



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Insurance Contract Law Reforms	Date to be published	4 December 2019

List of documents that have been proactively released

Date	Title	Author
20 November 2019	<i>Insurance Contract Law Reforms</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
20 November 2019	<i>DEV-19-MIN-0311</i>	<i>Cabinet Office</i>
November 2019	<i>Impact Statement: Insurance contract law reforms</i>	<i>MBIE</i>

Information redacted

YES

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In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Insurance Contract Law Reforms

Proposal

1. This paper seeks agreement to reform insurance contract law, and to consolidate and modernise existing insurance legislation.

Executive Summary

2. Effective insurance contract law is important for enabling well-functioning insurance markets that help consumers and businesses cope with unforeseen events. Problems have been identified with several aspects of the law, and both industry and consumer groups have been calling for reform for a number of years.
3. I launched a review of insurance contract law in February 2018. Following extensive public feedback, I am now seeking approval to reform aspects of New Zealand's insurance contract law. The proposals will enable more efficient insurance markets that better meet parties' expectations. The key proposals are outlined below.

Policyholders' duty of disclosure

4. Currently, a policyholder must (before entering into an insurance contract and on each renewal) disclose to the insurer all material information that would influence the judgment of a prudent insurer in setting the premium or deciding whether to insure the risk. However, consumers may not know what an insurer might consider material, and the consequences for failing to disclose information can be harsh.
5. I propose reforming this duty to require consumers to "take reasonable care not to make a misrepresentation" (effectively to answer any questions asked by the insurer truthfully and accurately). This approach has been implemented successfully in the UK and is the approach that has been recommended in Australia. I also propose requiring insurers to respond proportionately to any non-disclosure by policyholders.

Unfair contract terms

6. The Fair Trading Act 1986 prohibits unfair terms in standard form consumer contracts. That Act currently states that certain insurance terms cannot be declared unfair. Consumer groups have been concerned for some time that the current insurance exceptions mean that inferior protections are available compared to contracts in other industries.
7. I propose removing the current insurance exceptions and tailoring to insurance the exceptions which apply to all consumer contracts (i.e. exceptions for terms that define the main subject matter and upfront price of the contract). I propose seeking further feedback through an exposure draft Bill on different options for how the generic exceptions are tailored for insurance.

Assisting consumer understanding and decision-making in relation to insurance policies

8. Consumers often do not fully understand the terms of their insurance policies. This includes important features such as extent of cover and exclusions which may apply.
9. To help consumers understand and choose insurance policies, I propose requiring that consumer insurance policies be clear and in plain language. I also propose being able to prescribe in regulations specific presentation requirements and specific information that insurers must make publicly available.

Next steps

10. I propose consulting in mid-2020 on an exposure draft Bill giving effect to the above and other proposals.

Background

11. Insurance plays an important social and economic role, helping people cope with unforeseen life events and providing businesses with greater certainty. A well-functioning insurance system is integral to ensuring that insurance works for all New Zealanders. It is in the public interest to ensure that insurance provides the cover that it is expected to provide.
12. The law that governs insurance contracts in New Zealand consists of various pieces of legislation and case law. A number of issues (some long-standing) have been identified with New Zealand's insurance contract law:
 - 12.1 Consumers are sometimes unable to make an insurance claim for losses just because they innocently did not disclose matters to the insurer which they were unaware they had to disclose.
 - 12.2 A number of terms in insurance contracts cannot be declared "unfair" under the Fair Trading Act 1986 due to specific exceptions that only apply to insurance contracts.
 - 12.3 Unlike many other jurisdictions, New Zealand has no legal requirements in relation to the presentation of insurance policies in order to help consumers understand and compare different insurance products.
 - 12.4 The law is fragmented across six different Acts, some over 100 years old, and would benefit from consolidation and modernisation.
13. Some of these issues have been considered previously, including by the Law Commission, but reform stalled due to other priorities.
14. I launched a review of insurance contract law by publishing a terms of reference in February 2018. This was followed by consultation on an issues paper released in May 2018, and consultation on an options paper released in April this year [DEV-18-MIN-0012, DEV-18-MIN-0077 and DEV-19-MIN-0082 refer].
15. The Ministry of Business, Innovation and Employment (MBIE) received around 400 submissions on the options put forward for public consultation from a range of submitters, including consumers, consumer advocates, lawyers, insurers and representative bodies. Those submissions have informed the proposals in this paper.

