

Submission on discussion document: Insurance contract law review

Your name and organisation

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Responses to discussion document questions

Regarding the objectives of the review

Are these the right objectives to have in mind?
<i>[Insert response here]</i>
Do you have alternative or additional suggestions?
<i>[insert response here]</i>

Regarding disclosure obligations and remedies for non-disclosure

Are consumers aware of their duty of disclosure?
<i>[Insert response here]</i>
Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?
<i>[Insert response here]</i>
Can consumers accurately assess what a prudent underwriter considers to be a material risk?

[Insert response here]

Do consumers understand the potential consequences of breaching their duty of disclosure?

[Insert response here]

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?

[Insert response here]

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.

[Insert response here]

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?

[Insert response here]

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

[Insert response here]

Should non-disclosure be treated differently from misrepresentation?

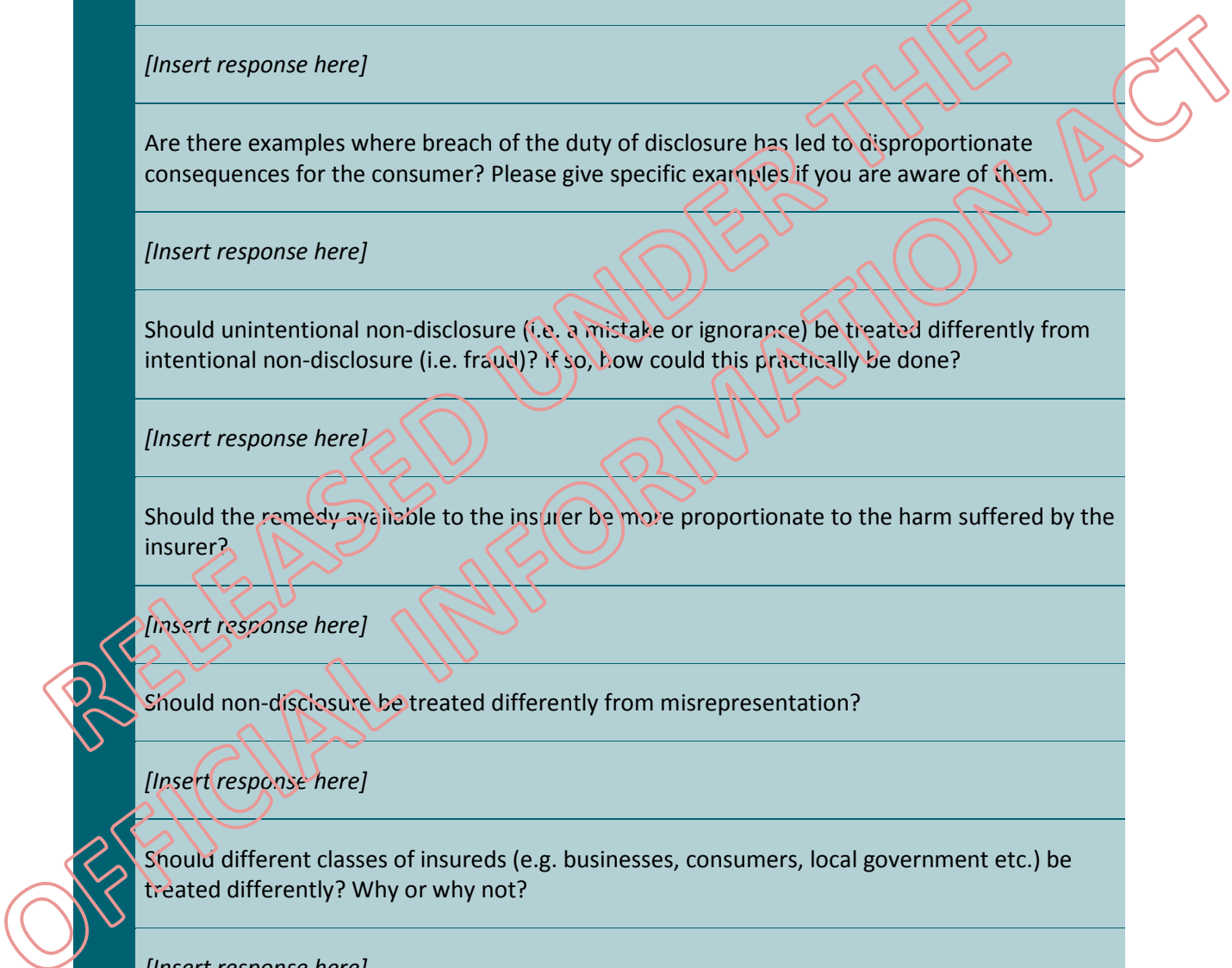
[Insert response here]

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

[Insert response here]

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?

