



FINANCIAL SERVICES FEDERATION

4 May 2022

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

By email to: insurancereview@mbie.govt.nz

Dear Madam/Sir,

Exposure draft of Insurance Contracts Bill

The Financial Services Federation (“FSF”) is grateful for the opportunity to submit on the exposure draft of the Insurance Contracts Bill (“Bill”).

By way of background, the FSF is the industry body representing the responsible and ethical non-bank finance, leasing, and credit-related insurance providers of New Zealand. We have over 85 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B.

Our submission on this exposure draft is warranted as the FSF’s membership includes credit-related insurance providers who will therefore be heavily impacted on the implementation of this legislation. As our members are general, non-life, credit-related insurers, some questions may not be relevant to our members, and therefore have not been included in our submission. Only relevant questions have been provided answers following our introductory comments.

Introductory comments:

By and large, the FSF does not see any major omissions in the Bill and congratulates the Financial Markets Policy team at MBIE for constructing a comprehensive consultation document, and all relevant teams for the effective exposure draft of the Bill.

As always, the FSF would like to reiterate the importance of hearing the voice of small and domestic insurers in the New Zealand market, and with this importance requires the consideration of proportionality in all legislation made affecting such a varied industry. Proportionality should be considered when considering penalties and consequences, as the effect of consequences on a large international insurer is a chip on the shoulder as opposed to a potentially lethal consequence to a small, community-based insurance provider.

Generally, the FSF welcomes and supports MBIE's efforts in the Bill to conduct a structured and considered review of New Zealand's insurance contracts law. We consider that a consolidation of legislation will provide clarity, transparency, and accessibility for the industry. We also agree that it is important to provide more certainty as to consumer rights, as FSF members, being those of smaller and more community orientated natures, value customer focussed legislation which allows for better customer relations and outcomes.

Although the FSF agrees with the direction in which the legislation is headed, there are details which need to be amended and considered further to ensure they are indeed proportional to the needs of both insurance providers and customers. As a result, we are outlining our support with the Insurance Council of New Zealand's ("ICNZ") submission and their technical enhancements proposed in their submission.

The impact of the Bill, and especially how it will interact with other reforms currently in the pipeline, will be complex however, and will also require careful consideration.

Answers to the relevant consultation questions will now be answered below.

Consultation Questions:

Question 1: Do you have any feedback on Part 1 of the Bill?

The FSF agrees with the writing in Part 1 of the Bill, as it is consistent with the objective and purpose of the review, and agrees with the overarching objectives and direction in which the Bill is headed.

Question 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?

The FSF agrees that the Bill's provisions in relation to the duty for consumers to take reasonable care are indeed reasonable. The duty distributes more onus on customers to ensure that they are also being reasonable in the facilitation of a fairer relationship between both the customer and insurance provider.

However, the FSF has hesitations with respect to the test of 'reasonableness' as precedent suggests that the interpretations of what is deemed to be 'reasonableness' are often varying and ambiguous. The FSF suggests that more pertinent questions may need to be asked, and therefore a differing standard to be applied in the realm of this section. Ultimately, the law should seek to avoid relying on incoherent categories, and rather it should be a devised test that asks what to take into account and allows answers to vary according to context.

Particularly, as FSF's insurance members typically deal with motor vehicle transactions, these being more susceptible to criminal activity, more pertinent questions and guidance to small insurers on what to ask, as opposed to the 'reasonableness' standard, would be more beneficial and could mitigate ambiguities and variations in the questions asked for such purchases.

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

The FSF supports ICNZ's comments in regard to this question. We agree with the intention of provisions in relation to remedies for breach of the consumer duty, however we have concerns on the approach taken.

The FSF, as with ICNZ, is in favour of a percentage deduction approach as being more proportional, as opposed to the premium proportion approach proposed. This is currently adopted in the United Kingdom with respect to insurers' breaches of their consumer duty and has proven to be effective with minimal unintended consequences or problems identified with its implementation.

The percentage deduction approach has a strongly established preference in the insurance industry, as it allows for better incentives for better customer behaviour. The premium proportional approach will be too generous for customers and allows more opportunity for economic mistrust, excluding genuinely reckless and intentional behaviour.

The percentage deduction approach also protects those consumers who are doing everything right and carefully considering the consumer duty imposed on them. Their contributions can be sacrificed by those attempting to receive economic benefit from insurance claims.

In line with the arguments above are the ICNZ's more detailed comments in favour of the percentage proportional approach, which the FSF agrees with entirely.

Question 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?

As the disclosure provisions do not require the disclosure to be in writing, as outlined, and for as long as it just requires policyholder's duties to be disclosed, the FSF is content in supporting these provisions, and has no further feedback to suggest.