Other insurance related initiatives underway

16. This is one of a number of insurance-related initiatives being undertaken across government. The focus of this review is reform of the legal rules that apply to insurance contracts generally so that insurance works as expected for the parties.
17. Other initiatives across government include the introduction of principles-based regulation of the conduct of insurers and other financial institutions [Cabinet agreed to introduce a new regime in September 2019, DEV-19-MIN-0237 refers] and work on improving or maintaining property insurance uptake.

Policyholders' duty of disclosure

Policyholders must currently disclose all facts that would influence insurers' judgement

18. Currently, a policyholder must (before entering into an insurance contract and before renewing a contract) disclose to the insurer all material information that would influence the judgement of a prudent insurer in setting the premium or deciding whether to insure the risk. Answering the insurer's questions does not relieve a policyholder of the duty to disclose other material information. If the policyholder does not disclose all relevant information, the insurer can decline claims and avoid the contract (i.e. act as if the insurance contract never existed). This is the case even if the non-disclosed information is unrelated to the claim and would not have led the insurer to decline cover.
19. This is problematic as, generally, consumers cannot reasonably be expected to know what an insurer might consider material, and therefore what facts must be disclosed. If consumers do not disclose correctly, the insurer can then take what is often a disproportionate action of avoiding the contract. Financial dispute resolution schemes see many cases relating to insurer responses to non-disclosure, and schemes are often unable to assist the consumer due to the current law.

I propose that consumers' duty be limited to answering questions accurately

20. I propose reforming the duty to instead require consumers to "take reasonable care not to make a misrepresentation", which effectively requires them to answer any questions asked by the insurer truthfully and accurately. This approach is most favourable to consumers. It also aligns with the current approach in the United Kingdom, and with the approach recommended by the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Several insurers said that it aligns with their current practice.
21. This change should not impact consumers in terms of the application process for obtaining insurance. The United Kingdom moved to this approach to disclosure over seven years ago and application forms have not increased in length in a significant way during this time. Furthermore, insurers already require a lot of specific information from consumers in order to accurately price the risk of offering insurance. The benefits should outweigh any costs for both parties as the change is likely to reduce the number of disputed claims due to non-disclosure better than the status quo or alternative options.
22. In addition, I propose that insurers be required to inform all policyholders of the duty to answer questions accurately and the consequences of failing to do so. Further, if

insurers seek permission to access medical records, then they should be required to inform consumers whether the insurer will access their medical records when deciding whether to insure the risk, or will only access their records at claims time (so that consumers know whether the insurer will take into account their medical records when deciding to insure and setting premiums).

I propose amending the disclosure duty for non-consumer policyholders

23. I also propose amending the standard of disclosure required of non-consumers (most of whom are businesses). While there is less evidence of a problem with disclosure obligations for businesses, I propose to require non-consumers to make a “fair presentation of risk”, which is the current UK position. This is similar to the status quo in practice and therefore would not require a significant change in existing processes, but it would provide certainty to insurers and policyholders in the following ways:
- 23.1 It would clarify what a policyholder is presumed to know (e.g. for a corporate, clarifies which of its personnel’s knowledge is also deemed to be known by the corporate).
- 23.2 It would require the policyholder to undertake a reasonable search for material information (rather than just provide their knowledge).
- 23.3 It would clarify that in some cases, it is up to the insurer to ask further questions based on information it receives from the policyholder.
24. While having different disclosure standards for consumers and non-consumers creates some complexity, I consider this appropriate. Business risks can be much more complex and therefore not as easily anticipated by insurers asking questions. Moreover business policyholders will generally have greater knowledge and resources.

