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## **Cigna Life Insurance New Zealand Limited Submission on the Review of Insurance Contract Law Issues Paper – May 2018**

Thank you for the opportunity to submit on the Review of Insurance Contract Law Issues Paper (“**Issues Paper**”).

Cigna Life Insurance New Zealand Limited (“**Cigna**”) is a leading provider of life, funeral, income protection, accidental death, serious illness and travel insurance. As such, we fully endorse the review of New Zealand’s current Insurance Contract Law to advocate fair, efficient and transparent outcomes for both the industry and consumers alike.

From Cigna’s perspective, the Issues Paper provides a valuable opportunity to simplify understanding, both for consumers and insurers around the current law. This is particularly important, given the importance of insurance for all New Zealanders. The initiative to remove the complexity surrounding insurance law, as well as address long-standing issues with the current legislation is something that Cigna views positively. The potential changes to New Zealand’s insurance law should seek to be aligned with the International Association of Insurance Supervisors’ Insurance Core Principles (“**IAIS**”) to ensure the smooth functioning of insurance in our society; managing consumers’ risks as well as providing a safeguard for savings and investments, in times of adversity.

Cigna has been working closely with the Financial Services Council (“**FSC**”) and the Insurance Council of New Zealand (“**ICNZ**”) throughout the drafting of their individual submissions. We broadly support the submissions made by the FSC and the ICNZ and have contributed to both, throughout the drafting process. In addition, we would like to make the following points:

### **Life Insurance Act 1908**

Cigna is in agreement with the sentiment that the provisions of the Life Insurance Act 1908 (“**Act**”) are outdated and well overdue for review. The Act is 110 years old and should be updated accordingly to reflect the advances in New Zealand’s financial markets and technology. Issues with the Act that should be addressed in the upcoming review include the registration of transfers of ownership of Life Insurance Policies and the Interest payable on death claims – both are outlined as separate points below.

### **Registration of transfers of ownership of Life Insurance Policies**

Section 43(1) of the Act requires ownership interests in life insurance policies to be transferred “upon the policy, in the form” or through a table outlined in Schedule 8 of the Act. The requirement for paper policy documents to be sent to the insurer for registration purposes, registered in a book and inserted in the form of transfer which is to be “signed by the secretary” is archaic and does not account for situations where paper policy documents are misplaced by consumers, for example. Furthermore, the table in Schedule 8 requires both a witness to the transferor and the transferee. These elements are outdated and require reform. Land and share transfers in New Zealand were previously dependent on paper-based registration however methods have since been modernised and simplified to improve accessibility and clarity. Electronic systems are now relied upon to record transfers of land and shares, and transferring ownership of life insurance policies should be no exception.

Any review or reform should also stipulate that registration of transfer of ownership of life insurance policies is a requirement but the method of registration to be used should not be dictated. It should instead be determined by each insurer.

### **Interest payable from 91<sup>st</sup> day after date of death**

Section 41A of the Act provides that if, for any reason a death claim is not paid within 90 days after the date of death, the insurer is liable to pay interest at a prescribed rate from the 91<sup>st</sup> day until the death claim is paid.

Insurers are motivated to settle valid death claims with efficiency and in a timely manner. However, in spite of their best efforts, certain circumstances outside an insurer’s control may arise – resulting in situations where it is not practicably possible for the insurer to make payment within 90 days.

Examples of such circumstances include:

- Delays in obtaining letters of administration or probate;
- Delays in medical information being received, and subsequent delay in obtaining a review of this information
- Delays of Coroner’s findings/inquests – with regard to situations of unexpected deaths;
- Delays in notifications to the insurer of other parties in proceeds of the deceased’s life insurance policy - taking into account any family disputes or disagreements that might contribute to further delays;
- Delays (can be up to a few years) in notifying an insurer of a death claim;
- Delays as a result of difficulty getting in touch with the policy owner or representative of the deceased to satisfy claim requirements and obtain relevant information.
- Claim requirements not being properly met in the first instance by the policy owner or representative of the deceased (estate etc.) – resulting in an inherent delay while both parties communicate further to obtain the information required;

It is a fundamental commercial principle that interest should only be charged when a payment is overdue. This should not apply to insurers with regard to interest payable on death claims in situations outside the insurer’s control. It is incorrect to classify a payment as “overdue” in situations where the insurer has not yet received the requisite information to process the claim or has not even been notified of a death in some circumstances.

