

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

1	Are these the right objectives to have in mind?
	<i>Yes</i>
2	Do you have alternative or additional suggestions?
	<i>No</i>

Regarding disclosure obligations and remedies for non-disclosure

3	Are consumers aware of their duty of disclosure?
	<i>I was a (life) insurance broker for over 40 years and I was also a member of the Australian Life & Disability Claims & Underwriting Association. It never surprised me what consumers did not understand. After retiring 3.5 years ago, I established the consumer claims support business and co-founded Life Info with a former insurer's CEO because our concern for better consumer education.</i>
4	Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?
	<i>Generally, no. The documentation provided by insurers at the end of a full application is lengthy and ethical advisers need to go through it. Perhaps this should be put at the beginning of applications.</i>
5	Can consumers accurately assess what a prudent underwriter considers to be a material risk?
	<i>Not without an experienced insurance person explaining the consequences. It is an article we will put on Life Info.</i>
6	Do consumers understand the potential consequences of breaching their duty of disclosure?

No, as in 5 above.

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?

No always because GP's are often focussed on overall health and don't have the time (expertise?) to spell out what a person's present health could develop into. The App "Manage my Health" could certainly help.

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.

Yes, I could relay many. One that stands out is a client didn't disclose she was taking natural health tablets recommended by her GP to assist her anxiety. This was not declared, and her disability claim was denied because the insurer would have requested a mental health exclusion.

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?

Yes – like the Law that applies in Australia and UK. However, there is possibly some downside, so research and care is required. This could result in retail premiums increasing due to claims sensitivity testing on 'at risk' products.

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

Yes – as per 9

11 Should non-disclosure be treated differently from misrepresentation?

Yes -- as per 9

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

This is an interesting question and I would suggest they should be. Businesses can afford to pay for expert opinion, unlike the average consumer.

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?

No – the reputable ones will look at them case-by-case. In the cases that are referred to me to assess, the largest percentage have treated their assessment correctly.

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?

It's a summary of comparable evidence – the past with the present. They are careful to receive legal advice on their response, quoting policy wordings and statements made by

claimants. Again, the cases of misrepresentation I have seen, insurers have been very careful to “leave the door open” for further discussion.

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 think most insurers are pretty good presenting their claims evidence but it’s a very emotive time so not all consumers will perceive treatment as being fair. For consumers, the current dispute resolution process is fair, but the prescribed sum insured limits are far too low – perhaps should be removed? For businesses, etc., they can afford to seek higher expertise.

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

I had not been aware of this Standard. There is certainly a gap at the Pre-contractual Stage.

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

I would not go so far as to say a “significant risk” but improvements are required.

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)

• This clearly varies from insurer to insurer. Timeframes can be a huge issue, often due to the expertise of the claims person. I think the claims staff turnover is large so bringing new people up to speed is difficult. In Australia, I believe there is a timeframe objective?

• The reasons for declining claims is typically well presented. See 13 above.

• Cases I get involved with are the minority and are often just requiring clarification on one or several points. View my website: www.insuranceclaimsupport.co.nz for further information.

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

Yes, some have attempted to employ ‘bully tactics’. I would rather not give specifics in this

	<i>Submission.</i>
20	When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?
	<i>n/a</i>
21	What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?
	<i>I represented the industry's Ethics & Practice body for 13 years and saw evidence of mis-selling during this time.</i>
22	Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.
	<i>Yes, more especially to the less-ethical or poor training Financial Adviser or staff member.</i>
23	Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?
	<i>Not yet – I am pleased this is currently being addressed.</i>

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.
	<i>Yes, a few. An example is when an insurer revises their document wording and does not clearly disclose changes to their intermediaries, leaving them (and the consumer) to interpret the changes and consequences. This is despite the Insurance Law Reform Act 1977.</i>
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?
	<i>Yes and no. What consumers don't fully understand is when a life or disability insurance contract states that pre-existing conditions will be assessed at claim time. In respect to "no", consumers don't have to wade through pages of questions and if they've nothing to disclose about their health, occupation or pastimes, it's quick and simple. Adequate disclosure is the big issue here.</i>
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"?
	<i>I reserve judgement on this issue – the Australian development needs consideration.</i>
27	What would the effect be if there were no exceptions? Please support your answer with evidence.

As in 26 above

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?

This is especially applicable to disability, trauma and health insurance contract because of the technical nature of them. Basic life/death policies are less difficult because of their simplicity. (These questions provide additional material for Life-Info.org to produce for consumers)

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.

As above

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

The barriers aren't there, but the risks involved are. It's highly dependent on the expertise and ethics of a Financial Adviser, or staff member. The barriers include the knowledge and experiences interpreting policy wordings, medical conditions, exclusions, financial strength, etc.

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

Yes – as above. Barriers for switching fire and general insurance is less I suggest.

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?

Provide Law around the conduct of insurers and intermediaries to mandate acceptable standards. The industry is then required to inform consumers what these should be. Our website Life-Info was started to educate consumers and its ongoing development and funding will help provide this change, along with the FMA.

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?

I do not feel competent to comment on Liability Insurance, i.e. Questions 34 - 42

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

[Insert response here]

35	What has been the consequence of the problems with section 9 of the LRA?
	<i>[Insert response here]</i>
36	If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?
	<i>[Insert response here]</i>

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?
	<i>[Insert response here]</i>
38	What has been the consequence of the problems with section 9 of the ILRA?
	<i>[Insert response here]</i>
39	If you agree that there are problems with section 9 of the ILRA, what options should be considered to address them?
	<i>[Insert response here]</i>

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?
	<i>[Insert response here]</i>
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>[Insert response here]</i>
42	If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?
	<i>[Insert response here]</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>Possibly – this is a legal issue</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>Don't know</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>Yes, this needs attention. True insurance brokers accept responsibility for their actions. Also, Professional Indemnity Insurance is mandatory today anyway for Financial Advisers, isn't it?</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>Yes - both</i>
47	If you consider there to be problems, what options should be considered to address them?
	<i>Thorough disclosure of the relationship with the consumer</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>No, unless there is misappropriation of these funds</i>
49	If you agree that there are problems, what options should be considered to address them?
	<i>FMA inspections</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>Not that I am aware of</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>Duty of Care</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>As per 50 above</i>
53	Is there anything further the government should consider when seeking to consolidate the six Acts into one?
	<i>As per 50 above</i>

Other comments

	We welcome any other comments that you may have.
	<ol style="list-style-type: none"><i>1. Even though Life Info has no objection to all forms of insurance distribution products, as far as consumers are concerned, there is a lack of clarity for the consumer over the objectivity status and function of Financial Advisers working within large organisations, like banks, etc. The Code Working Group doesn't yet appear to be concerned about this difference with Intermediaries – reference to 45-47 above.</i><i>2. Clearly, it's very disappointing the Law Commission's 1992 report has taken so long to get traction, so I am delighted the content raised here and look forward to the expected timetable being completed by <u>mid-2019</u>, as per the Terms of Reference.</i>