I propose introducing proportionate remedies for non-disclosure and misrepresentation

25. To support these new duties, I propose new remedies for how insurers deal with instances of non-disclosure and misrepresentation by consumers and non-consumers. These would be applied proportionately based on the materiality of the non-disclosure and whether the policyholder was deliberate or reckless, and is based on the UK position. Insurers would be able to avoid contracts, reject all claims and retain premiums for deliberate or reckless non-disclosure that is material (i.e. the insurer would not have insured risk on the same terms or at all if it had the information). For non-disclosure that was not deliberate or reckless, the insurer would be able to avoid the contract but would have to return premiums, vary the policy terms or reduce the claim amount, depending on what the insurer would have done had it known the non-disclosed information when entering the contract.
26. This approach will put both parties back in the position they would have been in had insurers had all the information at the start, and creates the right disincentives against policyholders intentionally or recklessly withholding information. Most insurers said they already applied these remedies in practice, so it would codify good practice.

27. The existing legal remedies for pre-contractual misrepresentation by a policyholder would be brought into line with the new proposed remedies for non-disclosure.

Changes to the types of insurance contract terms that can be declared “unfair”

Various insurance contract terms currently cannot be declared unfair

28. The Fair Trading Act 1986 prohibits unfair contract terms (UCTs) in standard form consumer contracts. A term can be declared by the courts to be “unfair” if it would cause a significant imbalance in the rights and obligations of the parties to the contract, is not reasonably necessary to protect the legitimate interests of the party who would benefit from the term, and would cause detriment to a party to the contract.
29. Terms that cannot be declared to be unfair in any standard form consumer contract are terms that define the main subject matter of the contract and set the upfront price.
30. However, there are additional exceptions for insurance contract terms that cannot be declared to be unfair. These include terms that exclude or limit the insurer’s liability on the happening of certain events and terms that set the basis on which claims are settled. These exceptions mean that consumers do not have the same level of protection from some genuinely unfair terms in insurance contracts as they do for other types of contracts.

I propose removing the insurance-specific exceptions and clarifying how the generic exceptions apply to insurance

31. To protect consumers against genuinely unfair insurance contract terms, I propose removing the insurance-specific exceptions to the unfair contract terms prohibition. The proposal and status quo are illustrated in Annex 1. Exceptions for terms that define the main subject matter and upfront price of the contract would be retained, but the legislation would clarify how the main subject matter exception applies to insurance contracts.
32. However, I consider that exactly how the main subject matter is defined for insurance would benefit from further stakeholder consultation on an exposure draft, given the high level of interest in this matter from both insurers and consumer stakeholders. I therefore propose to instruct Parliamentary Counsel to draft two options. The first option would provide that the exception extends only to insurance terms that set the main subject matter in narrow terms (i.e. the house that is insured, but not terms that define all the exclusions to cover). This option is consistent with what has been proposed in Australia and is similar to what is currently in place in the UK. However this option was not consulted on in the options paper, as the options paper pre-dated the recent Australian proposals.
33. The second option would provide that the exception extends to terms that set the main subject matter in broad terms (i.e. terms that define the risk accepted by the insurer and the insurer’s liability). This would mean that policy limitations and exclusions that affect the scope of cover would be considered part of the main subject matter and would not be open to review for unfairness.

34. There are benefits and disadvantages of each of these options that I wish to seek stakeholder feedback on. A key risk of the first option is that insurers have stated that opening up a greater range of insurance contract terms, especially terms that specify exclusions to cover, to be challenged in this manner would create significant uncertainty as to the risk they are insuring and lead to increases in premiums. While there would be some uncertainty, I do not expect this to be a significant risk. The law would still provide that a term will not be declared unfair if it is necessary to protect legitimate business interests. I would expect insurers to be able to assess whether they can rely on a term on the basis that it is necessary to protect their legitimate interests. In most cases terms that exclude cover are necessary to protect the insurer because they set the boundaries of what the insurer is prepared to pay a claim for.
35. My concern with the second option is that any broader carve-outs for insurance terms would mean that terms setting out the conditions and exclusions to obtaining cover cannot be challenged. However, conditions of cover and exclusions are an area where the UCT protections may be particularly relevant for protecting consumers against genuinely unfair terms. This option would provide fewer consumer protections, but would allay insurers' concerns about uncertainty over the risk they are insuring.
36. For both of these options, there would be some increased compliance costs as insurers assess their policies for compliance, some of which may be passed to consumers. However, I consider this justified in light of the greater protection from genuinely unfair terms.
37. I intend to seek final Cabinet decisions in relation to the unfair contract terms provisions when I seek approval to introduce legislation amending insurance contract law.

