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Thank you for providing Chubb Insurance New Zealand Limited (Chubb NZ) the opportunity to submit in respect of the 'Review of Insurance Contract Law'. Engagement in regulatory development is a priority for Chubb NZ as part of its commitment to being a fully compliant insurer that contributes to improving New Zealand's insurance industry.

About Chubb

Chubb NZ has offered insurance to New Zealand policyholders since December 1978, originally called CIGNA Insurance Company of New Zealand Limited. Following the global acquisition of the CIGNA Group by the then ACE Group of Companies in 1999, CIGNA NZ was renamed ACE Insurance Limited which has in turn been re-named Chubb Insurance New Zealand Limited and forms part of the now Chubb Group.

The Chubb Group is one of the world's leading providers of insurance and reinsurance, established in 1985 by a consortium of 34 Fortune 500 companies and now has offices in more than 50 countries and agents in a further 90 countries. Chubb is the world's largest publicly traded property and casualty insurer.

Chubb NZ offers a wide range of corporate and commercial casualty, group personal accident, corporate travel and expatriate medical products, commercial property and business interruption, financial lines, leisure travel, specialty personal lines and high net worth domestic home and contents cover to clients in New Zealand. Chubb NZ also offers accident and health related general insurance products such as personal accident and leisure travel insurance to individuals and families.

Chubb NZ's Submission

Chubb NZ is a member of the Insurance Council of New Zealand (ICNZ) and has had input into the submission being made by ICNZ, Chubb NZ supports the views expressed by ICNZ.

Chubb NZ supports the review of insurance contract law being undertaken and is of the view that by consolidation of the six acts identified in paragraph 7 of the Issues paper into one piece of legislation would in itself help to simplify and bring greater certainty to the industry. This would provide a 'one-stop' shop for the legislation related to insurance contracts.

Chubb NZ also supports the need for change in certain areas which are set out in the answers to the questions.

Chubb NZ recognises that this review is only at the identification of issues stage but believes that even at this early stage there are some factors that should be noted. These are:

1. Insurance contracts are by their nature complicated. They are not easily compared and contrasted like electricity for example, where you will receive exactly the same thing from each provider and price is your only comparison. Cover limits and exclusions significantly impact the value you receive. Disclosure obligations which seek to identify 'key limits and exclusions' are not effective because what is 'key' depends upon the consumer. For one person the limit of **\$2,000** per item of jewellery is key while for others it is an exclusion for theft by those lawfully in your home. It is impossible to provide a summary of key terms which is going to be relevant to all consumers. The Product Disclosure Statement (PDS) approach in Australia has not achieved its goal and has led to much, much longer policies. The PDS means that these contracts are repetitive and significantly longer than the typical New Zealand insurance policy document (by as much as two to three times).
2. Life/health insurance and general insurance do have some fundamental differences in their nature and this needs to be reflected in any legislation. The desire for uniformity shouldn't be applied at the expense of the reality that there are differences between a contract that runs for a period of a year and one which is not renewed annually and will run until cancellation by, or the death of, the policy holder. Issues relating to consumer difficulty in moving insurers and the consequences for consumers where they do (known as churn) simply do not arise with general insurance one year contracts.
3. New Zealand is a different insurance market to Australia and the United Kingdom and while it is useful to look at their experience and regime we are a very small market by comparison. Our much smaller population base and lesser number of corporates means that increases in compliance costs are going to be spread across a smaller customer base. This has an impact on the availability of insurance as either the costs have to be passed to customers, meaning customers may no longer be able to afford to insure, or insurers will withdraw from sectors of the market. A reduction in players in sectors of the market will then lead to further cost increases. Because of New Zealand's small market size it is also reliant on overseas insurers to add capacity to areas of the market in which New Zealand insurance companies are not able to insure. The higher the regulatory compliance costs, the less desirable New Zealand becomes to provide extra capacity.
4. While not through an insurance specific piece of legislation, the last decade has seen a significant increase in consumer protection through:
 - Financial Service Providers Registration and Dispute Resolution Act **2008** - requiring financial service providers to be members of a registered dispute resolution scheme.
 - Amendments to the Fair Trading Act 1986 which provides protection in relation to uninvited direct sales and the application

of unfair contract terms (with only the pure insurance term being exempted, this has generally seen the removal of unilateral cancellation rights and clauses limiting refunds of premium upon mid-term cancellation.)

