Submission on discussion document: Insurance contract law review

Your name and organisation

Name	s 9(2)(a)
Organisation	I have a number of companies and trusts

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?
No. I only answer what I am asked from the insurer. If an insurer requires further information then they should have the obligation to ask the questions they require answers to. To simply have a "catch all" clause stating that all material information needs to be disclosed without stating what is material is unreasonable. What may be material to an insurer may not be material to the insured. How hard can it be for an insurer to ask the questions they require answers for?
If you were aware of your duty to disclose material information, who informed you of this duty?
By the questions asked in the application for obtaining insurance.
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?
The insured are not mind readers. We can only answer the specific questions asked by the insurer.
Do consumers understand the potential consequences of breaching their duty of disclosure?
No. Applicants for insurance fill out the forms that insurers have made. It is totally unreasonable for the insured to guess what is deemed material or not to the insurer. If something is important to the insurer, then they should ask, rather than use this issue as a loop hole to mitigate claim payments.
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?
Not that I am aware of. But what is material to an insurer may not be material to me.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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?

All the power is with the insurer. There are little to no penalties on the insurer for breaching the terms of contract. If the insured gives misleading information the insurer has the power to void the claim. When, it was discovered that Tower misled Young in the High Court, Tower only received a fine of $5,000. Hardly fair and reasonable.

If the insurer does not act in the utmost good faith, there are no consequences. Insurance representatives are tasked with resolving claims for as little as possible. How is that acting in the "utmost good faith"?

If you have a car accident and it was your fault, you are not allowed in the terms of contract to accept that it was your fault without voiding your insurance. In other words, the insurers don't want you to be honest and this is written into their contracts. If you are honest and accept it was your fault the insurers can void your claim.

Fair treatment would be an insurance agreement which is not one sided but equal to both parties concerned. If insurers delay claims, they need to be penalised accordingly as in the USA where insurers can be fined up to 9 times the sum insured for delaying claim settlements. All claims should be settled within a certain timeframe. Too often insurers will just reject engineer's scopes and QS reports without explanation. When an insurer receives a report from their own engineer that they do not like they engage another report from a different engineer that is more favourable to them. This happens far too often as can be seen from multiple assessments post the Christchurch earthquakes.

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)

As a property investor impacted by the Christchurch earthquakes, I still have13 unsettled insurance claims now seven years after the event. I have used 5 different engineers and the insurer has not accepted the scope of works and reinstatement required from any of the 5 engineers used. I have obtained a QS for determining my loss as per the engineers' report and not one insurer has accepted all the QS values. I have been twice to the IFSO and the insurers have ignored the recommendations made by the IFSO and still have not paid me what I am entitled to (as recommended by the IFSO) due to an unfair full and final settlement document drafted by the insurer which the insurer refuses to change. This leaves only the court system for an insured to pursue. Currently, I have five court proceedings on the go. Each court proceeding costs a minimum of $100,000 and you never get all your costs back, even if you win. The insurers know full well that most claimants will never go to court. They rely on this. Most claimants do not have the resources or fortitude to fight insurers that collect $4.5 billion

RELEASED UNDER THE OFFICIAL INFORMATION ACT

in premiums from New Zealander's each year.

There are no penalties against an insurer for breaching the insurance agreement. In America, if an insurer delays paying a claim entitlement, then depending on the State they are in, the insurer can be fined up to nine times the sum insured for the delay. NZ requires a law where the insurer can be fined the sum insured (on top of the insured's claim) for delaying a claim. This would help to ensure insurers are kept honest.

If an insured gives incorrect information on an aspect of their claim, then the insurer has the right to void the whole claim. This could be several hundreds of thousands or millions of dollars. However, if the insurer purposely withholds information or purposely misleads the insured which would benefit the insurer (as per the case between Young vs Tower) only a fine of $5,000 against Tower resulted. This seems hardly fair and equitable.

To do justice to this topic, I would welcome a day with representatives to discuss the many issues involved.