I propose the Financial Markets Authority share responsibility for enforcement in relation to unfair contract terms

38. The Commerce Commission is currently solely responsible for enforcing the UCT provisions in the Fair Trading Act. I propose that the Financial Markets Authority (FMA) shares responsibility for enforcing the UCT provisions in relation to financial products and services. I propose updating the Financial Markets Conduct Act 2013 (FMC Act) to include UCT provisions in relation to financial services and "financial advice products" (which includes insurance).
39. Having dual regulators with the ability to enforce UCTs in financial services would work well with the FMA's new role in enforcing a conduct regulation regime for banks and insurers and provide them with another enforcement tool to use when investigating conduct breaches. It would also mean that there would be a choice of regulator depending on which one was best suited to the particular enforcement issue.
40. This would create an overlap in the jurisdiction of the Commerce Commission and FMA. This is similar to the existing shared responsibility for enforcement of 'fair dealing' provisions relating to misleading and deceptive conduct, with dual regimes in both the Fair Trading Act and FMC Act. The Fair Trading Act includes provisions clarifying which regulator will commence proceedings. The FMA and Commerce Commission also have a memorandum of understanding which guides how they

work together to approach enforcement of the 'fair dealing' provisions. These can be updated as needed to reflect the shared responsibility for enforcing UCT. Both regulators are comfortable with this approach.

Understanding and comparing insurance policies

Insurance contracts can be hard for consumers to understand and compare

41. Many insurance policies are complex and technical. Consumers often do not have the time or expertise to read and understand such long technical documents, and cannot be expected to always seek financial advice (for example, for travel insurance). Not understanding policies can lead to consumers purchasing an ill-suited policy, having difficulty comparing policies across different providers, and facing problems at claims time (when consumers may discover limits or exclusions that affect whether their claim is successful).
42. Some insurers have started to move to plain language policies, while others provide summary information sheets on insurance policies. Currently, there are no legal requirements in regards to language, presentation and length of insurance policies. Other jurisdictions such as the UK, Australia and US have more prescriptive legal requirements to help aid consumer understanding. While Australia has mandated summary sheets, the UK has both summary sheets (in line with European Union requirements) and a requirement for documents to be 'clear, fair and not misleading'.
43. If insurance does not meet consumers' expectations because of details of the policy that they were unaware of, trust in insurers may be eroded, leading to perceptions that insurers have deliberately created complex policies in order to discourage understanding and decline claims.

I propose requiring consumer insurance policies to be written and presented clearly

44. I propose:
 - 44.1 introducing a general obligation requiring consumer insurance policies to be written and presented clearly so as to assist consumer understanding. The wording of this general obligation will be refined during the drafting process and tested through exposure draft legislation. The obligation could mirror the existing FMC Act requirement for disclosure documents (which must be clear, concise and effective) and/or could require policies to be in plain language; and
 - 44.2 being able to prescribe in regulations specific requirements as to how policies are presented and worded. I envisage that the regulations would not fully prescribe the details of how insurance policies must be laid out, but may instead include a few requirements such as requiring exclusions to be highlighted prominently on the front page. I will undertake further consultation on the details of any such regulations.
45. Clear and well-presented insurance policies that better highlight certain key details should help consumers better understand the scope, limits and exclusions of their cover. This would in turn help reduce instances of claims being declined due to consumer ignorance as to the details of their policies. This may also help facilitate better comparison of different insurance policies.

