

Submission on discussion document: Insurance contract law review

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Responses to discussion document questions

Regarding the objectives of the review

Are these the right objectives to have in mind?

We are surprised that the document does not include much about natural hazard insurance, and more specifically about earthquake insurance. The Canterbury earthquakes were by far the biggest event in the history of the insurance sector in NZ, and the liabilities incurred over the two most damaging earthquakes (Sept. 2010 and Feb. 2011) far surpass any other comparable peril covered in NZ. As such, getting hazard insurance right should be of prime importance to this review.

We also note that while the review of the EQC Act is very important and relevant to this review, more than half of the insured damages from the Canterbury earthquakes were covered by the private sector. Fixing any deficiencies in the EQC Act is therefore not going to be sufficient.

We also note that from a social/policy perspective, the fact that so much of the damages incurred during the earthquake sequence was insured was a dramatic success as it prevented many from losing a lot. However, the event left much dissatisfaction among the ultimate beneficiaries of this insurance coverage. The surveys that were done by CERA and others clearly show that many people found dealing with their insurers to be very stressful (and maybe was the most painful part of the recovery, apart from the aftershocks). Delays and disagreements between insurers and insured were common in both residential and commercial insurance claims, so that the EQC, and the EQC-private insurers interface are only two of the reasons for these delays. Fixing the EQC Act, including allocating the claim management role to the private insurers (which we support) will not fully resolve this issue.

Do you have alternative or additional suggestions?

The delays and difficulties in resolving claims led to various unintended consequences that made the recovery from the earthquake more difficult and more prolonged. As such, it seems self-evident that the current insurance system did not deliver as much benefit as it could have had. This functioning of the insurance sector in a post-disaster environment should clearly be, in our view, part of this review.

Regarding conduct and supervision

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?

Broadly, we think that the time it took to resolve insurance claims in Christchurch is both unacceptable (from a fair-trading perspective) and, more importantly from our perspective, had many flow-on adverse effects on the recovery in Christchurch (especially, but not only, in slowing it down).

There were multiple reasons for these delays, and some were inevitable (especially the size of the event and the large number of aftershocks), but since almost all insurers have still not resolved all claims arising out of the 2011 earthquake, these reasons are no longer convincing).

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

NZ is unusual in that it has no insurance regulator that is tasked with supervising the industry along the lines we propose elsewhere in this document. This absence also means that no one entity can respond appropriately if circumstances change (as was the case in 2011). An independent regulator can be charged with the monitoring of claim resolution practices and making sure that the Christchurch failure (in terms of speedy resolution of claims) does not repeat. We note that the International Association of Insurance Supervisors Core Principles mentioned repeatedly in the review document assume that there is indeed a supervisor, an assumption that is not yet true for the NZ market. Our suggestions in this document relate specifically to Core Principle 19.2, 19.4, 19.6, and 19.10.

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

Yes, as noted above. It poses a risk both specifically to individual purchasers of insurance in as much as it causes delays in the resolution of their claims. More broadly it damages the ability of the community to recover fully and rapidly from large-scale events.

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)

The time it took to resolve claims after the Canterbury earthquakes was (and is) inordinately long. This is also true when it is compared to other large earthquake events (specifically the Chile earthquake in 2010 and the East Japan earthquake of 2011). There are multiple reasons for these differences, but it is still undeniable that almost 7.5 years have passed since the February 2011 earthquake, and not all claims have been resolved.

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

N/A

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

N/A

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

Insurers were selling multiple insurance contracts for similar customers, probably arising from the different time periods in which these were originally purchased by each customer.

Placing some restrictions on the types of property insurance contracts that can be sold and regulating this, so that firms do not sell multiple types of contracts to similar consumers, will provide a lot of benefit to all stakeholders (including insurers). Standardization of insurance contracts will be most useful if it is also enforced across-firms (at least along some important dimensions relating to natural hazard insurance and in particular earthquakes and floods). But, even if it is only enforced within-firms it will be a significant improvement to the current status quo in which the same firm offers multiple types of contracts (sometimes more than a dozen). From a public policy perspective, standardization is only important for natural hazard risks where a large concurrent number of claims is possible. However, standardisation will also assist by enhancing competition in the insurance industry during normal times.

Standardisation would also mean that any Court Precedents would apply to all policy holders. It would make giving legal advice much easier and straightforward.

A further advantage is for adjacent property owners. Be they property owners in blocks of flats or property owners that share a retaining wall. For these customers standardisation would have huge benefits.

We would suggest that the standardisation should also be between EQC policy wording and the private insurance company policy wording.

There is no urgent need to standardize the insurance contracts for risks such as theft or fire, and insurers should be allowed, if they so wish, to decide on the contracts they offer for these perils (but offering one standardised contract is going to enhance competition in the sector). The easiest way to standardise would be to insert a clause in all contracts that specifies that in case of large scale event (these can be pre-defined) the coverage provided will be aligned with EQC coverage or some other pre-determined standard.

Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.

N/A

Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?

N/A

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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.
<i>See above. We do believe that delays in claim resolution are a problem.</i>
More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?
N/A
Why are each of the specific exceptions outlined in the Fair Trading Act needed in order to protect the "legitimate interests of the insurer"?
N/A
What would the effect be if there were no exceptions? Please support your answer with evidence.
N/A

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?
<i>Yes. The required information is provided in the legal contract, but this is rarely very easy to understand. To facilitate transparency, price comparisons, and competition within the sector, any proposed insurance contract should be accompanied with a one-page easy-to-understand document that described the broad outline of the insurance contract proposed (what risks are covered and excluded, what is the excess associated with each risk, what are the premiums, for how long is the contract, what are the conditions for renewal, etc.). This can be modelled, for example, after the United States Consumer Financial Protection Bureau's disclosure requirements for credit card companies to report their contracts in an easy-to-understand format. There is ample evidence that consumers do not understand their insurance contracts, and what they are or are not insured for. Markets do not seem to provide strong enough incentives for this information to be provided in easily digestible format by consumers, so that this may have to be regulated.</i>

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.

N/A

What barriers exist that make it difficult for consumers to switch between providers?

N/A

Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.

N/A

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?

See above. We essentially argue that all the relevant information that consumers care about (and should know!) can be provided in a one page, clear, concise and standardized format.

Other comments

We welcome any other comments that you may have.

[Insert response here]

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