In situations where the delay is through no fault of the insurer's own, it is unreasonable to expect the payment of interest at a prescribed rate from the 91<sup>st</sup> day until the claim is paid. This section of the Act is prejudicial towards insurers, as it puts them at an inherent disadvantage due to circumstances completely beyond their control.

### **Duty of Disclosure & General Disclosure Issues**

The duty of disclosure is underpinned by the duty of good faith owed by both parties in entering into an insurance contract. It is unreasonable to expect an insurer to carry out their business of assessing risk effectively without possessing the relevant information to provide an accurate assessment that is well priced and tailored to suit each consumer.

The onus is currently on the consumer to disclose all information to the insurer regarding their circumstances, which could affect the insurer's determination of risk. As summarised by the Marine Insurance Act 1908, in all insurance contracts in New Zealand, the consumer has a duty to make full disclosure of all "material" facts that are within their knowledge. A fact is deemed "material" if it influences the judgment of a prudent insurer in determining whether to accept the risk, and if so, on what terms.

The review should look towards shifting the onus; either to be more balanced or placing the obligations on the insurer to be more proactive and prompt answers from the consumer, by tailoring their questions to be more thorough and specific – in keeping with overseas jurisdictions (Australia and UK) where a policy cannot be avoided by an insurer unless recklessness or deliberate dishonesty of the consumer is proved.

It is crucial that consumers understand their duty to disclose all material circumstances to an insurer. Better disclosure benefits both the consumer as well as the insurer. It provides the consumer with increased assurance that their claim will be paid out, enables the insurer to properly assess the risk for the particular benefits the consumer is applying for (leading to better priced premiums), while increasing the efficiency of the claims process overall-reducing the likelihood of unnecessary delays in a time of urgency as a result of new information being disclosed at the eleventh hour.

Due to differing perspectives between insurers and consumers, consumers might not fully comprehend the potential repercussions of breaching their duty of disclosure. They may not fully appreciate the importance of giving insurers the most accurate, up-to-date information as their circumstances change. A shift in perception is required here, and any reform should take this into account.

### **Section 9 of the Law Reform Act 1936**

The operation of Section 9 has caused significant issues in New Zealand - mainly with regard to the decision reached by the Supreme Court in the *BFSL 2007 Limited & Ors (In Liquidation) v Steigrad* case (2013) which adopted a different approach to other overseas jurisdictions, in Australia and the UK for example. The wording of section 9(1) is complicated and lacks clarity with regard to Parliament's intention.

It imposes a statutory charge in favour of a third party on any insurance money payable to indemnify the insured for damages or compensation payable to third party claimants". Per

this section, the charge is imposed over “all insurance money that is or may become payable in respect of that liability”. Furthermore, the charge arises “upon occurrence of the event” which gives rise to the claim for compensation or damages and applies regardless of whether the exact amount of such liability is determined at the time.

The inconsistency between New Zealand’s position and the position taken in Australia and further afield has created confusion, particularly for insurers who operate within New Zealand as well as overseas. There are practical issues with prioritising multiple charges, figuring out how the charge operates where a policy covers both liability and defence costs up to a combined limit, and determining the time limits that should apply to a third party’s claim.

As outlined in the Issues Paper, certain elements in the Steigrad case have been explored by the New South Wales Law Reform Commission regarding third party claims on insurance money. Both the UK and New South Wales have now replaced their statutory charge provision (equivalent to s9 Law Reform Act in NZ) with provisions enabling third parties to directly initiate proceedings against the insurer. Any review or reform should consider this example for guidance in terms of consistency and clarity.

