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**From:** Insurance Review  
**To:** no-reply@mbie.govt.nz  
**Subject:** RE: Response to Review of insurance contract law comprehensive form

**From:** no-reply@mbie.govt.nz [mailto:no-reply@mbie.govt.nz]  
**Sent:** Friday, 5 July 2019 3:34 p.m.  
**To:** Insurance Review  
**Subject:** Response to Review of insurance contract law comprehensive form

### **Preamble question 1**

#### **Do you have any feedback regarding the objectives for the review?**

BNZ Life agrees that the objectives of the review are reasonable and promote fair outcomes for insurers and customers.

We equally feel that a fifth objective should be included; one which helps ensure that insurance remains accessible and affordable for consumers.

Many of the proposed reforms are likely to increase costs to insurers, which could have the unintended consequence of increasing the price of insurance (as these additional costs may be passed onto consumers).

Whilst this objective is part of the criteria being considered for some of the options within the paper (for example the criteria that MBIE has determined for addressing the identified in section 33(e)) we feel that it would be beneficial to have this as an overarching objective against which all the proposed reforms can be better assessed.

### **Preamble question 2**

#### **Do you have feedback in relation to the options for disclosure by consumers?**

Of the options presented, option 1 (duty to take reasonable care not to make a misrepresentation) provides the most balanced approach, ensuring that consumers have clarity on what they need to disclose and have a responsibility to do so truthfully, whilst also placing responsibility on insurers to ensure that the questions asked of consumers are designed to obtain the information necessary to understand/underwrite the risk. Although it may be implicit in this approach, we think that there should be express wording to clarify that a consumer should not “make a misrepresentation or omit relevant information”. Examples of the types of information considered relevant should be provided in the application to make it clear what “relevant information” might include.

We do not favour Option 2 (what a reasonable person would know to be relevant) as we feel that this option would leave a high degree of customer uncertainty as to what needed to be disclosed, with different consumers likely to have different views on what is ‘reasonable’. Any change made should better support customers through the disclosure process, rather than hinder them.

We do not support Option 3 as currently framed. This option would increase costs to consumers of accessing insurance cover, and potentially delay the implementation of any cover. Medical records alone do not necessarily provide all relevant information – for example, they may not necessarily contain information about lifestyle choices, which could have a significant bearing on underwriting, and would be needed in addition to medical records if this option is selected.

### **Explanatory text for qn2**

#### **Preamble qn 3 and 4**

**Should insurers be required to warn consumers of the duty to disclose? Should insurers be required to warn all insureds of the duty to disclose, including businesses?**

BNZ Life strongly agrees that insurers should alert consumers to both the duty to disclose, and the risks associated with non-disclosure.

We note that the Options Paper refers specifically to warning insureds of the duty in writing before a contract is entered (page 14 of the options paper). The “in writing” requirement would appear to be overly prescriptive and does not account for the various business models currently in operation, e.g. those including telephone-based customer interactions. Where other models apply, there should be a cooling off period to allow the insured to receive and consider the duty once received in writing.

**Should insurers have to tell consumers what third party information they will access, when they will access it and if they will use it to underwrite the policy?**

BNZ Life is supportive of the view submitted by the FSC.

Fundamentally, we agree that it is appropriate for the insurer to advise the customer on the third-party information they will access. However, we consider the requirement should not be prescriptive and should allow for an appropriate level of flexibility, e.g. a generic statement to the effect that at relevant times during the policy lifecycle, the insurer may obtain appropriate records and information, and make enquiries regarding the insured, where that is necessary for the insurer to provide the service required to the customer.

**Preamble q 5**

**What is your feedback on the options in relation to disclosure by businesses?**

We note the submission of the FSC, and have no further comment to make in this area.

**Explanatory text for question 5**

**Preamble q 6**

**If we have a separate duty of disclosure for businesses, should small businesses have the same duty as consumers? If so, how should small businesses be defined?**

We note the submission of the FSC and have no further comment to make in this area.

**If a duty of fair presentation is adopted, should businesses be allowed to contract out of the duty? What are the pros and cons? If businesses are allowed to contract out the duty of fair presentation, should the duty apply to all businesses?**

We note the submission of the FSC and have no further comment to make in this area.

**Preamble question 8**

**What is your feedback in relation to the disclosure remedy options?**

BNZ Life is supportive of the view submitted by the FSC; that Option 1 provides for proportionate remedies whilst incentivising appropriate consumer disclosure behaviours.

In practical terms however, we would note that establishing when non-disclosure may be intentional or unintentional in nature could be challenging and create potential uncertainty for customers. Therefore, Option 3 could be considered a more pragmatic option, given it would remove the need for insurers to attempt to assess intent, thereby reducing potential consumer uncertainty[?]. The treatment of these issues needs to be simple for customers to understand, and practical for insurers to manage.

Option 2 has the potential to create such uncertainty for insurers that the costs of premiums for customers may negate any potential customer benefit.

**Explanatory text for question 8**

**Preamble question 9**

**Is it fair to require insurers to pay claims that are unrelated to a non-disclosure or misrepresentation, even if the insurer would not have entered into the contract had they known the facts?**

In circumstances where the customer's medical history or lifestyle information would have meant that insurer would not have entered into the contract, it is reasonable that the insurer be able to cancel the policy without being required to pay the claim.