Question 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?

FSF members understand that insurers are already subject to these consequences, and, therefore, FSF members then behave as though they are indeed subject to these consequences.

The principle of proportionality should also be considered when understanding the effects of consequences and their impacts on the various sized entities which operate in the market.

As always, and as the FSF has mentioned before in a multitude of submissions, enforcement of regulations as opposed to the increase of consequences as a disincentive, is a far better method of ensuring compliance.

Question 9: Do you have any feedback on how the Bill codifies the duty of utmost good faith?

FSF members would prefer the codification of this duty to not be made in the Bill. We do not consider that the objective of appropriate codification of the law, and room for flexibility to leave the courts to develop the law further, has been achieved. In our view, the courts should be left to further develop.

Further, as the insurance sector will then be subject to the CoFI regime, the codification of this duty seems unnecessary.

The FSF align with the ICNZ's technical amendments proposed in their submission in relation to this question, and would echo these here.

Question 10: Do you have any feedback on the Bill's provisions relating to information provided by a policyholder to a specified intermediary?

As FSF members are bound by the Insurance Intermediaries Act, an Act being unified with this Bill, the provisions relating to information provided by a policyholder to a specified intermediary are provisions which are reasonable and are agreed upon by our members.

Question 11: Do you have any other feedback on the drafting of Part 2 of the Bill?

The FSF has no further comments to make on Part 2 of the Bill.

Question 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?

The FSF agrees that the 60-day period is sufficient, as it reflects other such periods already in existence and therefore, for the purpose of consistency and good law we would agree with the implementation of this period in the Bill.

Question 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?
FSF sees the proposed timelines as ones that members already comply with, and therefore sees these as being fairly proposed in the new Bill.

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

The FSF agrees with the proposed time limits under clause 69 and think they appear reasonable for their objective.

Question 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)?

The FSF would rather such exclusions to be added to clause 71(3) are done so through regulations. The rationale for this is that such exclusions will then be amended or added to with far more ease. The need for flexibility is evident in the haste of innovation and evolution in the industry, as further technological advancements, regulations, and market

pressures evolve so rapidly. Regulations allow for such updates to be more reflective of the market more quickly therefore not halting growth in the industry.

Legislation requires a lengthy process to amend as the market changes, and as retrospective law is inviable, this will allow for market growth and evolution of the industry.

Although the voice of our members is small comparatively to the larger international insurers operating in Aotearoa's market, our opinion on the topic will be echoed right through the sector, and even more so through those larger insurers who have the resources to innovate and adapt products and services as the market evolves, and aid in steering market pressures.

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

The FSF acknowledges that Subpart 4 of Part 3 is more relevant and crucial to larger insurance providers operating in the market, as opposed to credit-related insurance providers. However, in saying this, the FSF align with all the technical changes proposed by the ICNZ and their comments on the consequential issues of such relevant clauses (cl. 84, 85, 87 and 91) as being beneficial to our smaller credit-related insurance members.

Further, the FSF still have some concerns in regard to the extensive information available initially in this process.

The comprehensive information available to third party claims upfront allows for more opportunity to misuse and less initial protection of the customer's privacy.

Overall, the new approach is supported by the FSF however we urge MBIE to consider minimising the amount of information initially available in third party claims in an attempt to minimise our concerns around misuse and privacy issues. Sufficient information may be supplied initially, and if more information regarding the case is then found to be necessary, then existing processes, for example an application to the courts, can be made to obtain this information providing it is necessary. The FSF has concerns that providing all this information initially will also be distortionary.

In saying this, the direction in which these provisions are heading are well intended, and it is this intention that the FSF agrees with.

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

As with the ICNZ's comments regarding their concerns as to the extremely broad scope of the information a third-party claimant can obtain, the FSF shares these same concerns, and as outlined in our answers in the question above. Our concerns are centred around the distortionary impact such an entitlement may bring, and potentially reducing the capacity they are prepared to offer for these products.

As a result, the FSF align with the ICNZ's response to this question entirely and therefore echo all the concerns and enhancements outlined in ICNZ's submission to this question.

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

FSF do not support s 10(1) of the ILRA to be transferred over to the new proposed Bill. We agree, as with ICNZ, that this provision is puzzling and unnecessary. We agree with ICNZ's comments on contractual arrangements being the most appropriate governance.

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

No further feedback to provide on the drafting in Part 3 of the Bill.

Question 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?

FSF members report that such changes are not necessary to be made to the requirements for how insurance brokers must hold premium money. Currently, our members are happy with the status quo, as many of their commercial agreements with dealers and with intermediaries are managed by the insurance provider directly. Allowing for them to have dictatorship over the holding and policies regarding the insurance premiums money.