I also propose including an ability to require insurers to publish or provide information

46. I also propose including an ability to prescribe by regulation that insurers must publish certain information in a certain format in relation to consumer insurance policies. This information could relate to the policies themselves, but could also relate to the insurer's business (such as claims acceptance rates).
47. Such information would assist consumers to choose an insurance provider and promote transparency about insurers to the public. Further consultation would be undertaken on the details of any such regulations.

I propose that the FMA be responsible for monitoring compliance with obligations relating to presentation of policies and publication of information

48. I propose that the FMA be responsible for monitoring compliance with the proposed requirements in relation to presentation of insurance policies and any future requirements in relation to publication of information in standardised form. This would expand the remit of the FMA, but is consistent with its current responsibility to monitor disclosure requirements for other regulated financial products.
49. I will consider further the enforcement tools that should be available to the FMA in respect of the above obligations (including considering FMA's existing tools in relation to disclosure requirements for other financial products). I seek Cabinet's authority to make decisions on penalty and enforcement tools to be included in an exposure draft Bill, and will seek final Cabinet decisions when seeking approval to introduce legislation amending insurance contract law .

Codify the duty of utmost good faith

50. There is a common law duty of utmost good faith that applies to insurance contracts. Both the insurer and the policyholder have a duty to act in good faith. Whilst it is not written into legislation, parties can seek damages for breaches of the duty as it is an implied term of the contract. However, many policyholders would not know about the duty of good faith.
51. The courts have recently stated that for insurers the duty is that they must disclose material information; act reasonably, fairly and transparently; and process claims in a reasonable time. Despite these obligations there is little precedent on what specific conduct would be a breach of the duty for the insurer, and it may be difficult for policyholders to pursue claims against insurers for a breach of the duty.
52. I propose to state in legislation that the duty applies to all insurance contracts for both parties. This would highlight to policyholders the existence of the duty. The FMA would be able to take court action in relation to breaches of the duty by insurers (and policyholders could continue to seek redress through dispute resolution schemes or the courts). Any such actions would also give more certainty as to what types of conduct is considered a breach.
53. I propose that pecuniary penalties would not apply for breach of the duty, as that would be better dealt with through the regulation of the conduct of financial institutions regime. Other overlaps with that work will be considered as part of the drafting process.

54. The duty of utmost good faith currently includes the duty on policyholders to disclose material information to insurers prior to entering into an insurance contract. Legislation would make clear that codification of the utmost good faith duty would not mean continuation of the current disclosure duty. Instead the disclosure proposals referred to at paragraphs 20-27 of this paper would apply instead.

Other issues

55. I propose a number of other amendments to insurance law as set out in Annex 2. These proposals address some problems in relation to how insurance law has been operating that are of a more technical nature, and propose consolidating and modernising certain insurance legislation. While the proposals deal with issues of a technical nature, they are important and will help enable insurance markets to operate efficiently while taking into account the interests of policyholders.
56. I also seek Cabinet's agreement to delegate authority to me to make further decisions in relation to other policy matters, consistent with the policy intent of this paper, on issues that arise in the drafting process. There will be consideration of overlaps with other government work during the drafting process.

Consultation

57. The Treasury, the FMA, the Commerce Commission, the Ministry of Justice, the Department of the Prime Minister and Cabinet (Policy Advisory Group), and the Reserve Bank were consulted on this paper.
58. Extensive consultation was undertaken through an issues and options paper during the review process. 120 submissions were received on the issues paper and around 400 submissions on the options paper. Submitters included insurers, representative bodies, consumers, consumer advocates and legal professionals.
59. To ensure that the proposed changes are workable in practice, I also seek Cabinet's authority for me to approve the release of an exposure draft Bill for public consultation.

Financial Implications

60. Some proposals will have funding and resourcing implications for the FMA, in particular the plain language requirements for insurance policies and shared responsibility for enforcing unfair contract terms in financial services.

61.  Constitutional conventions

Legislative Implications

62. The proposals in this paper will be implemented through a Bill that consolidates certain insurance legislation into one Act, and that makes changes to the Financial Markets Conduct Act 2013 and Fair Trading Act 1986. Supporting regulations will also be required.

63. I intend to submit a bid for the 2020 Legislation Programme and have legislation ready to introduce to the House by the end of 2020.