- The Credit Contracts and Consumer Finance Amendment Act 2014, which increased disclosure requirements in respect of credit-related insurance and made it subject to the Responsible Lenders Code. This is pertinent to the concerns in Australia relating to 'add-on' insurance that is typically sold by car dealers and usually fits within the category of credit-related insurance.
- The introduction of the ICNZ Fair Insurance Code, particularly the 2016 iteration which saw the requirement that ICNZ members responded reasonably to non-disclosure and introduced time frames for claims outside of catastrophe situations.
- Increases in consumer protection are also currently being provided through the Financial Services Legislation Amendment Bill and the introduction of the new Code of Conduct which will apply more broadly than the existing code.

We note that the word 'consumer' appears to have been used in two different ways in the questions. For the most part it appears that the word 'consumer' is intended to refer to customers or prospective customers of the insurer. However in question 12 for example there is a reference to businesses and consumers indicating that the word 'consumers' is intended to mean customers who are not engaged in trade. Our answers are given on the basis that consumer means customers or prospective customers of the insurer and we have used the terms 'business consumers' and 'non-business consumers' where we want to distinguish between those who are engaged in business.

The answers given are based on Chubb NZ's understanding of the insurance market and the way that it operates. Where we refer to insurers taking an approach we are not intending to speak on behalf of any other insurer but give a response which is based upon our observations in dealing with other insurers.

Regarding the objectives of the review

1	Are these the right objectives to have in mind?
	These are appropriate objectives. However we note that in respect of consumer behaviour there are things that a law change can encourage but may not be able to achieve. In respect of the objective of 'insureds having certainty that insurers will respond as expected in the event of loss' this would require a significant change in consumer behaviour. Most consumers do not read their policy documentation and seek to have minimal interaction during the purchase of their insurance. Insurance contracts are complicated and attempts to provide simplified disclosure can increase misunderstanding rather than reduce it.
2	Do you have alternative or additional suggestions?
	As an additional suggestion, we propose adding that the first two objectives are achieved whilst maintaining the availability of insurance in the New Zealand market. Our reference to 'availability' relates to the issues raised in paragraph three of our introduction above.

Regarding disclosure obligations and remedies for non-disclosure

3	<p>Are consumers aware of their duty of disclosure?</p> <p>Generally insurance applications and documents will provide an explanation of the duty of disclosure and suggest that consumers ask questions if they need assistance in determining what needs to be disclosed. ICNZ via the Fair Insurance Code and the Insurance and Financial Services Ombudsman also seek to educate consumers as to the duty of disclosure. It is difficult to accurately assess consumer awareness as a whole as only instances where this has not been understood are raised.</p>
4	<p>Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?</p> <p>The information provided to consumers by most insurers will explain this. Unfortunately this is not always read.</p>
5	<p>Can consumers accurately assess what a prudent underwriter considers to be a material risk?</p> <p>Not in all cases but in most scenarios the reasonable person would recognise that the material fact would have an impact on the price and willingness to offer insurance.</p>
6	<p>Do consumers understand the potential consequences of breaching their duty of disclosure?</p> <p>Generally insurer documentation warns customers of the significant consequences of a failure to disclose material information. Insurers want consumers to disclose information and so it is mutually beneficial to provide such warnings.</p> <p>In situations where there has been a failure to disclose material information it is difficult to know whether the consumer had not understood the duty and the consequences of failing to comply or if the non-disclosure was either a calculated risk taken to secure insurance/achieve a reduced premium or because it was information that the insured was embarrassed about disclosing.</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>It would be rare for an insurer to know more about the consumer's risks than the consumer. The circumstances where an insurer may know more is in respect of the impact of a particular piece of information, for example only the insured will know that their house has scrim lined walls but the insurer may better understand the fire risk that scrim poses.</p> <p>Advances in technology may help to enable the information about the consumer's property etc. be passed directly to the insurer, where the insured consents.</p>
8	<p>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.</p>

The dispute resolution schemes highlight instances where this has occurred but these situations are the exception.

