

Submission template

Exposure draft Insurance Contracts Bill

This is the submission template for responding to the Consultation Paper accompanying the Exposure draft Insurance Contracts Bill.

The Ministry of Business, Innovation and Employment (MBIE) seeks your comments by **5pm on 4 May 2022**.

Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the discussion document questions in the table: “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission, please:
 - a. Delete this first page of instructions.
 - b. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
 - i. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - c. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Send your submission as a Microsoft Word document to insurancereview@mbie.govt.nz.

Please direct any questions that you have in relation to the submissions process to insurancereview@mbie.govt.nz.

Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

Name	Crossley Gates
Organisation (if applicable)	Keegan Alexander - Lawyers
Contact details	Privacy of natural persons

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

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I do not want my submission placed on MBIE's website because... [Insert text]

Please check if your submission contains confidential information:

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]

Responses to consultation paper questions

Part 1: preliminary provisions

1 Do you have any feedback on Part 1 of the Bill?

No

Part 2: disclosure duties and duty of utmost good faith

2 Do you have any feedback on the Bill's provisions in relation to the duty for consumers to take reasonable care not to make a misrepresentation, including the matters that may be taken into account to determine whether a consumer policyholder has taken reasonable care not to make a misrepresentation?

While clause 14 (1) makes it clear the obligation to take reasonable care applies when the contract is 'entered into or varied', this leaves the renewal position unclear.

While it is clear law that a renewed contract is a new contract and so the policyholder enters into it again (presumably meaning clause 14 (1) is enlivened again), I suggest the position regarding renewals should be expressly stated to avoid doubt.

Assuming clause 14 (1) is intended to apply again at renewal, this raises a practical issue about the answer the policyholder gave to an insurer's question previously. Does the insurer have to put this question to the policyholder again at each renewal thereafter, or not? If the insurer does have to put it again, what does the insurer do if the question is not answered or not answered properly (see clause 17) before any particular impending renewal. A cautious insurer will not wish to be caught by clause 17 and will refuse renewal until the question is answered properly. In the meantime, the expiring policy may actually expire, and the policyholder becomes uninsured thereafter until the whole situation is sorted out. This is not consumer friendly.

One possibility would be to have a new clause deeming all previous representations made by the policyholder to be made again at renewal unless the insurer is expressly advised otherwise. As this puts the onus on the consumer, the insurer should be compelled to give clear notice to the policyholder about this and the consequences of not complying before renewal. This obligation could be added to clause 55?

3 Do you have any feedback on the Bill's provisions in relation to remedies for breach of the consumer duty?

No

4 Do you have any feedback on the Bill's provisions on remedies for breach of the consumer duty in relation to life insurance policies where the misrepresentation was not fraudulent and more than three years ago?

No

5 Do you have any feedback on the Bill's provisions in relation to the disclosure duty for non-consumers?

Clause 31 raises the same issues as described in response 2 above. I suggest it is addressed in the same way.

6	<i>Do you have any feedback on the Bill's provisions in relation to remedies for breach of the non-consumer duty?</i>
	No
7	<i>Do you have any feedback on the provisions in relation to the insurer's duties to inform policyholders of the disclosure duties, and insurer access to third party information, including how the duties apply for variations of insurance contracts?</i>
	Add the notice to the policyholder referred to in responses 2 and 5 above.
8	<i>Do you have any feedback on the consequences in the Bill if an insurer breaches duties to inform policyholders of the disclosure duties, and insurer access to third party information?</i>
	No
9	<i>Do you have any feedback on how the Bill codifies the duty of utmost good faith?</i>
	Good idea to clarify this as it has caused confusion in Australia
10	<i>Do you have any feedback on the Bill's provisions relating to information provided by a policyholder to a specified intermediary?</i>
	Agree with this reform. As the specified intermediary has been negligent, this remedy should be available.
11	<i>Do you have any other feedback on the drafting of Part 2 of the Bill?</i>
	No
Part 3: terms of insurance contracts	
12	<i>For claims-made policies, do you consider that 60 days after the end of the policy term is an appropriate period for allowing the policyholder to notify relevant claims or circumstances that might give rise to a claim?</i>
	I think it is too long and suggest 30 days.
13	<i>Do you consider that insurers should be required to notify policyholders in writing no later than 14 days after the end of the policy term of the effect of failing to notify a claim or circumstances that might give rise to a claim before the end of the 60 day period?</i>
	Insurers always have to communicate with policyholders/their brokers about 30 days before renewal (to negotiation the terms of the renewal) and I suggest the notification be given at this time. If it is given then, a period of 30 days after expiry seems appropriate. In summary, notice by the insurer is given to the policyholder say 15 days before renewal and notice of a claim must be given by the policyholder within 30 days of expiry.
14	<i>Do you have any other comments on clause 69 of the Bill (Time limits for making claims under claims-made liability policies)?</i>
	Clarify whether the notification required by clause 69 (1) (c) has to be served on the actual policyholder or whether service on the policyholder's agent (insurance broker) will comply.

