Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Commercial information
Contact details	Privacy of natural persons

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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?*
3	*Do you have any feedback on the Bill's provisions in relation to remedies for breach of the consumer duty?*
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?*
5	*Do you have any feedback on the Bill's provisions in relation to the disclosure duty for non-consumers?*
6	*Do you have any feedback on the Bill's provisions in relation to remedies for breach of the non-consumer duty?*
7	*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?*
8	*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?*
9	*Do you have any feedback on how the Bill codifies the duty of utmost good faith?*

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?*
	No, 60 days is nowhere near enough. Claims or circumstances that could give rise to a claim may not be known for many months after the policy end date. To limit coverage and leave a client holding the loss, even though they paid for their insurance coverage is patently unfair to the client. Run off covers are priced at the same level as the original insurance cover for the first 12 months after policy expiry, so effectively, to be covered clients have to pay for the same cover twice, or more if they keep run off cover going for over 12 months from end of contract. Consider a retired self employed person, no income coming in, but still having to pay for insurance premiums covering a business they are no longer in, just in case something comes up long after they ceased operating. Premiums become unaffordable and cover lapses, leaving the burden on the client, even though they have diligently and responsibly paid for insurance cover prior to ceasing operations. The insurers have been paid a premium for the coverage, yet want to charge additional premiums for anything discovered outside the timeframe of the contract, or escape cover altogether.
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?*
	Definitely
14	*Do you have any other comments on clause 69 of the Bill (Time limits for making claims under claims-made liability policies)?*
	Section 9 of the Insurance Law Reform Act 1977 provides for late notice of claims to insurers. The clause basically means an insurer can not decline your claim because of late notification unless the delay in notifying the insurer has caused them prejudice. If the proposed reform is made this clause will not apply to claims made policies. Professional Indemnity (PI) insurance is a claims made policy. **<u>Why is Section 9 vital?</u>** It is a requirement of a PI policy to notify the Insurer of (a) a claim, or (b) a circumstance which may give rise to a claim. A claim can be relatively easy to identify and hence notify at the right time to your insurers. A circumstance that may give rise to a claim can be very difficult to identify. For example, a client expresses dissatisfaction with an outcome, suggesting that they have suffered a loss. Is that something that should be notified to your insurers or not?

Due to the difficulty in determining what is a circumstance, notifications occur where it is determined that it should have been made at an earlier time. This difficulty becomes a problem where different insurers are involved. For example, you notify a possible claim to Insurer A. It is determined that you should have notified this matter 3 years earlier (when Insurer B was your insurer). Insurer A will decline the claim against you because the claim relates to a prior period and therefore does not trigger their policy. Insurer B however must defend the claim (unless the delay has caused prejudice) – *this is the current protection the Act provides*. However due to the proposed amendment Insurer B will be able to decline the claim due to the late notification. You would therefore be uninsured for a claim against you, simply because you did not understand what constitutes a "circumstance".

Late notifications of circumstances to PI insurers are common and mostly arise because the Insured party did not understand that a situation should have been notified to insurers as circumstance. We are aware of an example where the 'late notification' applied to two claims 4 years after the notification should have been made. This situation that led to two claims, was an offhand comment made by the claimant. *Fortunately for the client, the current law applied and the Insurer defended the client against both claims.*

What will be the impact of the change Section 9 of the Insurance Law Reform Act 1977

As noted above, the first and obvious impact is that many companies and individuals will be uninsured for what is otherwise a valid claim. This is a serious concern in it's own right, and we believe against the objectives for the reforms stated by the Ministry of Business, Innovation & Employment (MBIE).

If this change occurs, we believe that PI insurance in NZ will be less competitive. Those that purchase PI insurance will be correctly worried about this law change & late notification of claims. Hoping to avoid the situation, we have detailed above, they will be hesitant about changing insurers. This reluctance to change insurers, will lead to higher premiums charged by insurers and more restrictive cover. Hurting the clients.

