

**Review of insurance contract law**  
**TERMS OF REFERENCE**  
March 2018

**Aim of the review**

The Government wants to ensure that New Zealand's insurance contract law is facilitating well-functioning insurance markets that enable individuals and businesses to effectively protect themselves against risk.

At present, New Zealand's insurance contract law is antiquated and fragmented. There are six Acts governing insurance contracts in New Zealand (two of which date back to 1908) and numerous issues have been raised with the legislation.

The review will:

- assess a number of discrete issues that have been raised with insurance contract law;
- develop recommendations on any legislative changes needed to address those issues; and
- modernise New Zealand's insurance contract law and consolidate it into one Act.

**Context**

*Insurance facilitates greater individual welfare and economic growth*

Insurance provides compensation for the losses that consumers and businesses can face when an unexpected, harmful event occurs. Insurance also encourages innovation and supports productivity by transferring the risk of loss from one business to another. Having insurance also means that consumers and businesses have less need to hold reserve funds for dealing with emergencies, thereby freeing up money for more productive uses.

A poorly functioning insurance market makes it difficult to price risk and may leave households, businesses and Government vulnerable, or incurring excessive costs (through either excessive premiums or excessive loss in the event of harm). It can also reduce purchaser confidence, with negative flow-through to other sectors of the economy. Given these points, it is in the public interest to ensure that insurance contracts provide the protection that they are intended and expected to provide.

*Effective regulation of insurance is important for well-functioning insurance markets*

Insurance contract law is one part of the broader insurance regulatory system. Insurance contract law governs the contracts that are formed when one person pays to transfer their risk to another party. There are six pieces of insurance-specific legislation that govern the insurance contract relationship:

- Law Reform Act 1936 (Part 3)
- Insurance Intermediaries Act 1994
- Insurance Law Reform Act 1977
- Insurance Law Reform Act 1986
- Life Insurance Act 1908
- Marine Insurance Act 1908

Other general or financial service laws, for example, Part 2 of the Financial Markets Conduct Act 2013 also apply to insurance products.

Effective regulation of insurance contracts is important so that:

- Insurers and insureds are able to transact with confidence (including insureds having certainty in the event of loss, insurers being able to effectively measure and price risk and insureds being able to access and understand the information they need to make informed decisions).
- Interactions between insurers and insureds are fair, efficient and transparent at all points in the lifecycle of an insurance policy.

However, a number of issues have been raised with New Zealand's insurance contract law that are potentially undermining the effectiveness of New Zealand's insurance markets.

*The law has been reviewed previously but reform has stalled*

Issues with insurance contract law have been frequently considered over the past 20 years, but progress on law reform has stalled for various reasons. Previous work included:

- 1998 Law Commission report on "Some Insurance Law Problems"
- 2004 Law Commission Report on "life Insurance"
- 2007 Cabinet agreement for an Insurance Contract Bill (discontinued as priority was given to other areas)

Some of the issues raised by the Law Commission have been, or are being, addressed through other reform of general laws. However, a number still remain. Many of the issues raised have already been subject to reform in the United Kingdom and Australia.

### **Approach to the review**

The review will be led by the Ministry of Business, Innovation & Employment (MBIE). We plan to run the review in an open and transparent manner and will actively seek input from stakeholders throughout the process. It will be important to understand and consider the views and needs of a range of interested parties, including consumer and business policyholders, insurers, intermediaries, regulators, dispute resolution schemes, legal advisers and academics.

The findings of previous reviews of insurance contract law will be drawn on to inform the current review.

### **Scope**

The review will focus on discrete issues that have been identified, including that:

- disclosure obligations for policyholders and remedies for non-disclosure are seen as onerous;
- there are a range of technical issues that have been identified by the Law Commission and industry;

- the International Monetary Fund's Financial Sector Assessment Programme has identified areas where there is no conduct regulation of insurers and intermediaries;<sup>1</sup>
- the precise scope of those terms defined to be not "unfair contract terms" under the Fair Trading Act 1986 may need to be considered, and whether these could be moved to insurance-specific legislation; and
- some consumers may find it hard to find and compare prices and policies.

The review will cover all types of insurance, as many of the issues raised will be common to many forms of insurance products.

The following areas are out of scope for the review:

- underinsurance – for instance whether consumers are underestimating the level of cover needed under sum-insured home insurance policies (insurers already face an incentive to encourage consumers to accurately estimate their insurance needs);
- any competition issues related to the structure of insurance markets (the remit of the Commerce Commission);
- the prudential regulation of insurers (separately being considered by the Reserve Bank in its review of the Insurance (Prudential Supervision) Act 2010);
- earthquake insurance as governed by the Earthquake Commission Act 1993 (separately being considered by the Treasury) and accident compensation insurance as governed by the Accident Compensation Act 2001;
- regulation of financial advisers, and the dispute resolution regime in relation to insurance (considered in the review of the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008).

## Process

The next step will be the development and release of an issues paper for public consultation in mid-2018. This will provide an opportunity for public comment on the objectives for insurance contract law, and on the issues that have been identified.

The proposed process for the review is as follows:

- Mid 2018: Release of an Issues Paper for consultation.
- Late 2018: Release of an Options Paper for consultation.
- Mid 2019: Policy decisions made; to be followed, if warranted, by a legislative process.

There will be engagement with stakeholders throughout, beyond the formal consultation process.

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<sup>1</sup> Regulation of financial advisers will be outside of the scope of this review to the extent the issue has already been considered in the review of the Financial Advisers Act 2008.