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

No comment

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?

No comment

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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)

No comment

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

No comment

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

Yes

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

No comment

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.

No comment

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

YES. But on unsettled claims it is near impossible to switch insurance providers. This enables the current insurers to increase insurance premiums and you do not have the ability to go out to market to get better prices. I paid an insurance premium for one of my properties pre EQ of $23,000 and post EQ this was raised to $137,000 per annum. This claim is still not settled and there is no incentive for the insurer to do so.

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

The government needs to quickly regulate the insurance industry. This should have happened years ago. Insurers do not act in the "utmost good faith, are not fair and reasonable and have no penalties for breach of contract.

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.

See above and below comments.

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

There is no provision in the insurance contracts to settle claims in a certain timeframe. There are no penalties against the insurers for breach of contract and the IFSO has no teeth to enforce anything. The insurance industry is mainly unregulated and does what it likes.

Even when the courts determine an issue against the insurers, the insurers then state to other claimants that the ruling doesn't apply as it is on a case by case basis. However, if a ruling goes in the insurer's favour, then this is referred to continually and even out of context to reduce the claimant's entitlements and payments made.

For instances; when Southern Response lost their case against Avonside regarding the determination from the courts that Southern Response had to pay 10% contingency and 10% professional fees, Southern Response promptly stated that the claims settled previously were in good faith and these were full and final settlements and they would not be paying out these claimants these fees. How is that right when Southern Response told those claimants they were not entitled to those fees? Those claimants relied on Southern Response's representation made and signed off on that basis. That is fraud and the Commerce Commission should take appropriate action.

Another example, is Southern Response now settling professional fees for less than the 10% determined by the courts. I have spoken at length with Stewart Harrison on this matter who was the QS for the Avonside case. This is entirely wrong according to him and again the Commerce Commission needs to investigate.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

There is a huge power discrepancy between insurers and claimants. Claimants have no protection and the insurers hold all the cards. Most claimants cannot afford the fight with the insurer. Insurers know this. Insurers can and have asked claimants to prove their loss which can result in consultant fees of many tens of thousands of dollars which claimants have to find themselves as insurers will only pay this at the end of a claim and until they have been proven incorrect.

An insurer will never pay for anything over the sum they know they are obligated to pay. How is it then right for an insurer to offer an amount and when this is refused, weeks later they make another offer tens of thousands of dollars more (sometimes even hundreds of thousands more). This is not acting in the utmost good faith and appropriate penalties need to be in place for this kind of behaviour.

Other comments

We welcome any other comments that you may have.

1. All claims need to be settled within two years after a natural disaster. In the USA, some states penalise insurers up to 9 times the sum insured for delaying settlements. We have no penalties for insurers delaying claims in NZ.
2. If I was to give the insurer incorrect information they can void my claim. If the Insurer gives incorrect information or withholds information for pecuniary gain (which is fraud by the way) then in the court case Tower vs Young, Tower was only fined $5,000 for this. Hardly Fair and Equitable. More importantly, it sends a signal in the market that it is a waste of time suing Insurers (as advised by my legal council and citing this case) when it costs over $100,000 to go to court and damages of only $5,000 are awarded.
3. I have used five different engineers for my properties, and it doesn't matter who I use the Insurer always disputes their findings.
4. I don't see why Insurance companies are allowed to contract out of the Fair Trading Act. They must have a very good lobby machine to MP's.
5. When you seek insurance and you are asked what claims you have had in the last two or three years, the Insurers already have this information. All policy holders should have to do is state who we are insured with and give permission to the insurer to contact these insurers to determine the risk profile and information they already have. No different than Banks doing a credit check before loaning money. This then overcomes the issue of policy holders forgetting to disclose anything which can be easily done.
6. After a natural disaster, the insured has suffered loss, and likely rental income loss but still has ongoing mortgages and operating expenses to meet. Insurers that do not settle claims quickly, increase the cost to claimants by claimants having to engage professional engineers and quantity surveyors at their own expense to prove their loss. Legal representation is then soon required, again at the claimants own cost to obtain what is contractually owed to claimants. Often court hearings are years later and consultant expenses (and even indemnity payments) are then paid after or just prior to a court hearing. Insurers use this financial burden against claimants to pressure them to accept offers well below their legal and contractual entitlement.
7. I and many of my friends have many instances of straight out fraud by the insurers which I am happy to disclose to MBIE privately.
8. Are 13 unsettled insurance claims seven years after the earthquakes fair and reasonable? I don't think so. Why do insurers have no penalties for breach of

