

Submission on discussion document: Insurance contract law review

Your name and organisation

Name	s 9(2)(a)
Organisation	Homeowner with insured property in Woolston, Christchurch

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?

In general, yes, based on a working lifetime in international shipping and shipping management and being involved from time to time in marine insurance issues. That experience however was the opposite of that experienced in making claims for earthquake damage sustained during the 2010/2011 earthquakes of Christchurch. The absence of foundation principles of "utmost good faith" and "my word, my bond" proved home insurance in New Zealand to be a Kafkaesque confidence trick characterised by dishonest representation and ruthless exercise of corporate strength against the individual by techniques of attrition over time based on complexity and the asymmetrical financial,

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

I was reminded of this from time to time throughout eight years of fruitless communications with the EQC and then with State / IAG presented in a one-sided threatening manner, i.e. "if you do not do this, we have far-reaching legal powers of coercion". In any event, previous experience of P&I and H&M insurances in the international shipping industry has given me some background in the way insurances should work.

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?

No. The invariable priority of retail insurers is to get the insured party into a contract which is couched in sales-pitch terms of providing openness and assistance when necessary which dissolve when tested, if only because the sales team has different strategies to those dealing with claims.

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

Yes, in my experience this is made clear... if only in a heavy-handed manner

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?

No. Because of my experience of marine P&I insurance and my personal ethics I have not breached any insurance contract. This, however, has not been reciprocated.

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?

Fair treatment in insurance matters is where each party to an insurance contract can demonstrate satisfactory fulfilment of the terms and spirit of the contract.

The principal mutual obligations of each party during the lifecycle of an insurance contract are for each to fulfil the aims of the contract in the spirit of "utmost good faith" by the ethical use of clear and objective terminology in communicating with each other.

In the end, "Fair Treatment" looks like that codified by "The International Association of Insurance Supervisors' Insurance Core Principles" where defining fair treatment of customers.

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)

(1) Information relating to timeframes was only provided when it was to the advantage of the Insurer, State-IAG, to do so. Otherwise the apparent strategies used by State-IAG was to provide only sufficient information, albeit by large quantum and by obscure language, to be able to take a "you were told" position later.

(2) At all times during the Claims handling process, State-IAG representatives adopted an adversarial approach to advice and to problem-solving and appeared to pursue strategies and tactics of attrition aimed at eroding the policy-holders finances, credulousness, patience, and (in the end, his / her mental and physical health), and age-related durability. This latter observation is particularly true for older Claimants whose ethical compass of the 1950's was no match for the "no ethical compass" of 21st Century NZ insurance claims practices such as those of State-IAG.

(3) Reasons for State-IAG to declining a Claim or, more commonly to endlessly delay settling a Claim has been to require further proof by third-party engineers, surveyors, and specialists to be engaged by the claimant. This process appeared to be part of the attrition methods used to erode the Claimants confidence and ability to continue with a claim despite its having been made accurately and in good faith.

(4) Avenues for complaint are/were ineffectual and not as publicised or as reasonably expected;

(a) NZ Insurance Council: In response to a complaint, was to refer the complaint to the very person within State- IAG who was the subject of the complaint and to say

at the same time “we cannot be involved in specific cases”.

- (b) *The Residents Advisory Service, when referred to was generally disinterested and dismissive ... appeared reluctant to pursue the problem stating that “we are underfunded and understaffed” ... after which the nominated RAS contact disappeared overseas.*
- (c) *The legal resource in Christchurch, when reluctantly approached as a final resort, proved an expensive and empty vessel. Christchurch firms appeared reluctant to take on individual citizens when against State-IAG whose size and dominant market position appeared to have suborned both law firms and the judiciary. In the event, having found a solicitor willing to take on my problem vis-à-vis State-IAG no barrister could be found or was available to take it to court in the foreseeable future by a conservative expenditure cost to me of some \$44,000 which gives real point to the State-IAG strategies of attrition. [A similar cost estimate was provided to a friend in similar circumstances, also with State-IAG.]*
- (d) *All of the above proved blind alleys despite holding themselves out as avenues for solutions for failed or rejected insurance Claims. Although the first two (a) and (b) above, are larded with fine and lofty words, they each proved wholly ineffective as an avenue for complaint or solution. The legal avenue (recent experience, in Christchurch) was beset by a lack of barristers, high cost (for individuals), lengthy wait and uncertain time of fixtures and, in the end, highly uncertain outcomes (irrespective of the quality of the case presented).*

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

Yes. The insurance product insuring my home, although couched in comforting and legally water-tight terms proved to have held out false and misleading hope when put to the test by making a Claim (the only claim ever made in the 75 years of the family association with State Insurance). For example, of the five specific “undertakings” promised by the insurance policy only one undertaking was observed and followed through. All others were disregarded ... as was the mutual required undertaking to observe “utmost good faith” in dealings between the parties. In the event, “utmost good faith”, insisted upon by State-IAG for the policy-holder, was disregarded or avoided by the insurer State-IAG (and, prior to that, by EQC).

In the sense that my claim was resisted at all points by State-IAG, others of my family experienced similar difficulties at the hands of State-IAG.

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?