Members of ICNZ are required by the Fair Insurance Code to respond reasonably to non-disclosure.

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?

As a matter of principle yes, those whose non-disclosure was inadvertent should be treated differently from a consumer whose deliberate non-disclosure was intended to get insurance that would otherwise not have been offered. The difficulty is in being able to establish the difference when both the consumer who inadvertently did not disclose something and the consumer who deliberately did not disclose say that it was an accidental failure to disclose.

10

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

In circumstances where the insurer would still have offered the insurance but on different terms then, aside from situations involving an intentional failure to disclose, there is a case for the remedy reflecting what those terms would have been. In many cases this is the approach that insurers are applying and was formalised by the Fair Insurance Code's requirement to respond reasonably.

11

Should non-disclosure be treated differently from misrepresentation?

Yes because misrepresentation by its very nature involves a representation about a fact and will generally arise in respect of an answer to a specific question asked by the insurer. Where a question has been asked the consumer has been made aware that the information is of importance to the insurer.

12

Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?

Whilst there is the argument that there are many differences within different classes of insureds, with a commercially savvy non-business consumer and a sole trader with limited commercial experience, as a matter of regulatory policy it has been established that it is appropriate to apply additional protections to non-business consumers but not those engaged in trade. This is demonstrated in numerous pieces of legislation such as the Consumer Guarantees Act 1993 and the Fair Trading Act 1986. To the extent that there is going to be legislation modifying the duty of disclosure it is appropriate that a distinction in approach is drawn between business and non-business consumers.

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?

It is very much a case by case basis. Insurers are aware of the serious consequences of avoidance and it is a remedy which is used very sparingly. The introduction of the 2016 Fair Insurance Code's requirement to respond reasonably has further reinforced this.

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?

Once all of the pre-requisites for non-disclosure have been established:

- Materiality of the information as determined by the prudent insurer test where the information is something another insurer would have wanted to take into account as well as inducement of the actual underwriter; and
- The brokers or agents knowledge of the information has been checked.

Then the insurer's response will be determined after a review all of the circumstances. This will usually include seeking an explanation from the insured as to why the information was not disclosed. One of the most significant factors is whether the insurer would have offered insurance if the correct position had been disclosed. If the insurer would have still offered to insure then it would be unlikely that the insurer would avoid the policy due to the Fair Insurance Code's requirement of a reasonable response.

Where there has been obvious misrepresentation this will impact the response.

As previously noted avoidance is only used in rare circumstances.

Chubb NZ submits that any law change to the duty of disclosure and its remedies should be based on the work done by the Law Commission which sought to identify the regime best suited to New Zealand. The recommendations in the 2007 Cabinet paper added to this with proposed non-avoidance remedies. The Australian and United Kingdom regulation were developed to deal with very different insurance markets and each of these regimes have their own set of problems.

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?

Chubb NZ endorses the comments made by ICNZ. Fair treatment from both an insurer's and consumer's perspective has to include both parties performing the obligations that they have contracted to perform. Without this you don't achieve the objective of transacting with confidence, with respect to certainty as to outcome.

The duty of utmost good faith which is implied in every insurance contract as confirmed by *Young v Tower Insurance Ltd* [2016] NZHC 2956; [2018] 2 NZLR 291 (7 December 2016), found that the duty requires insurers as a bare minimum to:

- (a) disclose all material information that the insurer knows or ought to have known, including, but not limited to, the initial formation of the contract and during and after the lodgement of a claim;
- (b) act reasonably, fairly and transparently, including, but not limited to, the initial formation of the contract and during and after the lodgement of a claim; and
- (c) process the claim in a reasonable time.

The insured equally has the duties in both (a) and (b). These reciprocal obligations are a good basis for fair treatment.

16

To what extent is the gap between ICP 19 and the status quo in New Zealand (as

identified by the IMF) a concern?