[Insert response here]



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?

[Insert response here]

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?

[Insert response here]

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

[Insert response here]

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

[Insert response here]

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)

[Insert response here]

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

[Insert response here]

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

[Insert response here]

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

[Insert response here]

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

[Insert response here]

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

[Insert response here]

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.

[Insert response here]

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

[Insert response here]

Why are each of the specific exceptions outlined in the Fair Trading Act needed in order to protect the "legitimate interests of the insurer"?

[Insert response here]

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

[Insert response here]

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?

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Comparing insurance products in New Zealand is difficult due to several reasons.

1. There is a lack of a comparison platform to allow consumers to easily compare multiple insurance providers and products (including policies, pricing, service). Currently, consumers wishing to compare insurance must find policy details independently (either on individual provider websites, or by visiting branches); the inherent friction of this causes many to skip this step, leading to information asymmetries, and consumers that are not getting the best deal for their situations.
2. One of the causes for the (1) is due to a lack of transparency on pricing and policies from insurance providers. With PocketWise aiming to be the destination where consumers can easily compare financial products, we have started the process of trying to obtain the above data for [contents insurance comparison](#) on our site, but found it difficult getting providers to work with us and provide data to allow us to perform the comparison. Having also contacted other insurance providers for different products, such as travel insurance, I have received feedback such as the following:
“We will only list if we are the cheapest provider shown on the site. No exceptions.”. This shows an explicit anti-competitive culture in the insurance industry, with many providers not willing to give transparency and choice to customers.
3. Policy information that is currently available from the providers (on their websites or in policy documents) is riddled with ambiguous language that is not easily understood by the general consumer. To a consumer, the questions they care about are “What is covered?” and “What isn’t covered?”, however answering these from reading policy documentation can be difficult and complex, leading to many consumers unaware of the details of their policies.

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.

[Insert response here]

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

Firstly, as mentioned above information overload, complexity of information and the volume of documentation means that consumers are discouraged from digging deeper into any level of detail.

Second, even once a decision is made to purchase a product the resulting paperwork and the logistics around being on-boarded to the Provider is significant. As such, users' experience with the process of deciding, purchasing and getting on-boarded to a new insurance provider involves time, complexity and red-tape.

Third, when approached by affiliated advisors to switch policies, it is often difficult for the consumer to understand what benefits they are giving up when moving to the new policy. Meaning, they are at the risk of being left in the dark until it is time for a claim.

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

[Insert response here]

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?

- *A standard format of policy documentation, including sections of “What is covered”, “What isn’t covered”, “How much do I pay?” would help consumers to understand their insurance policies and be more aware of the limitations.*
- *Open APIs allowing for policy and pricing data would enable comparison sites to provide impartial and accurate comparison services to consumers, allowing them to make more informed financial decisions when making an insurance purchase.*
- *A standard insurance switching process would allow consumers to switch insurance providers in a standard manner, and enables comparison sites to offer this feature directly to consumers. The complexity involved with the current switching process leads to many consumers abandoning this process, even though it may be in their best interest. A standard, digital process would reduce friction, and enable consumers to take action based on their needs.*

Regarding third party access to liability insurance monies

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

[insert response here]

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

[Insert response here]

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

[Insert response here]

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

[Insert response here]

Regarding failure to notify claims within time limits

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?

[Insert response here]

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

[Insert response here]

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

[Insert response here]

Regarding exclusions that have no causal link to loss

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?

[Insert response here]

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?

[Insert response here]

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

[Insert response here]

Regarding registration of assignments of life insurance policies

Do you agree that the registration system for assignment of life insurance policies still requires reform?

[Insert response here]

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?

[Insert response here]

Regarding responsibility for intermediaries' actions

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.

[Insert response here]

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?

[Insert response here]

If you consider there to be problems, what options should be considered to address them?

[Insert response here]

Regarding insurance intermediaries – Deferral of payments / investment of money

Do you agree that the current position in relation to the deferral of payments of premiums by intermediaries has caused problems?

[Insert response here]

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

[Insert response here]

Other miscellaneous questions

Are there any provisions in the six Acts under consideration that are redundant and should be repealed outright? If so, please explain why.

[Insert response here]

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?

[Insert response here]

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.

[Insert response here]

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

[Insert response here]

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Other comments

We welcome any other comments that you may have.

[Insert response here]

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