

Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

Name	Aneleise Gawn
Organisation (if applicable)	Consumer NZ
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?***

No comment.

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?***

Yes, as mentioned in previous submissions, we strongly support the introduction of a new duty to take reasonable care not to make a misrepresentation. The introduction of this duty will mean the onus is no longer solely on consumers to gauge what an insurer might consider relevant. Instead, the onus will be on the insurer to ask appropriate questions to ensure it has the necessary information to underwrite the risk.

We recommend the words "must be had regard to" in clause 16 are amended to "must be considered".

We also recommend the inclusion of section 19(2) be reconsidered. It seems unusual to include a section in legislation summarising another section.

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

We support a narrowing of the circumstances in which insurers can avoid a contract for non-disclosure. We also agree insurance companies should have proportionate remedies available to them if policyholders breach the duty to take reasonable care not to make misrepresentations. However, as stated in our previous submission, our preference is for remedies based on intention and materiality (option 2 in the Options Paper).

In our view, it is important that a court, or dispute resolution scheme, has the power to disallow avoidance, or pay an amount in respect of the claim, for a non-fraudulent material non-disclosure if the insurer has not suffered any significant loss or where it would be harsh or unfair.

We suggest the Bill is amended to reflect this.

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 support the proposed 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?***

No comment.

6

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

No comment.

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?

Yes, we strongly support the provisions requiring an insurer to inform policyholders of the disclosure duties and insurer access to third party information.

Requiring insurers to warn consumers of the duty to take reasonable care not to make a misrepresentation and the consequences for breaching this duty will help consumers understand they need to take care the information they are providing to their insurer is accurate. Without such a warning, not all consumers will understand this.

We also support insurers being required to advise consumers about what third party information they will access. This will help to ensure interactions in the insurance market are fair, efficient and transparent at all points in the lifecycle of the insurance policy. Also, without this requirement, not all consumers will understand that insurers are accessing this information.

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?

We support 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?

Yes, we support codification of the duty of utmost good faith as many policyholders are unaware of the existence of this duty and we consider codification may improve this.

However, further consideration should be given to including a penalty for insurers that breach the duty of utmost good faith. In Australia, section 13(2A) of the Insurance Contracts Act was introduced in 2019 to establish a civil penalty for breach of the duty of utmost good faith by insurers. It has been described by an Australian Chief Justice as creating "very real financial consequences for conduct which, when judged against societal standards of decency and fairness, falls short." We consider a similar provision should be included in the Insurance Contracts Bill.

10

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

We support these provisions.

11

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

No comment.

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 comment.

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?***

No comment.

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

No comment.

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 comment.

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

No comment.

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

No comment.

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

No comment.

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

No comment.

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?***

No comment.

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

We support the proposed increase in penalties for non-compliance.

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?*

No comment.

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

No comment.

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 comment.

Part 6: regulation-making powers and miscellaneous provisions

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

We support the regulation making powers set out in 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 comment.

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

As stated in previous submissions, we support a narrow definition of the main subject matter of insurance contracts. We therefore support option A. We agree option A gives better protection to consumers and recognises that consumers usually do not have the opportunity to understand or negotiate the terms. As stated in the consultation paper, option A is also consistent with the approach in Australia and the UK.

We oppose option B. In our view, option B would provide little improvement on the status quo and very few benefits for consumers. It would also do little to address the potentially unfair terms used widely by insurers and those highlighted by MBIE in earlier discussion papers.

We are also concerned that policyholders would have to rely on the FMA or Commerce Commission to declare a term in an insurance contract to be unfair. In our view, this is a significant barrier to justice for consumers. We urge MBIE to consider amending the Fair Trading Act to allow consumers to take private action in respect of unfair terms, in the Disputes Tribunal and any dispute resolution scheme.

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

No.

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

Yes, we strongly support this option. As stated in previous submissions, consumers are not confident they fully understand their policies.

In our 2020 Consumer Monitor survey, only 26 percent of consumers felt they clearly understood their policy.

Requiring insurance contracts be worded and presented in a clear, concise and effective manner could help to address this.

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

No.

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.***

Yes, in previous submissions, we strongly supported the provision of a summary statement to help consumers better understand the core cover provided and make comparisons between policies. Consumers also want this. Nine out of 10 consumers in our 2021 insurance survey felt a summary statement would be useful to help them better understand the cover and compare policies.

Our 2021 survey also found almost 40% of consumers found it difficult to compare insurance companies and their services. Health and life insurances were the most difficult to compare with 50% finding these difficult to compare.

In the absence of a requirement for a summary statement, we consider it would be useful for consumers' attention to be drawn to where the policy exclusions can be found.

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

Yes, we consider regulations specifying publication requirements for insurers would help consumers to make more informed decisions about insurance products and help improve transparency. It could also help with the creation of comparison tools or websites to assist consumers to compare the different insurance products available to them.

Timing and transitional arrangements

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

Given the detriment being experienced by consumers, we'd like to see the Bill's provisions come into effect as soon as possible.

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

No.

Schedule 5: amendments to other Acts

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

No.

Other comments

We are concerned about the use of [blanket exclusions for mental health](#) in insurance contracts. By using such exclusions, insurers are often treating all mental health conditions as if they are the same and treating all those with mental health issues as high risk, regardless of their circumstances. In our view, this issue needs to be addressed.

As mentioned in previous submissions, we are also concerned about the existence of the four different dispute schemes and the confusion this creates for consumers. We consider a single dispute resolution scheme (like in Australia and the UK) would be preferable.

Similarly, we have previously expressed concerns about the fact that the schemes are not required to publish their decisions. In our view, the scheme/s should be required to publish their decisions, like the Financial Ombudsman Scheme in the UK does.

We also believe insurers should be required to provide better information about costs to consumers, including the amount of premium increases when a policy is up for renewal. This would allow consumers to assess any increase and the need to switch providers.

In the UK, insurers are required to display the past year's premium in renewal notices. Australia has also recently introduced the same requirement.