

Submission to:

Ministry of Business, Innovation and Employment

Review of Insurance Contract Law

BNZ Life Insurance Limited

July 2018

Submission on Discussion Document: Insurance Contract Law Review

Your name and organisation

Name	C/O Paul Hay – General Manager Regulatory Affairs, BNZ
Organisation	BNZ Life Insurance Limited

This submission has been prepared by BNZ Life Insurance Limited ('BNZ Life') in response to the Discussion Paper, "Insurance Contract Law Review" ('the Discussion Paper'), released by the Ministry of Business, Innovation and Employment ('MBIE') in June 2018. BNZ Life welcomes this opportunity to provide a response to the Discussion Paper and acknowledges the industry engagement undertaken by the MBIE on this matter. Unless otherwise stated, the responses below are limited to BNZ Life's polices and experience in relation to the life insurance industry.

Responses to discussion document questions

Regarding the objectives of the review

1	Are these the right objectives to have in mind? <i>BNZ Life agrees that the objectives of the review are reasonable and promote fair outcomes for insurers and customers.</i>
2	Do you have alternative or additional suggestions? <i>BNZ Life submits that an additional objective should be to ensure that insurance remains accessible and affordable for customers and sustainable for insurers. BNZ Life is of the view that it is important that regulatory or legislative developments resulting from this review do not have the unintended consequence of driving up the price of insurance for customers.</i>

Regarding disclosure obligations and remedies for non-disclosure

3	Are consumers aware of their duty of disclosure? <i>BNZ Life is clear and up front with customers about their duty of disclosure and the potential consequences of not disclosing material information. The steps taken to assist customers with full disclosure include scripted verbal communications during the application process, and written communications through our policy terms and conditions. To supplement this, BNZ Life also provides a copy of the answers provided by customers (during the application process) back to that customer in writing upon policy issue, along with clear messaging to ensure customers are aware of the importance of checking that the information is correct. BNZ Life honours all valid claims, and notes that the vast majority of claims received by BNZ</i>
---	--

	<p><i>Life are accepted. Where claims have been declined, the reasons for these have included those that did not satisfy the definition necessary to be entitled to make a claim under the relevant policy, along with instances where non-disclosure had an impact on the benefit being claimed on.</i></p>
4	<p>Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?</p> <p><i>Under the BNZ Life policy, it is our practice to ask customers to disclose information, even if it may not be directly requested within a specific question. BNZ Life understands that it is common for insurers to include a question/questions that are designed to prompt the customer to disclose information that may not be covered in other application questions. As an example, this may include asking the customer about any doctor or specialist visits in the preceding 5 years (or other period), as well as asking the customer if there is any other information they would like to disclose to the insurer.</i></p>
5	<p>Can consumers accurately assess what a prudent underwriter considers to be a material risk?</p> <p><i>In BNZ Life’s view, customers do not necessarily need to be familiar with the terms “prudent underwriter” or “material risk”. It is more appropriate for it to be very clear to customers that they need to answer the questions asked accurately. Insurers’ questionnaires should be designed to draw out the information required for a prudent underwriter, if answered accurately by the customer. The use of complex insurance terminology does not assist consumer understanding – steps to explain the duty of disclosure in plain English are important to support customers in meeting their obligations to ensure that insurance contracts are built upon the duty of good faith.</i></p>
6	<p>Do consumers understand the potential consequences of breaching their duty of disclosure?</p> <p><i>BNZ Life takes the necessary steps to make customers aware of their disclosure obligations, and the potential consequences of not meeting those obligations. This is communicated verbally during our application process, as well as being explained in our policy terms and conditions. BNZ Life also provides a copy of the answers provided by the customer [during the application process] to that customer upon policy issue. This document includes clear messaging to reinforce the importance of checking the information is correct, and that the customer must notify BNZ Life if any of the information provided needs to be altered. This practice is an important step in helping customers to ensure that their insurance contract is valid.</i></p>
7	<p>Does the consumer always know more about their own risks than the insurer? In what circumstances might they not? How might advances in technology affect this?</p> <p><i>Most New Zealanders will have some need for insurance – that means that the industry is dealing with a very diverse customer base, with differing degrees of understanding and investment in managing their personal health. Generally, consumers will have a good understanding of their medical history, while others may rely on their medical advisors to understand those risks on their behalf.</i></p> <p><i>BNZ Life understands that a customer cannot disclose something they are not aware of. However, based on our experience, the vast majority of cases of non-disclosure relate to cases where the customer was aware of a condition or symptoms, and had sought advice, but neglected to disclose that to the insurer. While it may not be necessary or appropriate for a consumer to have a detailed understanding of the risk that a condition, symptoms, or lifestyle</i></p>

choice may pose to their morbidity or mortality, BNZ Life is of the view that a customer should disclose a potential condition or symptoms. This allows the insurer to assess that risk alongside other policyholders, and price appropriately for the risks being covered.