Many of our members have zero debtors; members dictate insurance broker policies which do not allow them to hold onto the premium for long, but rather they are collected on a weekly (or so) basis. Brokers are also able to run their own operations, to ensure equal invoicing.

As a result, FSF members would prefer the continuation of the status quo but rather if MBIE sees this as an issue for some insurers, then perhaps guidance to those insurers is a more proactive and efficient approach. Potential regulation in an area which may not need any is costly and not good practice in the processes of legislation.

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

The penalties proposed seem reasonable and appropriate, and the FSF do not have concerns to raise on this aspect of the Bill.

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

The FSF will like to echo concerns, that the ICNZ has specified and which we have alluded to in many of our submissions to MBIE in previous consultations, it will be important that regulation-making powers are used with the utmost care and precaution.

Regulations made will have impacts on insurers, particularly those who are smaller and face compliance as a disproportionately costly experience. Regulations impact processes, systems, operations, and costs significantly and as a result impact the customer experience. As we state in our submission, consultation on regulation needs to be consulted with the industry and given consideration prior to their implementation, as does any good policy and law, applying the democratic process fairly and appropriately.

Regulation results in entities facilitating and funding implementation processes, and therefore in some cases redistributing the focus and investment from new products and services to customers, for the need to comply with novel regulations. The impact of regulation-making powers therefore needs to be considered thoroughly, and considered and used in rare and pressing circumstances.

Question 31: Which option do you prefer and why?

As with ICNZ, the FSF prefers Option B to be implemented.

Option B is a broader option, as recognised in the consultation paper. The option will support a contract of the broader variety and strike the most appropriate balance between something too exclusive and something far too generous.

Option A is seen as being insufficient in Aotearoa's market, as an option that will not be sufficient to recognise essential terms and provide enough certainty. This will non-contentiously eventuate into the prices of products and services on the market.

Australia has implemented an approach similar to that of Option A however they have defined it as "limited perils" as opposed to exclusions, and therefore not similar enough to compare it to the "exclusions" list proposed under this option, therefore allowing for less certainty and coverage of essential terms with our interpretation of exclusions.

Clause 68 and 71 of the Bill align with Option B, as they already give the protections to consumers that perhaps Option A purports to give, read alongside the UCT regime. Provisions in the Bill cannot be looked into in isolation, and when considering these clauses together with Option B, the FSF submits that Option B strikes the right balance in the exercise of interpretation and protection to consumers.

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

The FSF has also noticed that the definition of what a small trade contract is has not been amended in the making of this Bill, and therefore the current threshold is presumed to remain.

However, with the implementation of this Bill, as per the Order in Council, the current threshold of \$250,000 as a small trade contract means that a large proportion of insurance contracts will then be considered a small trade contract despite not actually being one.

This definition is not representative of premiums typically processed in Aotearoa's market, that being a smaller market, and is therefore distortionary. As a result, the FSF suggests that the threshold be amended to better reflect insurance contracts in the UCT regime and this Bill. We align with ICNZ's suggestion of \$10,000 as a far more representative threshold. The importance of this does indeed warrant such an amendment, as the current provisions are in no way reflective of actual insurance premiums.

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

The FSF, again, agrees with the direction and intention in which these provisions are heading, and our members uphold such standards already. Industry associations, FSF and

ICNZ included endeavour to lead with such best practice guidance and develop codes for members to follow in this regard. Our credit-related insurance providers are also familiar and experienced in complying with such standards as is required in the Credit Contracts reforms, and therefore entirely concur with the provisions in principle.

Although these amendments are of great intent and direction, the FSF urges regulatory bodies to consider the cost and resources required for their implementation, and not to underestimate this. The finance and insurance sectors are currently under unprecedented amounts of reform and compliance changes, and all of these reforms will need to be assessed together once implemented. The staggering of the introduction of legislation is far more costly than when entities are able to look at all instruments together and implement their operations in an efficient manner to ensure compliance with all of the reforms.

Further, some of the prescription in these provisions is also seen as not digitally appropriate. Much information to customers is provided through a digital means, and the prescription in font size and so forth does not account for the digital landscape which allows for the maximisation, reduction, and prominence tools available to all consumers. Provisions should be more reflective of the digital world, as opposed to the unconscious assumption that paper copy is dominant.

Question 34: Do you have any comments on the regulation-making powers in clause 184?
The FSF and all members find consultations and submissions vital, valuable, and critical to the democratic process of law making.

