



# HOW COULD INSURANCE LAWS BE BETTER?



## → REVIEW OF INSURANCE CONTRACT LAW

Insurance plays an important role in the lives of New Zealanders, helping us cope with unforeseen life events and providing businesses with greater certainty.

Insurance law underpins the insurance system and is crucial to ensuring insurance serves its purpose for all New Zealanders.

We want to make sure that our insurance laws allow all parties (insurers and purchasers of insurance) to have confidence in how insurance works and for interactions between parties to be fair, efficient and transparent.

We have heard from consumers and from those in the insurance industry that there are problems with our insurance laws.

We need your input in order to understand what is working well and what isn't.

Submissions are due by Friday 13 July 2018. You can email us your views directly via [insurancereview@mbie.govt.nz](mailto:insurancereview@mbie.govt.nz)

Or you can access the full Issues paper [here](#).

## SUMMARY OF KEY ISSUES FOR CONSUMERS



### Disclosure of information to insurers

When buying an insurance policy, consumers are required to tell their insurer all information that the insurer would consider "material" in deciding whether to provide insurance cover.

We have heard that there are three main problems for consumers with this disclosure duty for insurance contracts:

#### → Consumers don't understand what needs to be disclosed

The consumer must tell the insurer all information that the insurer would consider "material". What an insurer considers to be "material" information may be different to what the consumer understands to be material.

#### → Consumers may not be aware of the duty of disclosure.

Consumers may be breaching a duty of disclosure that they are not aware of. Consumers may not understand that their disclosure duty goes beyond answering the specific questions the insurer asks.

#### → The consequences for breaching disclosure obligations can be too harsh.

The insurer can refuse all claims under an insurance policy if the consumer does not share a material fact even if the undisclosed fact is unrelated to the claims made, the non-disclosure did not cause any loss to the insurer, and the non-disclosure was innocent.

### Questions:

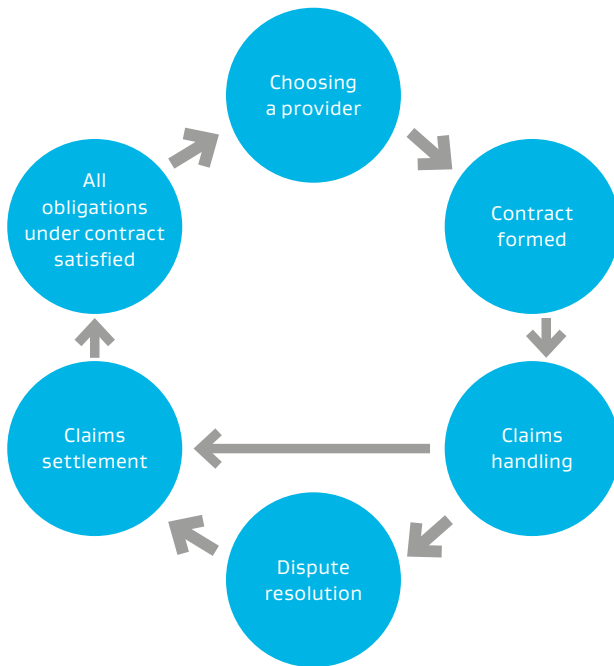
- › Were you aware of your general duty to disclose all material information when applying for insurance, and that the duty goes beyond the specific questions you are asked in your application for insurance?
- › If you were aware of your duty to disclose material information, who informed you of this duty?
- › When applying for insurance, do you understand what material information you need to give the insurer so they can assess the risk of providing you with insurance?
- › Have you ever breached your duty of disclosure? What consequences were there for you in terms of the insurance cover you were able to obtain under the policy following the breach?



## Regulation and oversight of insurers' conduct

The conduct of insurers and associated intermediaries (e.g. insurance brokers) involved in selling insurance can significantly influence outcomes for consumers. There is currently no government regulator that has oversight of the full policy 'lifecycle'. In this regard New Zealand is lagging behind other comparable overseas jurisdictions.