Chubb NZ submits that just because there is no one single regulator that reviews the conduct of insurers, this does not mean that there is a gap. Insurers conduct is supervised by:

- Financial Markets Authority (with QFE's having significant reporting obligations in respect of any misconduct);
- Commerce Commission - ensuring compliance with the Fair Trading Act 1986, Credit Contracts and Consumer Finance Act;
- Financial Service Providers Register - belonging to a registered dispute resolution scheme;
- ICNZ- in regards to compliance with the Fair Insurance Code;
- Privacy Commissioner - compliance with the Privacy Act 1993.

The RBNZ also regulate insurer conduct to preserve insurers financial stability.

17

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

Chubb NZ submits that there is not a lack of oversight as the regulators listed above oversee insurers' conduct.

18

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

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

It is anticipated that this is not a question intended for insurers.

19

Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.

It is anticipated that this is not a question intended for insurers.

20

When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?

It is anticipated that this is not a question intended for insurers.

21

What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?

The amendments to the Fair Trading Act 1986 (uninvited direct sales and extended

	warranties) and the Credit Contracts and Consumer Finance Amendment Act 2014 (disclosure obligations and inclusion of credit related insurance being subject to the Responsible Lending Code) has addressed concerns that existed relating to consumers being pressured into buying insurance that they don't need.
22	Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible. Chubb NZ supports the submission made by ICNZ.
23	Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives? It is anticipated that the Financial Service Legislation Bill and the introduction of the Code of Conduct will resolve any issues in this area.

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

24	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. Chubb NZ supports the submission of ICNZ. It is vital that the limited list of terms that are required as reasonably necessary to protect the legitimate interest of the insurer remain. If the risk terms in these categories could be reviewed and declared unfair then the Court would effectively become a substitute underwriter. The uncertainty that this would create would impact on the availability of insurance.
25	More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair? As per the answer to question 24 above.
26	Why are each of the specific exceptions outlined in the Fair Trading Act needed in order to protect the "legitimate interests of the insurer"? As per the answer to question 24 above.
27	What would the effect be if there were no exceptions? Please support your answer with evidence. As per the answer to question 24 above.

Regarding difficulties comparing and changing providers and policies

Is it difficult for consumers to find, understand and compare information about insurance policies and premiums? If so, why?

	<p>The use of websites has revolutionised the availability of information about insurance policies. You are able to access copies of most policy wordings from the internet as well as explanations of the policies. Consumers are also able to get instant quotes.</p> <p>In regards to comparisons we caution that the complex nature of insurance makes comparisons between products difficult as the differing limits and exclusions within each insurer's policy require explanation. The Fair Trading Act 1986 places obligations on those seeking to make comparisons to ensure that they are not misleading.</p>
29	<p>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.</p> <p>Differences in availability of information are more likely to be based on the method of distribution. Products which are sold directly to the public are likely to have more information available.</p>
30	<p>What barriers exist that make it difficult for consumers to switch between providers?</p> <p>There is largely no barrier to consumers switching providers in respect of general insurance. Things such as standard 'no claims bonus letters' have been developed to assist when consumers move from one insurer to another, which enables the consumer to transfer the reward that they have received for being accident free.</p> <p>Consumers are easily able to 'speak with their feet' if they don't like the price or service and move at any point of the period of insurance. If they have paid an annual premium they will be able to get a pro-rated refund of the premium for the remaining period, providing they have not had a total loss claim.</p>
31	<p>Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.</p> <p>The contractual nature of life and health contracts (being ongoing rather than for a maximum period of one year) does mean that there are issues which are specific to these types of insurance.</p>
32	<p>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?</p> <p>Technology has and continues to, make it easier for consumers to access information about insurance as well as facilitate their comparisons and decisions and there is not the need for government intervention.</p> <p>The amendments to the Fair Trading Act 1986 have provided further protection in relation unsubstantiated representations. This combined with the prohibitions on misleading and deceptive conduct in the Fair Trading Act 1986 and in the Financial Markets Conduct Act 2013 protect consumers from misinformation.</p>