Impact Analysis

64. The impact analysis requirements apply to the proposals in this paper. An impact statement has been prepared and is attached as Annex 3.

Quality of the impact analysis

65. MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

Human Rights

66. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications

67. There are no gender implications for the proposals in this paper.

Disability Perspective

68. This paper is consistent with the New Zealand Disability Strategy 2016-2026 and the Disability Action Plan 2014-2018.

Publicity and Proactive Release

69. I intend to publicly announce the decisions in this paper after Cabinet approval. The paper will also be published on MBIE's website.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

1. **note** that in April 2019, the Cabinet Economic Development Committee agreed to the release of an options paper seeking feedback on options for addressing various issues with New Zealand's insurance contract law [DEV-19-MIN-0082 refers];

Policyholders' duty of disclosure

2. **agree** to change policyholders' duty to disclose material information so that the duty for consumers is to take reasonable care not to make a misrepresentation;
3. **agree** to change the disclosure duty for non-consumers so that they are required to make a fair presentation of risk;
4. **agree** to change the remedies for non-disclosure and misrepresentation for both consumers and non-consumers to provide proportionate consequences based on how the insurer would have reacted to the information at application time, and

whether the policyholders intended to mislead or deceive the insurer or were reckless;

5. **agree** to require insurers to inform policyholders of the duty of disclosure and its consequences before they enter the contract;
6. **agree** that if an insurer seeks permission to access medical or other third party records about a consumer, the insurer must inform consumers of the types of third party information they are likely to access and when this is likely to happen;

Unfair contract terms

7. **agree** to remove insurance specific exemptions from the unfair contract terms provisions in the Fair Trading Act 1986 and clarify how the generic exemptions apply to insurance;
8. **agree** for the Minister of Commerce and Consumer Affairs to consult as part of an exposure draft Bill consultation on two different options for clarifying how the generic exemptions apply to insurance:
 - 8.1. provisions that define the main subject matter of insurance contracts in narrow terms (i.e. to describe the thing that is insured e.g. a house, a car, the life of a person); or
 - 8.2. provisions that define the main subject matter of insurance contracts in broad terms (i.e. terms that define the risk accepted by the insurer);
9. **agree** that the Financial Markets Authority share responsibility with the Commerce Commission for enforcing compliance with the unfair contract terms provisions in relation to contracts for financial services or relation to financial advice products;

Comparing and understanding consumer insurance policies

10. **agree** to require consumer insurance policies to be presented and worded clearly to assist consumer understanding;
11. **agree** to allow for regulations to prescribe specific presentation requirements in relation to consumer insurance policies, for the purpose of improving understanding of insurance policies;
12. **agree** to allow for regulations to prescribe that insurers must publish certain information in a prescribed format in relation to consumer insurance policies, to assist consumers with choosing an insurance provider and to promote transparency;
13. **note** that further work will be undertaken to determine any form and presentation requirements to be prescribed in regulations;

Duty of utmost good faith

14. **agree** that the duty of utmost good faith be codified in legislation and will apply to both parties in an insurance contract;

Miscellaneous and legislative implications

15. **agree** to the further policy changes set out in Annex 2;