Customers will know more about the facts associated with their medical history and health. Insurers must determine what risks that presents and price accordingly to ensure that insurance remains affordable and sustainable for all policyholders.

BNZ Life welcomes ongoing advances in general technology, and the potential benefits that may be possible for both customers and insurers alike in the future. It is also important to acknowledge that the duty of disclosure is a fundamental part of any insurance contract, and that that duty must remain unchanged. For instance, developments in technology may broaden the way that customers are able to obtain medical diagnoses away from the traditional relationship with a local doctor. This has the potential to introduce an asymmetry of information whereby customers have access to material information that insurers do not.

8

Are there examples where breach of the duty of disclosure has led to disproportionate consequences for the consumer? Please give specific examples if you are aware of them.

The remedy available to insurers to void the insurance contract from inception may in some instances be disproportionate to the breach of the duty of disclosure. BNZ Life recognises this potential for disproportionate consequences, and has internal policies in place to ensure that we are being as fair as possible to our policyholders. In the event of non-disclosure, BNZ Life aims to provide the insured with the cover they would have had, for the premium they are paying, where all relevant information had been disclosed from inception. Practically, this approach means that:

- a. If the relevant policy would have included a loading (i.e. an increased premium due to medical history or lifestyle), the cover would be reduced to the amount they would have had for the premium they are paying, if the premium included the loading element.
- b. If a condition would have been excluded BNZ Life will add the exclusion to the policy, but the cover will remain in force.

The only instances where the policy will be cancelled and the customer is left without any cover, is if the customer's medical history or lifestyle information would have meant that cover could not have been offered at all.

BNZ Life submits that this process provides a proportionate and fair remedy for insurers, whilst upholding consumer obligations to ensure fairness to all policyholders.

9

Should unintentional non-disclosure (i.e. a mistake or ignorance) be treated differently from intentional non-disclosure (i.e. fraud)? If so, how could this practically be done?

BNZ Life is of the view that this is a relatively difficult and subjective distinction to make. However, BNZ Life supports an approach that provides a fair remedy to the customers, based on the outcome of the information that was not disclosed. It is difficult to prove whether non-disclosure is intentional or un-intentional, and the treatment of these issues needs to be simple for customers to understand, and practical for insurers to manage.

10

Should the remedy available to the insurer be more proportionate to the harm suffered by the insurer?

BNZ Life agrees that the remedy available to the insurer should be more proportionate to the

	<i>harm suffered by the insurer. Please see further detail on this position in our response to question eight.</i>
11	Should non-disclosure be treated differently from misrepresentation?
	<i>BNZ Life is of the view that the remedy should be dependent on the outcome of the information that was not disclosed or mis-stated. This approach is more efficient as it will place less emphasis on classifying information in a way that may be confusing for customers and have differing remedies associated based on that classification.</i>
12	Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?
	<i>BNZ Life does not have any comment to make on this question.</i>
13	In your experience, do insurers typically choose to avoid claims when they discover that an insured has not disclosed something? Or do they treat non-disclosure on a case-by-case basis?
	<i>BNZ Life's experience on this is limited to the instances set out in the answer to question eight. Non-disclosure is treated carefully and on a case-by-case basis.</i>
14	What factors does an insurer take into account when responding to instances of non-disclosure? Does this process vary to that taken in response to instances where the insurer discovers the insured has misrepresented information?
	<i>In BNZ Life's experience, the most important issue for consideration in relation to instances of non-disclosure is whether the information 'would have' had an impact on the outcome of the underwriting of the application. This includes prudent underwriting in line with the insurer's guidelines and philosophy, as well as meeting reinsurer requirements.</i>
	<i>An additional relevant factor in relation to non-disclosure is whether the insured's health has improved over time, which is particularly relevant if insurance cover has been in force for a long time. This may have an impact on whether loadings or exclusions would have been reviewable after a period of good health.</i>
	<i>There are instances where it is difficult to validate information. For example, the misstatement of smoker status where an insured has stopped smoking at some point during the duration of a policy. In these instances, BNZ Life believes decisions should be based on the facts that are available, and fair judgement of the risk to the insurer, provided those risks are still relevant.</i>

Regarding conduct and supervision

15	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?
	<i>Customers should be provided with clear and relevant information about products and services. They should understand what they are required to do to ensure that they have a valid insurance contract that will pay out in the event of a claim. There must be responsibility</i>

on an insured to disclose information honestly and to ask questions if they do not understand the application process or a policy.

An insurer must make fact based decisions that take into consideration the circumstances of the insured (as every person is different), with fair customer outcomes at the heart of their processes.