Undue pressure was brought to bear on me to accept a flawed Cash Settlement in which the Scope of Work, prepared by State-IAG omitted critical information relating to damage known to exist in the concrete base structure despite the damage being repeatedly and accurately described by me in claims. Pressure was applied by an intermediary ostensibly employed by Crawford & Co., who represented himself as an expert and wholly “independent advisor” but who in fact was being directed by the Claims section of State-IAG. The “independent advisor” recommended I sign the Settlement offered by State-IAG because (a) the Scope of Work devised by State-IAG would result in a like-for-like and fully insurable remediation of earthquake damages conforming to all applicable building standards, (b) a quote provided by a State-IAG associated contractor to remediate the foundation structure was falsely represented to result in a competent repair when it was not, (c) the registered builder

employed by me to carry out remediation work above the foundation would not proceed until some guarantee or warranty was provided for the standards observed in remediation of the foundation. No such guarantee or warranty was made or supported by State-IAG despite their assurances to the contrary when inducing me to sign a Settlement by way of the "independent advisor", (d) the "independent advisor" was withdrawn from giving advice to me immediately the Settlement was signed despite his solemn undertakings to me that he would continue to provide independent advice until remediation was complete. He did not assist from the moment I signed the Settlement. (e) Similarly, having induced me to sign a Cash Agreement document, the insurer continued to insist that an unsatisfactory course of remediation be followed to produce an uninsurable and unsaleable home (f) Studies produced by State-IAG said to verify their proposed Settlement (and integral to their SOW) have been shown to be desk-top studies only and discredited by a further in-depth engineering study commissioned by me which showed the damages claimed for of my original claims of 2010 and 2011 to have been accurately and properly recorded despite the insurers consistent down-playing or omitting them over eight years, from the remedies offered.

Regarding difficulties comparing and hanging 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)

Despite my attempts to remediate my house by scrupulously following State-IAG requirements of the conditions Settlement the services and responses promised by the policy and its supporting literature were not only not delivered, delivery was protested and prevaricated throughout an eight-year period. The answer to your question then, is that in New Zealand at the present time, there is no reliable source of information on which a purchaser of insurance can rely for the simple reason that the sales process is so widely divorced from the claims-handling process. Each operates in isolation from the other, so that claims handlers do not feel bound by assurances given by sales pitches or by the "utmost good faith" and "my word, my bond" ideals of insurance

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

One hour

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

Based on my personal experience over 5 years with State-IAG, I no longer have any faith in the written word provided by a retail insurer of homes in New Zealand for reasons of an entire lack of accountability, a wholly one-sided contract with insurer holding all the cards, the adversarial stance immediately adopted by the insurer in defence of a claim, an absence of ethical foundation of insurers (i.e., patent dishonesty in pursuit of a settlement on the insurers terms), lack of remedy available to policy holders despite industry and corporate claims to the contrary, the one-sided application of "utmost good faith" principles, and the asymmetrical bargaining power of the consumer when set against that of the insurer.

In my professional life a manager of shipping in international trading I developed a good understanding and lasting respect for the P&I and H&M insurers with whom I worked and as a shipmaster I regarded the P&I Club with which the ship was entered to be my first stop in an

accident. I was not disappointed. However, I did make a mistake in expecting similar standards to be applicable to home insurance as conducted in New Zealand.

Overall, until my experience of State-IAG in making and attempting to settle a faithfully reported claim, I believed I had a good understanding of insurance principles.

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

An entire lack of trust of the insurance industry in New Zealand, developed over nearly eight years with experiences of the EQC and then State-IAG which has lead me to regard my insurance policy as an unreliable document, weighted towards the insurer, which may or may not result in an equitable outcome.

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.

Yes, the cover I thought I had, that in the event of a severe loss (such a that occasioned by the Christchurch earthquakes of 2010 and 2011) that my home would be rendered by the insurers guidance and remediation to a like for like, fully insurable structure to current applicable standards which conformed to its previous condition.

In the end the actual cover provided by State-IAG was illusory and, after nearly eight years of negotiations with insurers my property remains in a damaged, uninsurable and unsaleable condition with no remedy in sight.

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

An attempt to switch insurers failed, after an attempt by State-IAG to induce me to continue insuring my damaged property with them at an enhanced premium based on a pre-quake valuation, when the brokers for an alternative insurer declined the risk stating that the property in its current damaged condition was "uninsurable". It remains in that condition, eight years after first making honest and accurate claims in good faith on insurers EQC and State-IAG in turn.

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

The government, since self-regulation cannot be relied upon, should devise a simple form of comparison across the whole spectrum of providers in which like-for-like premiums are published regularly for defined categories of policies, allowing bundling and overlaps where applicable. The government should provide only the framework and the resulting matrix be populated and updated by the industry itself by following strict MBIE guidelines.

Above all, New Zealand home-owners insurances should conform to the fair, efficient, and transparent ideals of The International Association of Insurance Supervisors' Insurance Core Principles relating to fair treatment of customers, removal of "special" exemptions from Fair Trading legislation, and the introduction of meaningful penalties for failures to observe the letter and spirit of home insurance as it is intended to operate.

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.

No example known. On the other hand no special exemptions should exist in Fair Trading legislation for an industry self-described as "essential" and "efficient".

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

The absence of agreed and effective avenues of appeal for customers experiencing problems in the settlement of claims, and, separately, well-defined legislation providing for penalties on failures to perform as promised and restitution of costs to customers unfairly treated.

Other comments

We welcome any other comments that you may have.

Other comments are available in various reports and narratives in my possession that can be made available on request but I have avoided discussion of these in an attempt to be objective and to not personalise my comments. On the other hand, I am willing at any time to be cross-examined or be questioned on my assertions as recorded here. (Note: I will be returning to Christchurch on the 1st September 2018). Other comments may be gleaned from the covering letter accompanying this template / form.

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