This issue also arises with the notice required by clause 73(2). Insurance brokers prefer that insurers' communications don't cut across them and always go to them.

Presumably clause 70 is not meant to apply to claims-made policies because it only refers to 'repairing, replacing, or reinstating any property', and claims-made policies are all liability policies. However, it would be clearer if clause 70 is more obviously aimed at property insurance only (which never uses the claims-made process). I suggest a simple way of signalling this is to change the heading for the section to:

'Property insurer not liable to pay greater cost'

15 Do you have any feedback on the exclusions listed in clause 71(3), which are not subject to the rule for increased risk exclusions in clause 71(1)?

No

16 Do you have any other feedback on Subpart 4 of Part 3 of the Bill (Third party claims for liability insurance money)?

This is a good fix.

17 Do you have any feedback on Schedule 3 of the Bill (Information and disclosure for third party claimants)?

No

18 Do you have any comments on not carrying over section 10(1) of the ILRA 1977?

Good idea. It caused great confusion.

19 Do you have any other feedback on the drafting in Part 3 of the Bill?

No

Part 4: payment of monies to insurance intermediaries

20 Do you consider that changes should be made to requirements for how insurance brokers must hold premium money such as restrictions on brokers' ability to invest or more stringent requirements in line with the client money and property rules in the FMC Act?

Yes

21 Do you have any feedback on the proposed penalties for non-compliance with Part 4 of the Bill?

No

22 Is it necessary to retain clause 102 (broker to notify insurer within 7 days if a premium has not been received by the broker), and if so, what should be the consequence for breach of clause 102?

Yes, otherwise the insurer doesn't know the policyholder has not paid the premium to the broker by the due date set by the broker and doesn't know to start the cancellation procedure.

As it is not usually a condition precedent to cover starting that the premium is paid first, the insurer wants to get off risk as soon as possible once the policyholder has failed to meet the payment deadline.

23 Do you have any other feedback on Part 4 of the Bill?

No

Part 5: contracts of life insurance

24 If you consider that change needs to be made regarding interest payable from 91st day after date of death, please provide any further reasons and provide feedback on whether interest should only begin accruing after 90 days if the insurer has been notified of the death claim and (where relevant) letters of administration or probate have been obtained.

No comment

25 Do you have any feedback on the proposal that any mortgaging of life insurance policies under new policies be dealt with under the Personal Property and Securities Act 2009?

No comment

26 Do you have any feedback on the Bill's requirements relating to assignments and registrations generally?

No comment

27 Are section 75A of the LIA (relating to a policy entered into by a person for the benefit of the person's spouse, partner or children) or section 2(1) of the Life Insurance Amendment Act 1920 (relating to the reversion or vesting of life policy assigned to a spouse or partner) still necessary?

No comment

28 Do you have any other feedback on Part 5 of the Bill?

No

Part 6: regulation-making powers and miscellaneous provisions

29 Do you have any feedback on Part 6 of the Bill?

No

Part 7: unfair contract terms and presentation of consumer policies

30 Do you see any unintended consequences from removing sections 18-20, 34-39 and 42 from the MIA?

No

31 In relation to unfair contract terms: which option do you prefer and why?

Option B. It is clearer.

32	<i>Do you have any feedback on the drafting of either of the options?</i>
	The drafting of Option B is easier to follow.
33	<i>Do you have any comments on the obligation that consumer insurance contracts be worded and presented in a clear, concise and effective manner?</i>
	Agree
34	<i>Do you have any comments on the regulation-making powers in clause 184?</i>
	No
35	<i>Do you think regulations specifying form and presentation requirements for consumer, life and health insurance contracts (eg a statement on the front page that refers to where policy exclusions can be found) would be helpful? If so, please explain.</i>
	No, particularly if 33 above applies.
36	<i>Do you think regulations specifying publication requirements for insurers would help consumers to make decisions about insurance products? If so, please explain.</i>
	No comment
Timing and transitional arrangements	
37	<i>Do you have any initial feedback on when the Bill's provisions should come into effect?</i>
	No
38	<i>Do you have any feedback on the transitional provisions in Schedules 1 or 4, or other proposed transitional arrangements?</i>
	No
Schedule 5: amendments to other Acts	
39	<i>Do you have any feedback on Schedule 5 of the Bill?</i>
	No

Other comments

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