

Submission

to

Ministry of Business, Innovation & Employment

on

Issues Paper:

Review of Insurance Contract Law

from

NZbrokers Management Ltd

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Your name and organisation

Name	Simon Moss
Organisation	NZbrokers Management Ltd (NZbrokers)

NZbrokers is a collaborative group of more than 58 independent general insurance broker businesses throughout New Zealand. Within our group we handle the non-life insurance policies for 160,000 mostly retail clients. These clients pay approximately \$595m premium annually.

Regarding the objectives of the review

1	Are these the right objectives to have in mind? <i>We agree, these are good objectives.</i>
2	Do you have alternative or additional suggestions? <i>No other objectives to add.</i>

Regarding disclosure obligations and remedies for non-disclosure

3	Are consumers aware of their duty of disclosure? <i>No, not sufficiently aware of this duty unless carefully explained by a broker. Even when this happens it's fair to suggest that some consumers will still disclose selectively and often underestimate the consequences of a non-disclosure.</i>
4	Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask? <i>Brokers frequently convey this point to consumers but their understanding remains inadequate.</i>
5	Can consumers accurately assess what a prudent underwriter considers to be a material risk? <i>Apart from obvious criminal matters most consumers have no understanding about material risks.</i>
6	Do consumers understand the potential consequences of breaching their duty of disclosure? <i>No, consumers don't understand the consequences.</i>
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? <i>Understanding and assessing risk is a learned capability. Consumers will know about the simple or obvious risks to which they are exposed but are unlikely to know which are more serious or frequent. For example a family moving to a new city may not be fully aware about local flood zones.</i>
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. For example a consumer who omits to declare a three year old traffic (minor speeding) offence and subsequently has a large claim declined. Or a consumer who omits to inform the insurer that the home has been transferred into family trust ownership and, then has a substantial fire claim declined because the wrong Insured name is on the policy.

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, if unintentional non-disclosure can be demonstrated it is unreasonable to prejudice the consumer.

10

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

The claim response should be proportionate to the significance of the non-disclosure.

11

Should non-disclosure be treated differently from misrepresentation?

Non-disclosure and misrepresentation should be treated the same way.

12

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

Yes, the more sophisticated the insurance buyer then the more responsibility they should carry for their disclosures or non-disclosures. Insurance buyers within a 'consumer' category should benefit from strong protection against unfair actions by insurers.

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?

Because of the Fair Insurance Code insurers were becoming more reasonable in their responses to incidents of non-disclosure however this will be dependent on the market conditions. For example, right now insurance companies are under stress from increasing claim costs and one of the consequences in this type of market is tougher claim responses.

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?

Insurers will consider the type of non-disclosure, is it more, physical or something else. The size of the risk or claim may also have an influence, as may the commercial relationship between the parties. The insurance market conditions are also a factor; in competitive conditions the decisions may be more favourable to the insurance buyer but in difficult trading conditions the insurer will often adopt a tougher position.

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>The Fair Insurance Code describes these behaviours and obligations.</i>
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>The Fair Insurance Code describes similar conduct rules as expressed by the IAIS.</i>
17	Does the lack of oversight over the full insurance policy 'lifecycle' pose a significant risk to purchasers of insurance?
	<i>I don't believe there is a lack of oversight at any stage of the insurance cycle.</i>
18	What has your experience been of the claims handling process? Please comment particularly on: <ul style="list-style-type: none"> • timeliness the information from the claims handler about: <ul style="list-style-type: none"> ○ timeframes and updates on timeframes ○ reasons for declining the claim (if relevant) ○ how you can complain if declined • The handling of complaints (if relevant)
	<i>The insurance market conditions are a significant factor in the timeliness and actions of insurers. In competitive conditions when insurers want more market share and their profits are good the decisions may be more favourable to the insurance buyer but in difficult trading conditions the insurer will often adopt a different position where there might be more centralised control, fewer staff, cost reducing measures etc which affect the services standards experienced by consumers.</i>
19	Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.
	<i>Only when the insurers offer and decision has been proven to be fair and reasonable.</i>
20	When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?
	<i>No</i>
21	What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?
	<i>Our experience is in the sale of Fire & General insurance products where incompetent personnel sell poorly designed and advised product to consumers, usually in banks and other one-dimensional sales environments where price is the predominant selection criteria.</i>
22	Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.
	<i>Potentially yes, therefore our network actively discourages volume sale rewards, prizes or similar.</i>

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

Yes, Fire & General insurance businesses have not been subject to these influences in the same way that the Life insurance industry has been. Commission levels are modest and consistent across the industry.