## Conclusion

Thank you again for the opportunity to submit on the Issues Paper. If you have any questions, please contact [s 9\(2\)\(a\)](#) on [s](#) or by emailing [s 9\(2\)\(a\)](#)

Yours sincerely,

Michael Burrowes  
Head of Legal and Risk

Nicolette Luke  
Legal Counsel

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# Submission on discussion document: Insurance contract law review

## Your name and organisation

<b>Name</b>	Nicolette Luke
<b>Organisation</b>	Cigna Life Insurance New Zealand Limited (Cigna)

## Responses to discussion document questions

### Regarding the objectives of the review

1	Are these the right objectives to have in mind?
	Yes, Cigna considers the objectives to be fair and equitable, with appropriate consideration to both consumers and insurers.
2	Do you have alternative or additional suggestions?
	Please refer to our cover letter for detailed submissions on our main points.

### Regarding disclosure obligations and remedies for non-disclosure

3	Are consumers aware of their duty of disclosure?
	Please refer to our cover letter for a detailed submission on this point.
4	Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?
	The duty of disclosure is set out in policy wordings, application forms, and other materials (e.g. declarations which are signed or verified by the consumer prior to entering into a contract with the insurer). The Fair Insurance Code, developed by the Insurance Council of New Zealand (ICNZ) and publicly available on their website outlines best practice standards for the insurance industry. These act as guidelines for interactions between insurers and consumers and the duty of disclosure is specifically referred to in several clauses of the Code (16, 19, and 20). Under our existing law, the onus is currently on the consumer to disclose all information to the insurer regarding their circumstances. Failure to do this enables the insurer to avoid the policy. This is in stark contrast to overseas jurisdictions (Australia and UK) where the responsibility lies with the insurer to be more proactive in their questioning – meaning that they cannot avoid a policy unless recklessness or deliberate dishonesty of the consumer is proved.

5	Can consumers accurately assess what a prudent underwriter considers to be a material risk?
	While consumers may not necessarily be able to assess what a prudent underwriter considers a material risk, a greater effort is being made throughout the industry to reduce the complexity and confusion surrounding disclosure obligations, and to make it simpler for consumers to understand their responsibilities and what material facts (related to their circumstances) they should disclose. Plain English is often used (for example in the Fair Insurance Code) and throughout policy wordings.
6	Do consumers understand the potential consequences of breaching their duty of disclosure?
	Due to differing perspectives between insurers and consumers, consumers might not fully comprehend the potential repercussions of breaching their duty of disclosure. They may not fully appreciate the importance of giving insurers the most accurate, up-to-date information as their circumstances change. A shift in perception is required here; and any reform should take this into account.
7	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>Consumers might not necessarily always know their own risks, however they will always be more aware of their own circumstances than insurers. Risk can be subjective in this regard- a risk as deemed by an insurer might not be a risk to the consumer. As a result of differing perspectives, the consumer therefore might not see the importance of disclosing specific information as they believe it to be irrelevant.</p> <p>Advances in technology could allow insurers to obtain direct access to consumer's medical records more easily. This would relieve some pressure on the consumer- rather than having to constantly disclose factors that may or may not constitute material changes in their circumstances, insurers could directly ascertain the relevance of these factors and adjust consumers' life insurance policies accordingly, if required.</p> <p>This could be achieved by information exchange, however would be subject to privacy laws and limitations and other considerations such as cost for the insurer, the process of obtaining consent from various providers and the feasibility of meeting strict timeframes (e.g. in the event that information is required urgently).</p>
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.
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?
10	Should the remedy available to the insurer be more proportionate to the harm suffered by the insurer?

11	Should non-disclosure be treated differently from misrepresentation?
12	Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?
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 important to focus on comparing the facts given at the time the policy was entered into to the updated information that comes to our attention. If they are materially different, our first step is to issue the consumer with a 'Please explain' letter, offering them an opportunity to elaborate on the situation, clarify the difference between the information we had and any recent updates. From their explanation, we gain a better indication of whether their non-disclosure was intentional or unintentional. Claims are examined on a case-by-case basis, as opposed to a "one size fits all" approach.
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?  Each situation is treated on a case-by-case basis, as outlined in Q13. Factors take into account include whether there was a mistake/misunderstanding in failing to note the information down during the customer's original application process (if it was provided), any factors to indicate the consumer is being dishonest or fraudulent, and to what extent the misrepresentation or non-disclosure would have affected the underwriting of the original decision/policy at the time the application was made.