RELEASED UNDER THE OFFICIAL INFORMATION ACT

contract? Where is the incentive (or penalty) for insurers to act in the utmost good faith. If insurers were acting in the utmost good faith, then why are their staff commissioned to settle claims as low as they can get away with?

9. I am unaware of the Commerce Commission initiating any action against any insurer regarding the settling of Christchurch earthquake claims. I find this surprising as I note that Risk Worldwide have estimated insurers have saved themselves in the order of 20% of the Christchurch $40b rebuild from not paying claimants their full entitlements which equates to some $8b. From my own personal experience I would suggest this figure is somewhat light. I am happy to meet with any representative from the Commerce Commission to prove the misleading and fraudulent behaviour of insurers in dealing with claimants.
10. Insurers engage valuers to determine the "present day value" or indemnity value of a property, knowing full well these valuers are not qualified to carry out this work. A valuer should only determine the depreciation applied to a building while a quantity surveyor should carry out the reinstatement value of the property. My experience has shown that the valuer's determination of the reinstatement value of a property is significantly less than that of a QS and in many cases half the QS value. When these arguments are brought to the insurer's attention, they just ignore them. When the IFSO suggest to an insurer to use a QS for determining the PDV, the insurer also ignores this advice. As a claimant – what can you do except file proceedings in court which is beyond the financial ability of most people.
11. If insurers have a duty to act in the "utmost good faith", then why have they commissioned their staff to try and settle claims at an amount as low as possible. The insurance agreement is a legally binding agreement and claimants should receive what they are legally and contractually entitled to. This is not happening as many claimants take insurers' low ball offers to move on after being worn down for many years. I can show many instances of offers made by insurers that are revised upwards many times to settle a claim. How can insurers get then their first offer so wrong when they have a duty of care to act in the utmost good faith and provide correct information? Claimants often belief what the insurer tells them to their detriment.
12. As a property investor I can honestly say I knew very little about insurance pre EQ. It was something banks required so you could get a loan. Post EQ I engaged WorldClaim on a number of my properties to look after these claims for me. As a result, the insurers refused to deal in a timely and appropriate manner with WorldClaim and rejected their submissions of loss suffered by me the claimant. (not surprising as they do this also to engineers and the QS I have engaged). As a result, I believe I have suffered loss due to all my claims being still unsettled. Statistically with 90% of Southern Response claims being already settled, I should have had at least 5 of my 6 claims with Southern Response settled, but that has not happened.
13. EQC are in breach of the Earthquake Commission Act 1993. Under schedule 3 item 7 Reporting of Claims effectively states:-the insured person shall, at his own expense, give to the Commission proof of claim. Hence claimants waited many months for an EQC loss assessor (who did not have the necessary expertise to carry out a loss assessment as these people were ex policemen, real estate agents, etc) to assess the EQ damage of their property when all along EQC had no right to do this and claimants were never informed of this until disputes arose over assessments and then EQC reverted back to schedule 3 stating claimants had to engage their own engineers and QS at their costs.
14. Insurers also delayed settling claims by waiting for MBIE guidelines to be produced. Insures had no right to delay the settlement of claims on that basis but they did.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

After the issuing of these guidelines, insurers then used these standards to reinstate homes to the guideline standard rather than the building code saving insurers billions of dollars.

RELEASED UNDER THE OFFICIAL INFORMATION ACT