

Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

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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?

Please go to questions 12 and 13.

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?

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

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?

No, we do not consider that 60 days is an appropriate period of time to allow policyholders to notify relevant claims, or circumstances that might give rise to a claim, for several reasons.

Firstly, circumstances giving rise to a claim will often not come to the attention of the policyholder, or present themselves in a way that suggests a potential claim exists, until well after the event. It may take years for this to occur. If a 60-day notification period is introduced as suggested, policyholders who have changed insurers over 60 days after the circumstance arose may be left uninsured for what is otherwise a completely valid claim. In light of this, 60 days falls far short of an appropriate period for notification of relevant claims or circumstances giving rise to a claim and leads to an unacceptable risk for the insured, effectively reducing or eliminating the benefit of the insurance for which the insured has paid.

Secondly, insurers are concerned that they cannot know with certainty their exposure to risk under expired policies. This bears resemblance to the difficulty policyholders face and will continue to face in not knowing whether a circumstance which may give rise to a claim in the future has arisen. This legislation would essentially transfer the burden of the risk and uncertainty from insurers to policyholders. Such a transfer is illogical considering the very purpose of holding an insurance policy is protect one against risk. This proposed change would seek to alleviate insurers from a fundamental responsibility of their business, placing it on their customers instead.

Another serious concern we hold is that this proposed change will greatly reduce competition among insurers, and thereby significantly harm policyholders as consumers. Policyholders would be more inclined to remain with their insurers due to the risk that after switching insurers they would be left uninsured for claims relating to the period they were with their previous insurer. The consequences of this would be akin to those of the cartel practice of market sharing. Insurers would not need to compete with each other as customers would be very hesitant to switch insurers, and insurers could take advantage of that significant lessening of competition in a market which already has a limited number of providers.

Finally, it would be irrational to prohibit a policyholder making a claim under a policy relating to a claim/circumstance that occurred when the policyholder held the policy. Policyholders would effectively be denied a service they had paid for. Prohibiting this is difficult to justify.

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?*

Yes, we do consider that insurers should be required to notify policyholders no later than 14 days (at most) after the end of the policy term of the effect of failing to notify a claim/circumstance giving rise to a claim within 60 days.

However, a 14-day notice period offers little comfort in the context of the concerns we have raised in response to the previous question. This does almost nothing to address the serious risk policyholders would face switching insurers, the anticompetitive effects of this, and the unjustifiable denial of services to policyholders which they have paid for.

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?*

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?

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

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.

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?

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

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?

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

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?

31	<i>In relation to unfair contract terms: which option do you prefer and why?</i>
32	<i>Do you have any feedback on the drafting of either of the options?</i>
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>
34	<i>Do you have any comments on the regulation-making powers in clause 184?</i>
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>
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>
Timing and transitional arrangements	
37	<i>Do you have any initial feedback on when the Bill's provisions should come into effect?</i>
38	<i>Do you have any feedback on the transitional provisions in Schedules 1 or 4, or other proposed transitional arrangements?</i>
Schedule 5: amendments to other Acts	
39	<i>Do you have any feedback on Schedule 5 of the Bill?</i>

Other comments

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