



Submission to Ministry of Business Innovation and Employment on Insurance Contract Law Review

25 July 2018

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ONE HUNDRED YEARS OF TRUST

Dear Sir / Madam

Submission: Insurance Contract Law Review

This submission is from:

Motor Trade Association (Inc)
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The contact person in respect of this submission is:

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Thank you for the opportunity for MTA to provide comment on the Insurance Contract Law Review regarding the views of and its effect on the automotive industry.

Yours sincerely

Greig Epps
Industry Relationship Manager

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Introduction

The Motor Trade Association (Inc) (MTA) was founded in 1917 and last year celebrated 100 years of trust with the NZ motoring community. MTA currently represents approximately 3,600 businesses within the New Zealand automotive industry and its allied services. Members of our Association operate businesses including automotive repairers (both heavy and light vehicle), collision repair, service stations, vehicle importers and distributors and vehicle sales. The automotive industry employs 57,000 New Zealanders and contributes around \$3.7 billion to the New Zealand economy.

We appreciate the opportunity to comment on the Insurance Contract Law Review and have the following comments to make on behalf of the Collision Repair and Motor Vehicle Dealer sectors.

General Comments

Many MTA member businesses deal with insurance contracts daily. New vehicle dealers administer warranties which offer cover to policy holders for the first few years of a vehicle's life. Collision repairers see the insurance industry from a completely different angle, acting as third-party intermediaries between insurance companies and policy holders. Because of our experience with these business members, we suggest:

- Enforcement of existing regulations is key, and in many instances better enforcement of existing legislation and regulations would negate the need for regulatory change.
- Discussion of insurance should not be limited to the relationship between the insurer and the policy holder. There are often third parties (such as collision repairers) who are affected by the way in which insurance companies administer and give effect to insurance policies.
- Given the jargon used in insurance policies there should be some sort of feedback loop or process that tests whether the policy conditions meet the expectations of the insured.
- There should be some form of performance monitoring of insurers based on the number of complaints or declined claims. A high number in these areas may indicate some sort of issue that needs to be looked at by the regulator.

As well as the above, one thing we have noticed within the motor industry is the increasing rate of decline of insurance claims by reason of a technical breach in the terms of the insurance contract, even though that breach has no proven or even logical relevance to the substance of the claim. For example, in the case of a new car warranty, terms and conditions would usually require all servicing to be done by an approved service agent. So, if an unapproved party puts the oil in the car, this could be a breach of the policy and therefore a claim for another fault in the car (for example a faulty car seat, completely unrelated) is declined. While this may seem an extreme example, we see it happening throughout the automotive industry.

Specific Comments

Question 1: Are these the right objectives to have in mind?

The objectives fail to address (or at the very least are not clear about) the way that insurers work with third party service providers when fulfilling claims. For example, the ability of vehicle repairers to deal with customer claims in a fair and timely manner can be affected by the pressure from insurance companies to provide a range of ancillary services unrelated to the technical vehicle repair. In many instances, these ancillary services are not funded by contracts with insurance companies and thus place an undue burden on service providers like collision repairers, drawing resources away from the core operations of these businesses.

Comment on Diagram of Insurance Policy Lifecycle (Page 23)

Concerns collision repairers have in terms of claims handling and claims settlement (see answer to Question 1 above) could be incorporated into this lifecycle.

Question 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?

For there to be fair treatment of policy holders, MTA believes that insurance companies must also treat service providers fairly when those businesses are seeking to meet the same objective as the insurer: satisfying a policy holder's claim. MTA has received reports of insurance companies allegedly telling policy holders that a business the policy holder has chosen to perform remedial work, but which sits outside the insurer's "approved network" of providers, may not have suitable health and safety practices or might not guarantee their work. A particularly concerning allegation that has recently come to our attention was that an insurance company may have offered reduced excess payment to a policy holder to influence the policy holder's choice of service provider.

These allegations portray actions that are not fair practice for either the policy holder or the service provider business concerned. This is especially so for repair businesses that are members of the MTA, which requires adherence and compliance with health and safety legislation as an element of membership. As well, MTA stands behind members meeting their promise of a MTA warranty and their compliance with the Consumer Guarantees Act (which trumps any contractual promise of warranty).

Question 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)**

Most of the discussion on claims handling in the discussion paper is focused on home and life insurance. It would be good to include other examples of insurance claims, specifically related to vehicles.

There is an ongoing debate as to who is the technical expert capable of determining how a particular vehicle repair should be carried out – the vehicle repair business or the insurer. Repairers are required by the *Land Transport Rule: Vehicle Repair* section 2.1(1) to ensure that a damaged vehicle is repaired to within a safe tolerance of the state of the vehicle or component when manufactured.. Insurers will often seek to dictate their view of appropriate methods for repair. If the insurer does not follow the advice of the expert repairer, then should the insurer be held to account for any consequences from that decision?

Perhaps vehicle insurers could document how the methods they propose and require repairers follow will come “within safe tolerance of manufacturer’s specification”?

Question 21: What evidence is there of insurance or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?

The Responsible Lending Code already places an obligation on sellers of financial products to ensure that related or complementary insurance products offered for sale have relevance and benefit for the consumer. It seems that might not have been the case in Australia where PPI insurance was sold to consumers who did not have a job to lose – therefore the policy had no value. The Responsible Lending Code does not allow this to happen in New Zealand. It is possible that poor practices still occur, but that might be due to an inadequate level of enforcement rather than the absence of any relevant legal obligations.

MTA appreciates the opportunity to provide feedback on this matter.

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