

# Submission template

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## 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](mailto:insurancereview@mbie.govt.nz).

Please direct any questions that you have in relation to the submissions process to [insurancereview@mbie.govt.nz](mailto:insurancereview@mbie.govt.nz).

# Submission on *Exposure draft Insurance Contracts Bill*

## Your name and organisation

<b>Name</b>	Tim Gunn
<b>Organisation (if applicable)</b>	TG Legal Services Ltd
<b>Contact details</b>	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.

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## Responses to consultation paper questions

### Part 1: preliminary provisions

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

### 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?*

In principle I agree with the intention of this amendment.

However, in my experience the wording of the medical questionnaires used by insurers are vague, opaque and misleading.

I believe that the form and content of the medical disclosure questionnaires are the key reasons for the high rates of non-disclosure claims before the Ombudsmen.

For example, medical questionnaires ask for the insured to inform them of "any signs or symptoms of" and then lists a host of illnesses. The insured simply does not have the expertise to self diagnosis a series medical conditions from their "signs and symptoms".

Secondly, the medical questionnaires ask the insured if they have had common "signs or symptoms" like stress, fatigue, headaches and/or sleeplessness. Who can answer no to that question?

If we don't address the type of questions asked in the medical questionnaires, then this issue will be perpetuated.

Lastly, we need a positive obligation on the insurer to insurer that they have correctly underwritten and understood the risk before the inception of cover. They are the only party with the requisite skill and expertise to determine what is "material" for the purposes of understanding that risk.

Under the proposed amendments innocent non disclosure will continue to act as the insurers "get out of jail" card. Insurers will continue to reverse underwrite policies – whereby the only time the adequacy assess the claimants medical records is then they make a claim.

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

I still do not understand the justification as to why an insurer is justified in avoiding a contract where they are the only party with the requisite skill and expertise to determine what is "material" for the purposes of understanding that risk.

I reject that avoidance is a proportionate outcome for not deliberate or reckless non-disclosure.

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?*

	We cannot walk back or weaken these protections.
5	<i>Do you have any feedback on the Bill's provisions in relation to the disclosure duty for non-consumers?</i>
6	<i>Do you have any feedback on the Bill's provisions in relation to remedies for breach of the non-consumer duty?</i>
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>
	<p>We need a positive obligation on the insurer that they have correctly underwritten and understood the risk before the inception of cover. They are the only party with the requisite skill and expertise to determine what is "material" for the purposes of understanding that risk.</p> <p>The current "duty" is too weak.</p> <p>In my opinion, insurers will continue to reverse underwrite policies – whereby the only time the adequacy assess the claimant's medical records is then they make a claim.</p>
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>
	They will never be imposed.
9	<i>Do you have any feedback on how the Bill codifies the duty of utmost good faith?</i>
	<p>Without any positive duties on the insurer and financial penalties the insurers will continue to deny, delay and defend claims with impunity.</p> <p>This is the opportunity to rebalance the insured/insurer relationship. We need to deter insurers acting in bad faith.</p> <p>For example, is it fair and reasonable that a person with an incurable illness is required to obtain a monthly report for a GP that they continue to have the incurable illness?</p> <p>Is it fair and reasonable that a person is required to attend investigations with multiple different medical experts where there is initial agreement between the experts that the person has a qualifying condition?</p> <p>Is it necessary to have the claimant seen by experts from four different, and intersecting, medical disciplines?</p> <p>My experience is that some insurers use medical testing and IME's to punish a claimant. For example, claimants face an increase frequency of testing requests, sometimes to a monthly basis, where they do not act in strict adherence to the insurers claims process.</p> <p>The claims process is unduly harsh and leads to poor mental health outcomes for claimants.</p> <p>A common occurrence is that an insured simply abandons their claim because they find the claims process too stressful, humiliating and traumatising.</p>

Insurers should have a positive obligation to:

- a) Inform
- b) Make determinations quickly;
- c) Not to cause undue hardship, anxiety or distress on a claimant through the claims process;
- d) Mitigate any temporary hardship, anxiety or distress caused by the claims process;
- e) In cases of severe hardship, anxiety or distress continue to pay a claimants claim while a claim is being disputed or being investigated;
- f) Consider and prioritise the medical expert opinions of the claimants treating physician;
- g) Modify claims form requirements to suit the needs of the insured;
- h) Perform routine assessments of a
- i) Not to place undue reliance on their own medical expert opinions;
- j) Disclose all commercial relationships with inhouse medical experts;
- k) To act with decency and fairness;
- l) To publish their declinature rates for different types of claims;

10

*Do you have any feedback on the Bill's provisions relating to information provided by a policyholder to a specified intermediary?*

11

*Do you have any other feedback on the drafting of Part 2 of the Bill?*

### Part 3: terms of insurance contracts

12

*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?*

13

*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?*

14

*Do you have any other comments on clause 69 of the Bill (Time limits for making claims under claims-made liability policies)?*

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)?*

16

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

17

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

18

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

19

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

#### **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?*

21

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

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?*

23

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

#### **Part 5: contracts of life insurance**

24

*If you consider that change needs to be made regarding interest payable from 91<sup>st</sup> 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.*

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?*

26

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

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?*

28

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

#### **Part 6: regulation-making powers and miscellaneous provisions**

29

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

#### **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?*

32

*Do you have any feedback on the drafting of either of the options?*

33

*Do you have any comments on the obligation that consumer insurance contracts be worded and presented in a clear, concise and effective manner?*

This is a good initiative.

We need to look at the claims mechanism and the requirements imposed on claimants to justify and substantiate a claim.

Claimants should be alert to the fact that an insurer will use their own experts to determine acceptance and coverage of a claim.

Claimants should understand the role of the loss adjuster and if there are any conflicts of interests in the presentation of a loss.

Claimants should be engaged on a regular basis where claimants are involved in a long term claim. The claimant should understand the claim requirements and ensure that they have been completing the required documentation to their satisfaction.

*Do you have any comments on the regulation-making powers in clause 184?*

*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.*

*Do you think regulations specifying publication requirements for insurers would help consumers to make decisions about insurance products? If so, please explain.*

### Timing and transitional arrangements

*Do you have any initial feedback on when the Bill's provisions should come into effect?*

*Do you have any feedback on the transitional provisions in Schedules 1 or 4, or other proposed transitional arrangements?*

*Do you have any feedback on Schedule 5 of the Bill?*

### Other comments