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.

No

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?

No

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?

Insurance is more complex than most people understand. Selecting the best product for your house or contents requires considerable understanding about the risks presented by your assets (for example do you own a drone, an electric bike that goes on the road, high value jewellery, artwork etc?), what the insurance policy (a legal contract) actually means, the responsiveness of the insurer, and other factors. But most consumers simply base their selection of price. Yes, this is very difficult without a capable adviser.

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, different policy types have different issues. For example, disclosure of material fact for

health policies often creates issues in knowing what material is.

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

For fire and general insurance, given the annual nature of the policies, there are usually not a lot of barriers to switching insurers.

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

Yes.

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?

Insurance is complex therefore it should not be sold without competent advice.

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?

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

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

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

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?

For an insurance buyer Section 9 provides relief to situations where insurers are not prejudiced as a result of a failure to comply with a strict time limit to notify claims. While that may result in some claims being brought after the expiry of the policy, Section 9 provides appropriate relief for insureds who are aware of the claim but failed to notify. If the insurer suffered no prejudice because of that, then to deny an insured cover due to breach of a policy condition seems inequitable.

The issue is actually complicated not in relation to actual claims but in respect to

circumstances that can give rise to a claim. Most claims made and claims made and reported liability policies require the insured to notify any circumstance that could give rise to a claim. What constitutes a “circumstance” may only become clear after the expiry of a policy. In the event an insured changes insurers if they are unable to notify a circumstance late, they will be without cover given cover with the new insurer excludes “known circumstances”. Again, as above, if the insurer has suffered no prejudice, a policyholder should not be denied cover but for the failure to have advised the circumstance before the expiry of the policy period.

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

We do not believe that Section 9 presents any problems for an insurance buyer, instead we see this section as providing positive outcomes.

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?

The Law Commission acknowledged that while there may be an issue of unfairness for insurers with Section 11, other jurisdictions had found difficulty in taking into account the statistical likelihood factor. It seems therefore that any attempted reform by removing certain types of exclusions might be too difficult to achieve in a way that does not introduce uncertainty, increased litigation or wipe out the original reform.

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 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?

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.

Insurers have a commercial agreement with each intermediary that allows it to recover losses incurred because of an intermediary error.

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?

Generally, insurance brokers consider themselves to be the agent of the insurance buyer and obtain written authority from their client to act on their behalf in relation to their insurance programme. Agency should be determined by the basis of written authorisation by the insurer or the insured.

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?

This is not a problem and nothing material has changed since the review in 2008. The provisions of the Intermediaries Act provide valuable protection for insureds. It requires intermediaries to operate a separate broking account for client funds and provides protection to insurance buyers in the event of a default by the intermediary.

Insurers have the ability to determine who they deal with and the credit terms of that relationship. Given they also carry the credit risk for payment of premium by insurance buyers, insurers usually have appropriate credit control processes to follow up agreed payment terms with the intermediary and take action if those credit terms are not complied with.

Likewise intermediaries also need to ensure the collection of premium from their clients to meet those credit term obligations and ensure policies remain in force. The obligations insurers and intermediaries have in relation to payment of insurance related taxes, levies and GST are irrespective of the credit terms the insurer may have with an intermediary or the credit risk associated with payment of the premium.

We also note that many changes are made around the time of the policy renewal date and 50 days or less does not allow sufficient time for these changes to be fully processed, paid and reconciled. Reducing the timeframe would only cause added expense and administration to insurers increasing costs to the consumer.

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

We do not agree there is a problem.

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?

Other comments

We welcome any other comments that you may have.

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