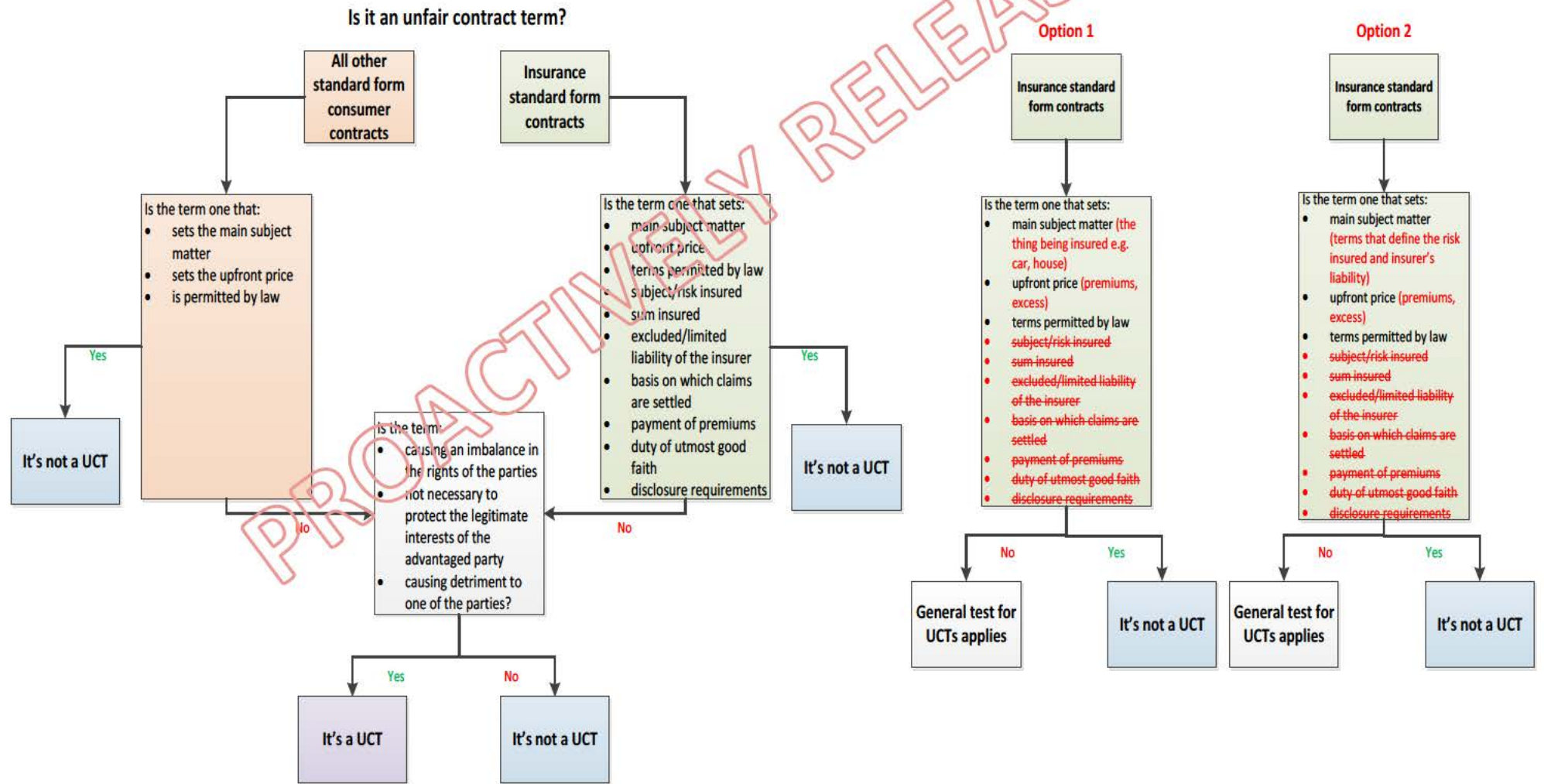
16. **agree** that the Financial Markets Authority be responsible for monitoring and enforcing compliance with the requirements referred to in recommendations 5-6 and 10-12;
17. **authorise** the Minister of Commerce and Consumer Affairs to make decisions on penalty and enforcement tools to be included in an exposure draft Bill in relation to failure to comply with the requirements proposed in this paper;
18. **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the recommendations above;
19. **authorise** the Minister of Commerce and Consumer Affairs to approve and release an exposure draft Bill and related commentary for public consultation; and
20. **authorise** the Minister of Commerce and Consumer Affairs to make decisions consistent with the proposals in these recommendations on any issues which arise during the drafting process.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

ANNEX 1: STATUS QUO AND PROPOSED OPTIONS (PROHIBITION ON UNFAIR CONTRACT TERMS IN INSURANCE CONTRACTS)