Regarding third party access to liability insurance monies

111 Do you agree that the operation of section 9 of the Law Reform Act 1936 (LRA) has

	<p>caused problems in New Zealand?</p> <p>Chubb NZ echoes the comments made in the ICNZ submission. This section has historically been difficult to interpret and caused problems even prior to the decision of <i>BFSL 2007 Ltd v Steigrad</i> [2013] NZSC 156. The effect of the <i>Steigrad</i> decision is that it leaves the parties to costs inclusive liability policies without any certainty. If the insurer pays defence costs this leaves them exposed to the potential of having to pay more than the policy limit. If the insurer does not pay for defence costs on the basis that the charge prevents the insurer from advancing these costs the insured has been deprived of the cover that they paid for. If as current case law suggests, section 9 of the ILRA does not have extra-territorial jurisdiction then this creates an incentive for consumers to purchase liability insurance from overseas insurers which will have the consequence of reducing access to liability insurance monies to third parties.</p> <p>As noted in the ICNZ submission there are a number of issues in relation to section 9 of the ILRA which require clarification.</p>
34	<p>What are the most significant problems with the operation of section 9 of the LRA that any reform should address?</p> <p>Dealt with above in the answer to Q33.</p>
35	<p>What has been the consequence of the problems with section 9 of the LRA?</p> <p>Dealt with above in the answer to Q33.</p>
36	<p>If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?</p> <p>Section 9 of the LRA should be repealed and third party access to liability insurance monies should be dealt with in an Insurance Contracts Law. This should undo the decision of <i>Steigrad</i> and provide clarity in respect of the issues outlined by ICNZ.</p>

Regarding failure to notify claims within time limits

37	<p>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?</p> <p>Chubb NZ echoes the comments made in the ICNZ submission.</p>
38	<p>What has been the consequence of the problems with section 9 of the ILRA?</p> <p>As noted in the Law Commission report section 9 of the ILRA and the related case law has produced "an unsatisfactory outcome and one that changes the bargain in a way that is unfair to insurers".</p>
39	<p>If you agree that there are problems with section 9 of the ILRA, what options should be considered to address them?</p> <p>Chubb NZ agrees with ICNZ that the recommendation of the Law Commission in their</p>

report should be adopted.

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?
	The operation of section 11 of ILRA has meant that some consumers are able to receive significant discounts on their premium by insuring on the basis that they have more restrictive cover (such as named drivers only or only drivers over 21) and still receive the same cover as the consumer who has paid a higher premium to allow anyone to drive their car. This is not only unfair to insurers but also consumers who have paid the correct premium.
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?
	We agree with areas identified in the Law Commission Report as these reflect the areas in which consumers are generally offered restricted cover in return for discounts on premium.
42	If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?
	We support the reform proposed in the Law Commission Report.

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?
	Chubb NZ only has a very small number of life insurance policies and so is not able to provide useful comment.
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?
	As per the answer above.

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.
	In respect of paragraph 138 of the Issues Paper, it would be very rare for an intermediary not to meet the Insurance Law Reform Act 1977 definition of "representative of the insurer" and therefore information known to the intermediary is almost always deemed to be known to the insurer.
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?
	We support the comments made by ICNZ.
47	If you consider there to be problems, what options should be considered to address them?
	As per the answer above.

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?
	We endorse the comments made by ICNZ.
49	If you agree that there are problems, what options should be considered to address them?
	As per the answer directly above.

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.
	To the extent that the regulatory development proposed will supersede some provisions in the six Acts.
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?
	Yes, in respect of the common law that has developed in respect section 9 of the LRA, section 9 of the ILRA and section 11 of the ILRA. The reasons for this have been covered above.
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.
	In respect of misrepresentation the interface with Contract and Commercial Law Act

2017.

53

Is there anything further the government should consider when seeking to consolidate the six Acts into one?

At this stage Chubb does not have anything additional to add but it is likely that there will be additional issues arise during the course of the review and consultation process.

We welcome any queries that you have and would be happy to provide further explanation of any of the points in this submission.

Yours sincerely

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