

Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

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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?

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

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

Part 3: terms of insurance contracts

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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?

This is totally insufficient.

A claims-made policy also includes a requirement on the policy holder to notify insurers of a 'circumstance that may give rise to a claim'. This is a very imprecise notification requirement. This uncertainty is not lost on Insurers - there are examples of Insurers referring to the courts to make the appropriate assessment as to when the circumstance should be notified.

The uncertainty of what constitutes a 'circumstance' is a key reason why many policyholder notify their insurers of a 'circumstance' well after the expiration of the appropriate policy. This delay is often many months or we have seen some that are several years late. 60 days is simply insufficient time to provide adequate protection for the policyholder.

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?

There is little point to this as it will not help the policyholder identify what constitutes a 'circumstance' and therefore will not prevent the late notice of circumstances to insurers.

14

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

We would refer to our previous submissions for a more detailed response. This change will however lead to valid claims being declined by Insurers, for the reasons outlined above.

As a result policyholders will need to be careful of this issue when considering changing insurers. This will obviously lead to a reluctance by policyholders to change insurers.

Due to this reluctance the insurance market for claims-made liability policies will become less competitive. Insurers will be able to increase premiums on current policyholders and to impose more restrictive terms. Therefore the law must not change in relation to the protection afforded to policyholders for late notification of claims & circumstances on claims made 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	<i>Do you have any other feedback on Subpart 4 of Part 3 of the Bill (Third party claims for liability insurance money)?</i>
17	<i>Do you have any feedback on Schedule 3 of the Bill (Information and disclosure for third party claimants)?</i>
18	<i>Do you have any comments on not carrying over section 10(1) of the ILRA 1977?</i>
19	<i>Do you have any other feedback on the drafting in Part 3 of the Bill?</i>

Part 4: payment of monies to insurance intermediaries

20	<i>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?</i>
21	<i>Do you have any feedback on the proposed penalties for non-compliance with Part 4 of the Bill?</i>
22	<i>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?</i>
23	<i>Do you have any other feedback on Part 4 of the Bill?</i>

Part 5: contracts of life insurance

24	<i>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.</i>
25	<i>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?</i>

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

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

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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?

35

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.

36

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

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

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

Schedule 5: amendments to other Acts

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

Other comments

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