

Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

Name	Privacy of natural persons
Organisation (if applicable)	Commercial Information
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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?

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

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?

1. We do not consider that 60 days is an appropriate time frame for the policyholder to notify the relevant claim (or circumstance that might give rise to a claim) to an insurance company.
2. The proposed 60 day period is significantly too short to give effect to claims made policies such as Professional Indemnity (PI) Insurance.
3. Professional Indemnity policies require the policyholder to notify the insurance provider of a) a claim or b) a circumstance which may give rise to a claim.
4. Giving notification of a claim can be straightforward, however giving notice of a circumstance which may give rise to a claim can be difficult, as often the policyholder may not be able to predict that. Circumstances that may give rise to claims are not straightforward and are seldom predictable.
5. The difficulty of assessing what does or does not constitute a circumstance become an issue with a 60 day limit. It may be a much longer period of time before the policyholder understands that something was a circumstance to be notified.
6. The difficulty around circumstances is magnified if a firm changes insurance providers. For example, a firm started off with Provider A, but then switched to B the following year. It transpires that the firm should have notified the circumstance for a claim last year. Provider B will not pursue the claim, as its policy will not be triggered. But under the current law, the firm would be protected because Provider A must defend the claim. In the proposed changes, Provider A would not defend the claim because it would be a late notification.
7. If the proposed legislation was to crystallise, the firm would not be insured, and instead be penalised, all because the firm did not adequately anticipate or understand what constitutes as a 'circumstance'.
8. As a result, many companies and individuals will be uninsured for what would otherwise be a valid claim.
9. As well as creating uncertainty, this amendment would have undesirable effects on the insurance market, which would have an immediate effect on policyholders.
10. The proposed changes would preclude policyholders from changing insurance companies, for fear that they would no longer be covered by any provider if they were to change.
11. The flow on effects of this on the market are undesirable. Insurance providers would not be incentivised to offer competitive rates, and this would push premiums upward by eliminating competition between companies for insurance holders.
12. The result is contrary to the objectives of MBIE outlined in the Impact Statement dated 4 December 2019. In particular, the proposals do not satisfy Objectives 3 and 4 because:
 - a. The proposed amendment creates a further barrier for consumers of claims made policies; and

- b. Claims made policies consumers' interests are not being recognised and protected by the proposed amendment.
- 13. Section 9 as it operates in the current legislation is vital to claims made policy holders, such as those who are Professional Indemnity Insurance holders. Therefore, the new legislation should allow late notification for claims made policy consumers.
- 14. Barring claims policy holders from late notifications would needlessly burden policyholders with unfair market conditions, uncertainly and it would be contrary to the objectives of the review.

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?*

- 1. We do not support the introduction of a 60 day timeframe for notification of claims and prefer that the status quo remains on this issue. However, if the 60 day notification period is implement - Insurers should be required to notify the policy holder in writing *before* the end of the policy term. This would avoid the situation where an insurer sends notice in writing to the policyholder on the 14th day, which would result in 14 days being carved out of the policyholder's 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 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?*

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?*

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?*

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

Other comments