was acting for the consumer.

Tower believes that people deserve better and that the insurance industry needs to take action to increase the trust of consumers in its products and services.

Accordingly, it is Tower's preference that the industry aligns with the most progressive approach to the management of insurance contractual duties. The duty for customers to take reasonable care not to make a misrepresentation (aligned with the current UK model) is an approach we support, as per Option 1, as this approach shifts the balance of power most positively to the benefit of the customer.

Tower's core strategic objective, particularly evident given the focus of our ongoing external branding campaigns, is to offer simple and easy insurance that leads to an amazing claims experience – this is based on our core belief of delivering something better.

Tower has previously identified the application of the duty of disclosure, and the level of onus placed upon the insured (the customer), as an area of opportunity to facilitate genuine industry change. Tower is making substantial internal modifications to drive an enhanced approach to the duty of disclosure across the organisation. We are currently re-designing our core products and processes, our approach to data and underwriting, and (most importantly) our approach to managing claims to remove this onus from customers. As we go-live with our new core insurance management platform through 2019, these changes will be further amplified and extended to the benefit of all Tower customers.

The progress Tower has already made is further evident in the fact that our insurance products are easy to understand. Tower is proudly the first personal lines insurer in New Zealand to achieve the WriteMark plain language standard. Tower customers know exactly what they're covered for in plain and simple English, meaning there will be no more confusing industry jargon and therefore less opportunity for confusion when it comes time for a customer to make a claim.

As we did with our approach to earthquake risk-based pricing, we aim to lead the way by openly and honestly talking about these changes and we commit to this level of transparency for all changes we make that impact our customers.

Proactively driving forward this improved approach to the duty of disclosure for insurance contracts is the single most effective step that public policymakers and the private sector can take to both ensure greater consistency of customer outcomes and improve the perception of the industry.

## **Unfair Contract Terms**

Tower believes that all our existing personal lines insurance products contain fair contract terms and that our customer sales and service processes and platforms across all channels deliver a fair outcome for our customers and the community. We acknowledge that there may at times have been isolated instances of unexpected outcomes for customers when seeking to make a claim, however this should not be viewed as a systemic issue. Through implementing simple and easy policies in the market and a straight forward sales process, Tower is seeking to remove all potential obstacles that may give rise to this type of issue in future.

Because of the historical context, specifically the blending of common and statutory law along with the need for additional statutory law in non-insurance contracts, statutory exemptions have been specifically addressed in the Fair Trading Act 1986 (FTA). However, there is an opportunity to remove complexity and, in simplifying the regulatory regime, reduce the potential perception of insurers acting in some of 'trickery'.

To improve and simplify the statutory approach, we believe that the operation of insurance contracts should be fully within the gambit of the Insurance Contracts Act. Removing fragmentation and increasing consolidation can in itself improve the perception and application of insurance contract law.

By being embedded within the FTA, the statute is drafted as an exemption to otherwise "unfair" consumer contracts. This gives rise to the suggestion that they would, if not for the exemption, be by their nature "unfair". This is not an accurate reflection of the true nature of insurance contracts, particularly in the context of the product disclosure and financial advice requirements that exist and are embedded across the industry. We are confident that our contracts are "fair" within the intended meaning of the word, and as it relates to an insurance contract.

While a material change to the current regime may give rise to some uncertainty across the international reinsurance arrangements that underpin the industry, if appropriately managed we do not see a significant downside or complication. We believe positive outcomes could be best achieved through total statutory consolidation and enhancing the scope of the statute to achieve fundamental clarity of what terms should, and should not, be included within an insurance contract. By adopting this approach New Zealand may also be able to lead the way globally.

One specific example of well-designed regulation that is well embedded and operational is the existing operation of the Human Rights Act 1993 (specifically section 48) which provides for insurance pricing based on appropriately supported evidence. A similar approach could be extrapolated to other elements of product terms. We would welcome further engagement on how a more transparent regulatory approach could improve the perception of fairness for personal lines insurance products.

## **Conclusion**

Thank you again for the opportunity to submit on the Options Paper. Please contact Richard Harding ( ) should you have any questions regarding our submission or require further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Richard Harding', with a stylized flourish extending to the right.

Richard Harding  
Chief Executive Officer