Customers should not face barriers in being able to submit a claim, and claims should be considered in a timely manner by an insurer. In processing claims, insurers should be required to seek expertise from specialists or external parties if required to fully understand the claimant's circumstances.

If a claim cannot be paid, an insurer should be clear and transparent about the reasons why, and provide information to the customer to help them understand those reasons.

Effective complaints and dispute resolution mechanisms should be available to all consumers.

16

To what extent is the gap between ICP 19 and the status quo in New Zealand (as identified by the IMF) a concern?

The insurance industry has made positive steps in self-regulation. We would support fair and transparent conduct regulation of the insurance sector in New Zealand, working alongside effective dispute resolution schemes.

17

Does the lack of oversight over the full insurance policy 'lifecycle' pose a significant risk to purchasers of insurance?

As noted in the response to question 3, BNZ Life will honour all valid claims. We do not believe that a lack of oversight is resulting in significant risks to customers, however we are supportive of an ongoing focus on customer outcomes and fair conduct.

18

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

- timeliness the 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)

Claim timeframes can vary depending on the information required to validate the claim and the benefit being claimed. As an example, death claims where the cause of death is unknown can take many months if dependent on a Coroner's Report. Measuring the timeliness of paying claims is not a simple exercise given the many variables involved.

BNZ Life recognises the impact that a declined claim can have on a customer and does not make those decisions lightly. In coming to this decision, BNZ Life may seek the guidance and opinion of several parties, including our Chief Medical Officer, our Reinsurer, the customer's treatment provider and an independent specialist.

All claims declined by BNZ Life must be approved by two Managers. The reasons for declined claims are clearly articulated to a customer and an opportunity is provided for review where appropriate, if further information can be provided.

	<p><i>BNZ Life may engage the services of our Reinsurer or Chief Medical Officer for auditing claim assessments of both accepted and declined claims. This is completed on an irregular basis.</i></p> <p><i>In BNZ Life's experience, dispute resolution schemes provide an effective mechanism for consumers to have an independent, objective review of their case if they feel they have not been treated fairly.</i></p>
19	<p>Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.</p> <p><i>BNZ Life does not have any comment to make on this question.</i></p>
20	<p>When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?</p> <p><i>BNZ Life does not have any comment to make on this question.</i></p>
21	<p>What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?</p> <p><i>BNZ Life does not have any comment to make on this question.</i></p>
22	<p>Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.</p> <p><i>BNZ Life does not have any comment to make on this question.</i></p>
23	<p>Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?</p> <p><i>BNZ Life does not have any comment to make on this question.</i></p>

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

24	<p>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.</p> <p><i>BNZ Life does not have any further comments to add in this area. BNZ Life is of the view that the reasons for the exceptions are outlined effectively in the Issues Paper. We are not aware of any feedback from customers that those exceptions are causing problems from a customer perspective.</i></p>
25	<p>More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?</p> <p><i>Insurance contracts will vary between providers. It should be the responsibility of the manufacturer of the product to ensure that the terms of the contracts are fair.</i></p>
26	<p>Why are each of the specific exceptions outlined in the Fair Trading Act needed in order to</p>

	protect the “legitimate interests of the insurer”?
	<i>To facilitate an effective insurance market, specific terms of coverage and exclusion are required. Without those terms in place, insurers would be unable to define and assess risk. BNZ Life submits that the ability to assess and price risk is essential to help ensure the insurance industry can function in a sustainable manner.</i>
27	What would the effect be if there were no exceptions? Please support your answer with evidence.
	<i>BNZ Life does not have any comment to make on this question.</i>

Regarding difficulties comparing and changing providers and policies

28	Is it difficult for consumers to find, understand and compare information about insurance policies and premiums? If so, why?
	<i>Research is required to understand and effectively compare insurance policies and premiums, and customers may choose to do that independently or through an intermediary advisor/broker. BNZ Life would submit that the difficulty for customers may come about due to the challenge of understanding what can be complex insurance documents, as opposed to the inability to access the information itself.</i>
29	Does the level of information about insurance policies and premiums that consumers are able to access and assess differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.
	<i>BNZ Life does not believe there is a significant variance between the types of insurance. Indicative premiums and sample policy information from different providers is generally available to customers either online, through an intermediary or on request from each insurer.</i>
30	What barriers exist that make it difficult for consumers to switch between providers?
	<i>A change of health circumstances over time may result in difficulties in switching from one life insurance provider to another. Application processes may also involve additional medical and/or financial information depending on type and level of cover required.</i>
31	Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.
	<i>The barriers to switching are likely to be inherently different between life and general insurance. As set out in question thirty, barriers to switching life insurance providers may be caused by changes in medical circumstances over time. The changes in customer circumstances which can ultimately act as a barrier to changing general insurance providers are likely to be driven by other factors, for instance previous history (e.g. driving related fines) and environmental factors (e.g. increased natural disaster risks).</i>
32	What, if anything, should the government do to make it easier for consumers to access information on insurance policies, compare policies, make informed decisions and switch between providers?

