



13 July 2018

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
WELLINGTON 6140
Email: insurancereview@mbie.govt.nz

Greetings

Thank you for the opportunity to submit on the insurance review consultation.

Please find attached a submission in response to the insurance review consultation from Dr Kaye Ottaway, on behalf of the Executive Committee of the New Zealand Society of Anaesthetists (NZSA). The NZSA is happy for the submission to be published and publicly available in its entirety.

About the NZSA

The NZSA is a professional medical education society, which represents over 600 medical anaesthetists in New Zealand. Our members include specialist anaesthetists in public and private practice, and trainee anaesthetists. We facilitate and promote education and research into anaesthesia and advocate on behalf of our members, representing and championing their professional interests and the safety of their patients. As an advocacy organisation, we develop submissions on government policy and legislation, work collaboratively with key stakeholders, and foster networks of anaesthetists nationwide.

We are happy to answer questions and can be contacted at s 9(2)(a)

Yours sincerely

s 9(2)(a)

Dr David Kibblewhite
NZSA President

Submission on discussion document: Insurance contract law review

Your name and organisation

Name	Dr Kaye Ottaway
Organisation	New Zealand Society of Anaesthetists

Responses to discussion document questions

Regarding the objectives of the review

1	Are these the right objectives to have in mind? <i>The objectives as stated are good objectives.</i>
2	Do you have alternative or additional suggestions? <i>[Insert response here]</i>

Regarding disclosure obligations and remedies for non-disclosure

3	Are consumers aware of their duty of disclosure? <i>Regarding the Health Insurance Industry, consumers may not be fully aware of what constitutes a pre-existing condition. Identification of such requires accurate questioning, detailed medical knowledge and if a time period for coverage is part of the contract a review should be undertaken of that condition once that time period is finished.</i>
4	Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask? <i>Many consumers find medical information confusing and may not be aware that this is their duty.</i>
5	Can consumers accurately assess what a prudent underwriter considers to be a material risk? <i>For Health Insurance it would not be possible for a consumer to accurately assess a material risk.</i>
6	Do consumers understand the potential consequences of breaching their duty of disclosure? <i>There is information on Medical Insurance sites around disclosure and breach of duty. However, consumers may not fully understand what they need to disclose</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>Not in the case of health insurance as consumers may not understand the complexities of their medical conditions. They also may not understand complex technology.</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.
	<i>[Insert response here]</i>
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?
	<i>In asking for disclosure a Medical Insurance Company, with the consumer's permission under the Privacy Act, may seek clarification regarding pre-existing medical conditions.</i>
10	Should the remedy available to the insurer be more proportionate to the harm suffered by the insurer?
	<i>[Insert response here]</i>
11	Should non-disclosure be treated differently from misrepresentation?
	<i>[Insert response here]</i>
12	Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?
	<i>Medical Insurance needs to be considered separately to other forms of Insurance</i>
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?
	<i>There has been instances where this has been investigated.</i>
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?
	<i>Medical Records.</i>

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>There should be regular review of policies and premiums which should not be automatically</i>

	<p><i>increased by large amounts simply based on age. Medical Insurance offers incentive for healthy lifestyle e.g. exercise, fruit and vegetable consumption, and smoking. However, once the age of 60 is reached, and without consultation or review the premiums rise based on age not on physical or medical condition. A consumer could have no change in their health status and simply on the basis of age be charged much higher premiums. This needs to be reviewed.</i></p>
16	<p>To what extent is the gap between ICP 19 and the status quo in New Zealand (as identified by the IMF) a concern?</p> <p><i>[Insert response here]</i></p>
17	<p>Does the lack of oversight over the full insurance policy 'lifecycle' pose a significant risk to purchasers of insurance?</p> <p><i>Yes, their premiums are based on age and are not reviewed independent of age.</i></p>
18	<p>What has your experience been of the claims handling process? Please comment particularly on:</p> <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) <p><i>As providers of anaesthetic services prior to the introduction of the Affiliated Provider Scheme under Southern Cross, the consumer who had a contract with the insurance company would pay the three bills involved: Hospital, Surgeon and Anaesthetist. They would then be reimbursed by the Medical Insurance Company. With the advent of AP, the insurance company now contracts to lead providers; these may be surgeons, Hospitals or a Surgical/Hospital arrangement. The details of this contract, commissions, legal associations are not readily available to the consumer. The consumer is aware that there may be a gap to pay to the Lead Provider but will not be made aware of what subcontractors are receiving for their services. Prior to the introduction of AP consumers were required to pay the difference and were aware of which provider i.e. Hospital, Surgeon or Anaesthetist required a top up. This transparency has gone. Subcontractors may be delayed in receiving reimbursement due to the actions of the Lead Provider.</i></p> <p><i>With return to theatre for a complication of surgery consumers must have a claim put to ACC for Treatment Injury and until such time as this is declined, the Insurance Company will not pay for further treatment. This may leave the consumer out of pocket for these expenses. There needs to be better coordination of these services.</i></p>
19	<p>Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.</p> <p><i>Not applicable, although anaesthetists may be under pressure to accept a subcontract price for AP services in a take it or leave it manner by Lead Providers.</i></p>
20	<p>When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?</p>