A stylised lifecycle of an insurance policy:



We are seeking feedback on whether consumers are experiencing issues with the conduct of insurers. We have heard of negative experiences in the areas of claims handling and in sales practices within the insurance sector.

### Claims handling

We have heard from consumers who have been engaged in protracted disputes with their insurance companies in regards to claims handling. These disputes may not go through any formal internal or external dispute resolution process, but are negatively impacting consumer outcomes.

### Incentives in sales and advice

We are aware that commissions paid to those selling insurance may be incentivising behaviours that are negatively impacting consumers. An example of this is 'replacement life insurance' (or insurance 'churn'). Commissions paid to those selling life insurance have been found to be incentivising some in the industry to replace policies for existing customers (in order to gain a commission on the new policy).

### Questions:

- › 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?
- › What has your experience been of the claims handling process? Please comment particularly on:
  - **information from the claims handler about:**
    - timeframes and updates on timeframes
    - reasons for declining the claim (if relevant)
    - how you can complain about claims decisions
  - **The handling of complaints (if relevant)**
- › Have you ever been sold an insurance product that was inappropriate for your circumstances? Or are you aware of this happening to others?
- › Have you ever felt undue pressure from an insurer or insurance intermediary (such as an insurance broker or salesperson) to buy or renew an insurance policy?

### Undue pressure during insurance sales

We are seeking feedback on whether consumers are being subjected to undue pressure by those selling insurance. In Australia, a review of sales of insurance resulted in refunds to thousands of customers because it was found they had been subjected to misleading and pressured sales practices. We are interested to hear whether New Zealand consumers are experiencing similar issues.

### Selling consumers insurance products that are unsuitable for them

There have been issues overseas with consumers being sold products that are unsuitable for them because they cannot make claims under the policy. In Australia they have referred to this as the sale of 'junk insurance'. For example, credit card insurance was sold to unemployed customers who were not eligible to make claims under the policy.



## Comparing and changing policies and providers

To make an informed purchasing decision about insurance, consumers need information about price, insurance cover offered by the policy and the quality of service offered by the insurer. However, insurance contracts can be very complicated and the quality of service offered by the insurer can be difficult for a consumer to assess before an unexpected event occurs and they need to make a claim on the policy.

We're interested to hear about consumers' experiences when purchasing insurance.



### Questions:

- › When considering the purchase of insurance, what sources of information do you draw upon to make your decision? (eg comparison websites, talking directly to different insurance providers, talking to an insurance broker or financial adviser)
- › How long do you think you typically spend reading an insurance policy before you purchase it?
- › Do you think you have a good understanding of the insurance policies you currently hold?
- › If not, what is the main barrier to you understanding your insurance policy?
- › Have you ever been in a situation where you thought you had a certain level of cover under your policy, but when you went to make a claim found you were not covered? If so, please provide us with a description of the situation.
- › Would you like to switch insurance providers? If so, what is your main barrier to switching?
- › What, if anything, should the government do to make it easier to compare and change insurance providers and policies?



## Unfair contract terms

Under the Fair Trading Act 1986, contracts cannot contain unfair contract terms. Insurance contracts are subject to these rules about unfair contract terms. However, there are some specific exceptions that allow insurers to include terms in contracts without them being declared unfair.

The exceptions are in relation to:

- a. the subject or risk insured against
- b. the sum insured
- c. excluded/limited liability on the happening of certain events
- d. the basis on which claims may be settled
- e. payment of premiums
- f. duty of utmost good faith that applies to both parties
- g. requirements for disclosure.

We have heard concerns from consumers about the exceptions for insurance. We understand these concerns to be that action cannot be taken against some unfair contract terms in insurance contracts because of the exceptions.

### Questions:

- › Are you aware of instances where the current exceptions from the unfair contract terms provisions under the Fair Trading Act for insurance contracts are causing problems for consumers? If so, please give examples.
- › More generally, are there terms in insurance contracts that you consider to be unfair? If so, why is that?