ANNEX 2: ADDITIONAL POLICY DECISIONS

Topic	Status quo	Reason for change	Proposed change
Insurer responsibility for intermediaries' failure to pass on information	Insurers are deemed to know information known to intermediaries such as brokers and agents. If an intermediary fails to pass onto the insurer information about the policyholder (e.g. that the policyholder had a pre-existing condition), the insurer is still deemed to know that information.	Some intermediaries are selected by policyholders and not closely controlled by the insurer. Not appropriate that insurer always bears the consequences if intermediaries do not pass on information (e.g. pay out a claim even though it would not have provided cover had it known about a matter the intermediary knew about).	Introduce a legislative requirement for intermediaries to pass onto the insurer all relevant material information known to the intermediary. This means the insurer can recover losses against the intermediary if the intermediary fails to pass on information.
Insurers' ability to exclude cover in some situations	Section 11 of the Insurance Law Reform Act 1977 provides that if a policy exclusion applies in relation to a claim but the exclusion did not cause or contribute to the loss, the insurer must accept a claim e.g. policy excludes cover if vehicle driven for commercial purpose, but commercial driving did not contribute to loss (vehicle was hit while stationary at stop light).	Some circumstances raise a greater statistical likelihood of loss even if they do not cause the loss. e.g. greater likelihood of loss for commercial vehicles because tend to be driven more. Section 11 limits insurers' ability to exclude such risks or charge higher prices.	Provide that certain policy exclusions are not subject to section 11 (the Minister to make decisions on the details having regard to the recommendations of the Law Commission - likely include where vehicle used for commercial purpose where not permitted by policy, and qualifications of the driver of vehicle). Introduce a regulation-making power so that regulations can add that further types of exclusions are not subject to section 11.
Third party claims for liability insurance money	Section 9 of the Law Reform Act 1936 allows a third party who has been wronged by a policyholder to access the policyholder's insurance in some cases (eg if the policyholder is missing or insolvent). To do this, section 9 provides for a property right called a "statutory charge" to be attached to the insurance proceeds.	There are multiple issues with how the statutory charge operates, including whether costs are to be paid out to policyholders to defend a claim, as well as other timing and priority issues when there are multiple statutory charges.	Replace section 9 with a provision that allows third parties to claim directly against the insurer. The third party would stand in the shoes of the insured person. There should be a duty on the insurer, the insured and certain other parties to give necessary information to third parties to support the rights of the third party.

Topic	Status quo	Reason for change	Proposed change
Cover for long-expired liability policies	Section 9 of the Insurance Law Reform Act 1977 provides that insurers cannot decline a claim on the basis that the policyholder did not notify the claim to the insurer within time limits set out in the policy, unless the insurer has suffered prejudice.	Under liability insurance policies, claims may arise many years after the event giving rise to the claim and many years after the insurance policy has expired. Section 9 means that insurers cannot know with certainty their exposure to risk under expired policies and must set aside large reserves for possible future claims.	Provide that an insurer under certain types of liability policies can decline a claim if the policyholder notifies the claim or the circumstances giving rise to a claim after a defined period after the end of a policy term. Note if the policyholder was not aware of the relevant circumstances until after the end of the policy term, the policyholder should be able to claim under their next policy (if any).
Registration of assignments of life insurance policies	The registration system for transfers and mortgages of life insurance policies requires paper documentation. Policy documents must be physically held by the assignee.	Paper and physical documentation requirements are outdated.	Update to remove prescriptive form requirements.
Limits on life insurance payments for minors	Section 67B of the Life Insurance Act 1908 limits the payment amount for life insurance policies for minors under 10 years old. The limit is \$2000 plus the interest-adjusted total amount of premiums paid under the policy.	The amount paid out under life insurance policies is generally insufficient to cover funeral costs.	Change limit to \$10,000 plus CPI adjustment.
Consolidation of legislation	New Zealand's insurance contract law is covered by multiple statutes, some of which have antiquated language.	To improve legislative clarity and succinctness.	Consolidate Insurance Intermediaries Act 1994, Insurance Law Reform Act 1977, Insurance Law Reform Act 1985, Life Insurance Act 1908, and Part 3 of the Law Reform Act 1936 into one Act. Remove redundant provisions throughout the statutes.