You may also be thinking, the solution is to just notify everything to insurers. This raises the issue of insurers not accepting notifications. A notification not accepted by insurers can be more damaging than a late notification. The solution to the issue is retaining the protection afforded by the Act. Hence please do not change or remove this current consumer protection.

It has been noted that the reason for this change is that under liability insurance policies, claims may arise many years after the event giving rise to the claim and many years after the insurance policy has expired. Section 9 means that insurers cannot know with certainty their exposure to risk under expired policies and must set aside large reserves for possible future claims.

There is already a requirement on insurers to set aside large reserves for possible future claims on all the current policies they have in force. The reality is this consumer protection effects their cash reserve requirements in a very minimal way, especially compared to the effect it may have on consumers.

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?*
	There is a very definite need for a change in this part of the Bill. The Bill does not differentiate between Fire and General Insurance Brokers, Life Insurance Brokers and Investment Brokers, yet in real life, all must work in different ways. There is a complete failure to understand the basics of Fire and General Insurance by those writing the Bill. When a Fire and General Insurance client pays their premiums to their broker, the money is no longer theirs (The Clients). The Fire and General Intermediary does not require a client money account as they never hold client money. As soon as a client pays their premiums to their broker, the money belongs to the broker and the insurance company. How it actually works • Broker invoices client for their Insurance Premiums • Client pays premiums to Broker. Money now belongs to broker and insurer. It is no longer the client's money. (So no need for Client Money Account) • Broker pays the insurer their portion of the money, on agreed timeframes • Broker retains their commission/brokerage
21	*Do you have any feedback on the proposed penalties for non-compliance with Part 4 of the Bill?*
	Change it! The Bill is trying to impose regulations on Fire and General Brokers based on a lack of understanding of how Fire and General Insurance/Broking actually works. Fire and

	General brokers are fundamentally different to investment brokers and Life Insurance Brokers.
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?*
	This clause should be removed for Fire and General Insurance. The current practice For Fire and General insurance is that the Insurer chases the Broker and advises when payment terms are breached, and at what point policies will be cancelled if premiums aren't paid. The insurer then cancels the policies if payment not received by the date they have advised. They have no requirement for any feedback or notification from the broker to do this. The insurers drive this timeframe and process, and they make the decision whether or not a policy is cancelled. They do not need notification from the broker to cancel the cover, they just cancel it themselves if they haven't received payment. There is no loss to the insurer when they cancel a policy for non payment. To try and spin this around and impose penalties on brokers for not notifying insurers that premiums haven't been paid makes no practical sense, and is in contradiction to the standard practice of insurers and brokers. When 102 is breached, there is no implication or repercussion for the insurer, they will already have cancelled policies for non payment regardless of whether the broker has advised them the payment hasn't been received or not. If a claim is lodged, they will not pay until they receive confirmation of premium payment. So again no financial harm can come to the insurer when a client doesn't pay their Fire and General Premium, regardless of whether the broker notifies them or not. In a non payment situation, the big loser is the broker. They never receive the income they should have for the work they have done. They have committed far more time and effort into the now defunct insurance policies than the insurer. They should not be further penalised, nor should the insurance company rewarded at the brokers expense.
23	*Do you have any other feedback on Part 4 of the Bill?*
	For Fire and General Insurance remove all reference to Client Broking account. There is no such thing, and no need for such a thing. When a client pays their Fire and General insurance premium to their Fire and General Insurance Broker, the money is no longer theirs. It now belongs to the Broker and the Insurance company. It is literally the same as buying groceries at a supermarket. You do not ask the Supermarket owner to put the money into a Client retail sales account, once the customer/client has paid, the money is no longer theirs.
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.*

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?*
	Perhaps the people responsible for making changes etc to the legislation should be required to have a lot more understanding of how the industries they are trying to regulate actually work. What does the Governer General, or Minister, know about the running of a Fire and General Insurance Brokerage? Current and proposed legislation changes indicate, very little.
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?*
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?*
34	*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

Please take the comments made above seriously, read them slowly and try to understand the context before dismissing. The boat is really being missed in some parts of this legislation. Long term the consumers you are trying to protect will be the ones who pay for it.