BNZ Life does not have any comment to make in this area.

Regarding third party access to liability insurance monies

33 Do you agree that the operation of section 9 of the Law Reform Act 1936 (LRA) has caused problems in New Zealand?

BNZ Life does not have any comment to make in this area.

34 What are the most significant problems with the operation of section 9 of the LRA that any reform should address?

BNZ Life does not have any comment to make in this area.

35 What has been the consequence of the problems with section 9 of the LRA?

BNZ Life does not have any comment to make in this area.

36 If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?

BNZ Life does not have any comment to make in this area.

Regarding failure to notify claims within time limits

37 Do you agree that the operation of section 9 of the Insurance Law Reform Act 1977 (ILRA) has caused problems for “claims made” policies in New Zealand?

BNZ Life submits that insurers should only be able to rely on the operation of section 9 if they can demonstrate that they have been prejudiced in their ability to fairly assess the claim.

38 What has been the consequence of the problems with section 9 of the ILRA?

BNZ Life does not have any comment to make in this area.

39 If you agree that there are problems with section 9 of the ILRA, what options should be considered to address them?

BNZ Life does not have any comment to make in this area.

Regarding exclusions that have no causal link to loss

40 Do you consider the operation of section 11 of the Insurance Law Reform Act 1977 (ILRA) to be problematic? If so, why and what has been the consequence of this?

BNZ Life does not have any comment to make in this area.

41 The Law Commission proposed reform in relation to exclusions relating to the characteristics

	of the operator of a vehicle, aircraft or chattel; the geographic area in which the loss must occur; and whether a vehicle, aircraft or chattel was used for a commercial purpose. Do you agree that these are the areas where the operation of section 11 of the ILRA is problematic? Do you consider it to be problematic in any other areas?
	<i>BNZ Life does not have any comment to make in this area.</i>
42	If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?
	<i>BNZ Life does not have any comment to make in this area.</i>

Regarding registration of assignments of life insurance policies

43	Do you agree that the registration system for assignment of life insurance policies still requires reform?
	<i>In practice, the assignment process works appropriately, however BNZ Life would support moves to educate customers on the risks and benefits of the assignment of a policy.</i>
44	If you agree that there are problems with the registration system for assignment of life insurance policies, what options should be considered to address them?
	<i>Assignment of life insurance policies can ensure a quick and efficient process for the customer, particularly in the event of a death claim, ensuring the customer has access to the proceeds of the claim promptly.</i>
	<i>BNZ Life submits that insurers should be able to determine how registration is affected, without specific prescription to ensure that the legislation does not become out of date over time.</i>

Regarding responsibility for intermediaries' actions

45	Do you consider there to be problems with the current position in relation to whether an insurer or consumer bears the responsibility for an intermediary's failures? If possible, please give examples of situations where this has caused problems.
	<i>BNZ Life does not have any comment to make in this area.</i>
46	If you consider there to be problems, are they related to who the intermediary is deemed to be an agent of? Or the lack of a requirement for the intermediary to disclose their agency status to the consumer? Or both?
	<i>BNZ Life does not have any comment to make in this area.</i>
47	If you consider there to be problems, what options should be considered to address them?
	<i>BNZ Life does not have any comment to make in this area.</i>

Regarding insurance intermediaries – Deferral of payments / investment of money

48	Do you agree that the current position in relation to the deferral of payments of premiums by intermediaries has caused problems?
	<i>BNZ Life does not have any comment to make in this area.</i>
49	If you agree that there are problems, what options should be considered to address them?
	<i>BNZ Life does not have any comment to make in this area.</i>

Other miscellaneous questions

50	Are there any provisions in the six Acts under consideration that are redundant and should be repealed outright? If so, please explain why.
	<i>BNZ does not have any further comments to make in this area.</i>
51	Are there elements of the common law that would be useful to codify? If so, what are these and what are the pros and cons of codifying them?
	<i>BNZ does not have any further comments to make in this area.</i>
52	Are there other areas of law where the interface with insurance contract law needs to be considered? If so, please outline what these are and what the issues are.
	<i>BNZ does not have any further comments to make in this area.</i>
53	Is there anything further the government should consider when seeking to consolidate the six Acts into one?
	<i>Changes to legislation should be future proofed, acknowledging that the financial services industry is becoming increasingly digitised in line with customer expectations. Provisions should be made for digital interactions to allow for simplified and efficient processes.</i>

Other comments

	We welcome any other comments that you may have.
	<i>BNZ Life is supportive of a focus on delivering fair outcomes to customers across the insurance industry and we appreciate the opportunity to submit on these topical issues. We look forward to ongoing consultation as the review of insurance contract law progresses.</i>