**Should insurers be able to offer reduced cover or ask the insured to cover the difference in order to recoup the amount they would have charged if they had the facts?**

BNZ Life agrees that insurers should be able to offer reduced cover or apply policy exclusions, if non-disclosure or misrepresentation is discovered without the presence of any claim.

The option of asking the insured to cover the difference between premiums retrospectively does not incentivise customers to disclose truthfully and accurately at the time of application, and this is therefore not our preferred option.

**Should we clarify that where a contract has been avoided and all claims rejected, the insured is not required to refund claims money if it is not easily returnable and would hard and unfair to the insured? Why or why not?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Do you agree that section 35 of Subpart 3 of the Contract and Commercial Law Act should not apply to insurance contracts? Are there any other sections of the Contract and Commercial Law Act that should not apply to insurance contracts?**

We do not have any specific comment to make in this area.

**Preamble qn 13**

**Do you agree with the proposed change to the misrepresentation provisions in the Insurance Law Reform Act 1977? Why/why not?**

BNZ Life agrees with this proposed change. There appears to be no reason to differentiate between the remedies in the Insurance Law Reform Act 1977 and those being considered here, as the two have a similar effect.

**Preamble qn 14**

**Which of the terms in Table 4 are unfair? In your opinion, are they exempt from the unfair contract terms prohibition?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Preamble qn 15**

**What is your feedback on the UCT options?**

BNZ Life is supportive of the view submitted by the FSC in this area. As to Option 1, we say further that, given there is some overlap between an 'unfair contract term' and the conduct issues highlighted by the regulatory bodies in New Zealand and in Australia, we also agree that the variation on this option (for the regulator to issue guidance to help define what generic exceptions mean in the insurance context) might be worthy of further exploration.

**Explanatory text for question 15**

**Preamble question 16**

**What is your feedback on the options to help consumers understand and compare contracts?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Explanatory text for qn 16**

**Preamble qn 17**

**What is your feedback on the options?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Explanatory text for qn 17**

**Can the issues with the status quo be overcome with insurers contractually requiring representatives to pass on all material relevant information? What are the benefits of a statutory obligation requiring representatives to pass on information?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Should consumer insureds be treated differently from commercial insureds in relation to these issues?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Preamble qn 20**

**What is your feedback on the options in relation to section 11 of the Insurance Law Reform Act 1977?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Preamble qn 21**

**What is your feedback on the option to provide that Section 9 of the Insurance Law Reform Act 1977 does not apply to time limits under claims made policies?**

BNZ Life has no comment to make in relation to professional indemnity insurance.

**Explanatory text for qn 21**

**If section 9 were to no longer apply to claims-made policies, should there should be an extended period (e.g. 28 days) for notifying claims or potential claims after the end of a policy term?**

BNZ Life has no comment on this matter.

**Preamble qn 23-24**

**What is your feedback in relation to the options for section 9 of the Law Reform Act?**

BNZ Life has no comment on this proposed reform

**Explanatory text for qn 23**

**If the option is adopted, should it apply to insolvency only? Should third parties be required to get leave of the court? Should reinsurance contracts be excluded from the application of the option?**

BNZ Life has no comment on this proposed reform

**Preamble qn 25**

**What is your feedback to the options in relation to the duty of utmost good faith?**

In principle, we support the duty to act with utmost good faith – that ought to be a minimum requirement for any customer focused service business. We note the current Conduct of Financial Institutions reform and recommend that the duties under that regime are mirrored under any Insurance Contract Law reform.

**Explanatory text for qn 25**

**Preamble qn 26**

**Do you have any feedback on the proposal to consolidate non-marine insurance statutes into a single statute?**

BNZ Life is supportive of the view submitted by the FSC in this area.

**Preamble question 27**

**Do you have feedback on our proposed approach in relation to the Marine Insurance Act 1908?**

BNZ Life has no comment to make on this matter.

**Preamble qn 28**

**Are the above provisions redundant ? Why/why not? Are there other redundant provisions in the legislation covered by this review?**

BNZ Life has no comment to make on this matter.

**Preamble qn 29**

**Do you agree with the proposed option in relation to registration of assignments of life insurance policies?**

We believe that the proposed option, notices of assignment to be sent in writing to the insurer and registered without requiring any particular form, is appropriate.

**Preamble qn 30**

**Should the maximum payment amounts for life insurance policies for minors be increased? Why or why not?**

We agree that increasing the limits paid out under life insurance policies for minors so that they are sufficient to cover funeral costs is an appropriate measure to better support consumers at their time of need.

**Your name**

Paul Hay

**Your organisation**

Bank of New Zealand

**Your email address**

**In what capacity are you making this submission?**

business

**Other capacity**

**Use of personal information - intro**

**Can we include your name or other personal information in any information about submissions that we may publish?**

yes

**We intend to upload submissions to our website. Can we include your submission on the website?**

yes

**You may ask us to keep your submission, or parts of your submission, confidential. If so, you'll need to attach reasons and grounds under the Official Information Act 1982 for consideration.**

no

**You've indicated that you would like us to keep your submission confidential. Please tell us your reasons and grounds under the OIA that we should consider.**