

Submission on discussion document: Insurance contract law review

Your name and organisation

Name	s 9(2)(a)
Organisation	Private Individual

Regarding consumers' disclosure obligations

Were you aware of your general duty to disclose all material information when applying for insurance, and that the duty goes beyond the specific questions you are asked in your application for insurance?

[Insert response here] Yes

If you were aware of your duty to disclose material information, who informed you of this duty?

[Insert response here] Learnt in course of Insurance Studies for my previous employment In Life Assurance where I rose to the level of Superannuation Manager.

When applying for insurance, do you understand what material information you need to give the insurer so they can assess the risk of providing you with insurance?

[Insert response here] Not really. The coverage is potentially too great.

Do consumers understand the potential consequences of breaching their duty of disclosure?

[Insert response here] Probably not.

Have you ever breached your duty of disclosure? What consequences were there for you in terms of the insurance cover you were able to obtain under the policy following the breach?

[Insert response here] Not that I know of. Potentially there is loss of cover, whether the non-disclosure is material or otherwise.

Regarding conduct of insurers

What do you think fair treatment looks like from both an insurer's and consumer's perspective? What behaviours and obligations should each party have during the lifecycle of an insurance contract that would constitute fair treatment?

[Insert response here] Uberimae Fides, but the insurers tend to make that affect the consumer

only, not their own behaviours.

What has your experience been of the claims handling process? Please comment particularly on:

- information from the claims handler about:
 - timeframes and updates on timeframes
 - reasons for declining the claim (if relevant)
 - how you can complain if declined
- The handling of complaints (if relevant)

[Insert response here] Personal claims:- Fair.

Business claims I handled in Superannuation:- prompt and generally had to chase the various Trustees for completed documentation to enable claims to be discharged and paid.

Have you ever been sold an insurance product that was inappropriate for your circumstances? Or are you aware of this happening to others?

[Insert response here] Yes. One company I was working for sold "Total Permanent Disability Cover" as an additional benefit for their superannuation schemes, but then added so many difficulties for a claim to be valid. They made it virtually impossible for a claim to be valid, despite Medical Specialist advices of Permanent Total Disability.

When the time came to re-write the policies into "Plain English" for the company, I removed many of the "weasel phrases" from it, but advised them to pass it to their solicitors before using that wording. (By the way, they are no longer in existence.)

Have you ever felt undue pressure from an insurer or insurance intermediary (such as an insurance broker or salesperson) to buy or renew an insurance policy?

[Insert response here] no, because I let them know that I was "insurance educated".

Regarding difficulties comparing and changing providers and policies

When considering the purchase of insurance, what sources of information do you draw upon to make your decision? (e.g. comparison websites, talking directly to different insurance providers, talking to an insurance broker or financial adviser)

[Insert response here] My own insurance education and experience.

How long do you think you typically spend reading an insurance policy before you purchase it?

[Insert response here] ½ hour

Do you think you have a good understanding of the insurance policies you currently hold?

[Insert response here] yes

If not, what is the main barrier to you understanding your insurance policy?

[Insert response here]

Have you ever been in a situation where you thought you had a certain level of cover under your policy, but when you went to make a claim found you were not covered? If so, please provide us with a description of the situation.

[Insert response here] n/a

Would you like to switch insurance providers? If so, what is your main barrier to switching?

[Insert response here]

What, if anything, should the government do to make it easier for consumers to compare and change insurance providers and policies?

[Insert response here] Require "Plain English" wording, instead of "legalese".

Regarding exceptions from the Fair Trading Act's unfair contract terms provisions

Are you aware of instances where the current exceptions for insurance contracts from the unfair contract terms provisions under the Fair Trading Act are causing problems for consumers? If so, please give examples.

[Insert response here]

More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?

[Insert response here] Failure to disclose should not automatically negate an insurance liability. Any failure should be material to the loss incurred, and the onus for proving any negation of liability should lie with the insurer, not the insured.

Other comments

We welcome any other comments that you may have.

[Insert response here] The Insurance Industry makes much of the term "Uberimae Fides" (of the utmost good faith), that this is the principle on which the industry is based. Yes it should be so based, but that is a two edged sword. It should apply to the insurer as well as the insured.

Another principle the insurers seem to ignore is that of fair-play – a document they write enables them to hide behind manifold "weasel phrases" to avoid claims that they should really honour, because they know their document. A normal principle in commerce is that if there is doubt over a wording, it should be interpreted against the party that wrote those

words. *Insurers act the other way around, in their own self interest.*

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