The small insurance sector is undoubtedly more often affected by such legislation when proportionality is not considered, and therefore it is critical to consider these smaller voices to ensure legislation is made in a way that is proportionate and reflective of the entirety of the insurance sector, as opposed to just the louder and larger market participants.

Many of our members are Aotearoa's own small businesses and companies. And these domestic companies and insurers are most definitely important for protection and consideration, as their customer bases are often loyal communities whom they have specialised in catering to their needs.

Therefore, with the regulation making powers, the FSF fears that much is given away from the importance of consulting with the industry to ensure that what regulation making is done is done in line with the requirements of good legislation.

Therefore, the FSF urges that the consultation process is upkept along with regulation-making powers to be implemented. We acknowledge that this industry is a rapidly evolving one and therefore requires the amendment of regulation to be available as a power. However, industry consultation is just as important to entirely understand the market pressures and requirements in force and to ensure regulation is fit for purpose.

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

The FSF refers to the answer provided above in Question 33, particularly on the topic of digitalisation for an answer to this question.

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

The FSF agrees that what is proposed seems to be a reasonable lead-in period, however, a transitional period should be considered too, as the changes in the Bill will require much cost and resource to implement. For compliance to be most efficient, a transitional period, complemented with education will be beneficial to the implementation and enforcement of the new Bill.

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

The FSF agrees that this seems to be a reasonable lead-in period as outlined in the transitional provisions in Schedules 1 and 4.

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

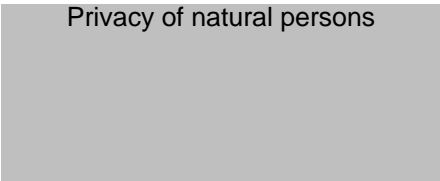
No further feedback to provide on Schedule 5 of the Bill, the FSF sees it as sufficient.

The FSF is indeed grateful for the well-intended and efficient exposure draft of the Bill, and for the opportunity of being consulted on it. Generally, FSF members are pleased to see that many of the provisions are moving forward in the right direction. We eagerly await the finalised Bill.

Until then, please do not hesitate to reach out if you wish for us to speak further on any topic or area.

Yours sincerely,

Privacy of natural persons



Diana Yeritsyan
Legal and Policy Manager
Financial Services Federation

APPENDIX A: FSF Membership List as at 1 April 2022

Non-Bank Deposit Takers, Insurance Premium Funders	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders cont. + Leasing Providers	Credit Reporting, Debt Collection Agencies, Insurance Providers	Affiliate Members
<p>XCEDA (B)</p> <p>Finance Direct Limited</p> <p>Gold Band Finance</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies:</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p>Steelsands Credit Union Inc</p> <p>Westforce Credit Union</p> <p><u>Insurance Premium Funders:</u></p> <p>Elantis Premium Funding NZ Ltd</p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p>IQumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p>AA Finance Limited</p> <p>Auto Finance Direct Limited</p> <p>BMW Financial Services</p> <p>Community Financial Services</p> <p>European Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Kubota New Zealand Ltd</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd</p> <p>Onyx Finance Limited</p> <p>Toyota Finance NZ</p> <p>Yamaha Motor Finance</p>	<p>Avanti Finance</p> <p>Basalt Group</p> <p>Basecorp Finance Ltd</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services</p> <p>Centracorp Finance 2000</p> <p>Finance Now</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Humm Group</p> <p>Instant Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Money NZ Ltd</p> <p>Metro Finance</p> <p>Nectar NZ Ltd</p> <p>NZ Finance Ltd</p>	<p>Pepper NZ Limited</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prospa NZ Ltd</p> <p>Smith's City Finance Ltd</p> <p>Speirs Finance Group</p> <p>Thorn Group Financial Services Ltd</p> <p>Turners Automotive Group</p> <p>UDC Finance Limited</p> <p><u>Leasing Providers:</u></p> <p>Custom Fleet</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p>	<p>Baycorp (NZ)</p> <p>Centrix</p> <p>Collection House</p> <p>Debt Managers</p> <p>Equifax</p> <p>Illion</p> <p>Intercoll</p> <p>Quadrant Group (NZ) Limited</p> <p><u>Credit-related Insurance Providers:</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p>	<p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Experian</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime Consultancy Limited</p> <p>HPD Software Ltd</p> <p>KPMG</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>PWC</p> <p>Simpson Western</p> <p>Verifier Australia</p> <p>Total 85 members</p>

APPENDIX B: Key data on lending and FSF members' contribution to New Zealand economy and society.



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the non-profit industry association for responsible and ethical finance, leasing and credit-related insurance providers operating in Aotearoa New Zealand.



Data collected and aggregated by KPMG in FSF's annual member data survey as at February 2021. Values in NZ\$.