	<i>[Insert response here]</i>
21	What evidence is there of insurers or insurance intermediaries mis-selling unsuitable insurance products in New Zealand?
	<i>[Insert response here]</i>
22	Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.
	<i>[Insert response here]</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>[Insert response here]</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.
	N/A
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?
	N/A
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>[Insert response here]</i>
27	What would the effect be if there were no exceptions? Please support your answer with evidence.
	<i>[Insert response here]</i>

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?
	<i>Medical Insurance Policies are complex and often difficult to compare because they are providing different policies and options. Persons and companies independent of the Insurance Companies need to be available to give informed details of the differences. There should be no</i>

	<i>incentives from a particular company to promote their schemes.</i>
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
30	What barriers exist that make it difficult for consumers to switch between providers?
	<i>Yes, for Medical Insurance as by switching providers' cover for pre-existing conditions may be lost and if you return to your original provider you are considered a new client and any benefits of prior membership are lost.</i>
31	Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.
	<i>See above.</i>
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?
	<i>Independent advisors.</i>

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?
	N/A
34	What are the most significant problems with the operation of section 9 of the LRA that any reform should address?
	<i>[Insert response here]</i>
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
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	caused problems for “claims made” policies in New Zealand?
	<i>Not a concern for Medical Insurance.</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>Not applicable to health Insurance.</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>[Insert response here]</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>[Insert response here]</i>

Regarding responsibility for intermediaries' actions

45	Do you consider there to be problems with the current position in relation to whether an
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	insurer or consumer bears the responsibility for an intermediary's failures? If possible, please give examples of situations where this has caused problems.
	<i>[Insert response here]</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>[Insert response here]</i>
47	If you consider there to be problems, what options should be considered to address them?
	<i>[Insert response here]</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>[Insert response here]</i>
49	If you agree that there are problems, what options should be considered to address them?
	<i>[Insert response here]</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>[Insert response here]</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>[Insert response here]</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>[Insert response here]</i>
53	Is there anything further the government should consider when seeking to consolidate the six Acts into one?
	<i>[Insert response here]</i>

Other comments

We welcome any other comments that you may have.

Consumers of health insurance who have been with a company such as Southern Cross for a considerable period originally signed up under a contract that has subsequently been changed to include Affiliated Providers. This has brought in another layer of contracts. Whereas the original contract was between the Insurance Company and the consumer, the Insurance company now contracts Providers to provide the service the consumer requires. The consumer may now only be able to have access to a service through an Affiliated Provider thus reducing the option of care provider, the venue and service provided. Some procedures may be required to be done without the input of anaesthesia under these contracts thus reducing the options available for consumers who did not originally sign up for this treatment option. Consumers are not made aware of the relationship between the Insurance Company and the Lead Providers. Are there incentives in place for these providers, will they profit from this arrangement and how, will these arrangements alter the level of services should subcontractors be unhappy with the conditions of their subcontracts?

Premiums for the consumer are often aged based with no regular review of co-morbidities and medical conditions. Disclosure of medical conditions is undertaken at the initial time of taking out the contract and is not regularly reviewed as is done for home and contents insurance.

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