## 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?  Per the Fair Insurance Code, fair treatment should encompass good conduct, honesty and good faith on behalf of both insurers and consumers. Transparency and openness is also important for both parties – encouraging fair and equitable consumer outcomes, strengthening the industry and allowing both parties to carry out transactions with confidence.
16	To what extent is the gap between ICP 19 and the status quo in New Zealand (as identified by the IMF) a concern?

17	Does the lack of oversight over the full insurance policy 'lifecycle' pose a significant risk to purchasers of insurance?
18	<p>What has your experience been of the claims handling process? Please comment particularly on:</p> <ul style="list-style-type: none"> <li>• timeliness the information from the claims handler about: <ul style="list-style-type: none"> <li>○ timeframes and updates on timeframes</li> <li>○ reasons for declining the claim (if relevant)</li> <li>○ how you can complain if declined</li> </ul> </li> <li>• The handling of complaints (if relevant)</li> </ul>
19	Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.
20	When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?
21	What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?
22	Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.
23	Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?

### 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.
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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?
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”?
27	What would the effect be if there were no exceptions? Please support your answer with evidence.

### 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?
	Consumers have access to information regarding various insurers’ policies (and sometimes the actual policies), as they are listed publicly on the insurers’ websites. Some have quote tools/calculators which are available for consumers to use by entering in their specific information, to give them an indication of the most suitable cover, pricing of premiums etc. Cover can then be properly arranged and a policy can be entered into either by phoning the insurer, online or through an intermediary.
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.
	Yes, the amount of information is dependent on the type of insurance the consumer is looking for – e.g. health or life insurance may be more difficult to obtain over the phone or online quickly as there are more personal factors involved and circumstances to consider on behalf of both the insurer and the consumer.
30	What barriers exist that make it difficult for consumers to switch between providers?
	Switching between providers depends on the consumers’ individual circumstances – as per Q29, it is also dependent on the type of insurance the consumer is interested in. For example, car insurance may be an example where it is easier to switch providers (if lower premiums, better value for money is found etc.) but this can be more difficult with life insurance, trauma, mortgage protection, income protection, health insurance etc. as these types of insurance are more complex and policies may be reliant on the insurer receiving specific information pertaining to a consumer e.g. health, credit rating, financial competency, job situation etc. Issues may arise where consumers may terminate their cover, as they are under the impression they can get better value for money elsewhere but as a result of a recent change to their situation, they might not be eligible or exclusions may apply (which are not as good as the previous cover they

	had) – or they may not even be offered cover altogether.
31	Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.
	Please refer to Q30
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?

### 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?
	Please refer to our cover letter for a detailed submission on this point.
34	What are the most significant problems with the operation of section 9 of the LRA that any reform should address?
	Please refer to our cover letter for a detailed submission on this point.
35	What has been the consequence of the problems with section 9 of the LRA?
	Please refer to our cover letter for a detailed submission on this point.
36	If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?
	Please refer to our cover letter for a detailed submission on this point.

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

## 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?
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?
42	If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?

## 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?
44	Yes- Section 43 of the Life Insurance Act 1908 is outdated and requires reform. Please refer to our cover letter for a detailed submission on this point.
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?
	Please refer to our cover letter for a detailed submission on this point.

## 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.
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?
47	If you consider there to be problems, what options should be considered to address

them?

## 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?

49 If you agree that there are problems, what options should be considered to address them?

## 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.

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?

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.

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

Yes – the issue of interest payable on death claims, pursuant to Section 41A of the Life Insurance Act 1908 should also be considered as part of the review and consolidation process. Please refer to our cover letter for a detailed submission on this point.

## Other comments

We welcome any other comments that you may have.

Please refer to our cover letter for detailed submissions on our main points.

