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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:** Monday, 24 June 2019 11:07 a.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?**

FMG agrees with the stated objectives.

**Preamble question 2**

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

FMG supports the industry submission made on behalf of ICNZ; specifically, whilst Option 1 is preferred, Option 2 is workable.

**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?**

As stated in the ICNZ submission, FMG already warns consumers as to the potential consequences associated with the duty to disclose.

**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?**

FMG is aligned with the ICNZ submission on this issue; noting that we do access information from the Insurance Claims Register which is disclosed to the client.

**Preamble q 5**

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

FMG is aligned with the ICNZ submission; noting that as we are a direct insurer (i.e. we do not operate through brokers /intermediaries). We take the same approach to business clients as we do to individual consumers.

**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?**

FMG is aligned with the ICNZ submission; noting that as we are a direct insurer (i.e. we do not operate through brokers /intermediaries) we take the same approach to business clients as we do to individual consumers.

**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?**

FMG is aligned with the ICNZ submission .

**Preamble question 8**

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

FMG is aligned with the ICNZ submission, supporting Option 1.

### **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?**

FMG is aligned with the ICNZ submission; specifically, it would not be fair to require insurers to pay claims that are not connected to a non-disclosure or misrepresentation where the insurer would not have even entered into the contract had they known the facts. Accordingly, we strongly oppose this option outlined in paragraph 59, noting it would undermine the approach to proportional remedies and the integrity of insurance pools and incentivise misleading or incomplete disclosure by insureds.

**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?**

FMG is aligned with the ICNZ submission; specifically, insurers should 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 they accurately disclosed/not misrepresented at the time of contract formation. The law should encourage compliance and not condone or reward misbehaviour.

**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?**

FMG is aligned with the ICNZ submission; specifically, the insurer should have the right to recover in such situations, even though we note these are fairly rare in practice. The potential impact of this on the insured is a factor that is considered by insurers. The law should not condone or reward misbehaviour.

To be complete this option should also apply to 'careless' non-disclosure/misrepresentation as well as to deliberate/reckless non-disclosure/misrepresentations as already mentioned in paragraph 62.

**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?**

FMG is aligned with the ICNZ submission.

#### **Preamble qn 13**

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

This is not relevant to general insurers.

#### **Preamble qn 14**

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

FMG is aligned to the ICNZ submission.

#### **Preamble qn 15**

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

FMG is aligned with the ICNZ submission. FMG would like to reinforce that standard policy terms are well communicated to the client. Having said that, where there are exclusions /higher excesses applied, those should be brought to the client's attention prior to the inception /renewal of the contract.

### **Explanatory text for question 15**

#### **Preamble question 16**

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

FMG is aligned with the ICNZ submission.

**Explanatory text for qn 16**

**Preamble qn 17**

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

This is not relevant as FMG does not operate through intermediaries or brokers. Having said that, FMG is aligned with the ICNZ submission on this matter.

**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?**

FMG is aligned with the ICNZ submission.

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

FMG is aligned with the ICNZ submission

**Preamble qn 20**

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

Perhaps the middle ground, in which FMG currently operates, is that there is a positive obligation on the insurer to inform the implications of s.11 to the insured and guide them through the process of being able to articulate how non-compliance with the exclusion did not materially increase the risk of loss in the specific circumstances. This positive obligation on the part of the insurers would ensure that valid claims are not being declined and reducing the effort /frustration from both the insured and insurer perspective. FMG believes that this approach aligns with the preferred Option in relation to non-disclosure - i.e. ensuring that loss is related to the risk that has been disclosed and priced for by the insurer.

**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?**

FMG is aligned with the ICNZ submission.

**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?**

FMG is aligned with the ICNZ submission.

**Preamble qn 23-24**

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

FMG is aligned with the ICNZ submission.

**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?**

FMG is aligned with the ICNZ submission.

**Preamble qn 25**

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

FMG is aligned with the ICNZ submission.

**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?**

FMG is aligned with the ICNZ submission.

**Preamble question 27**

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

FMG is aligned with the ICNZ submission.

**Preamble qn 28**

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

FMG is aligned with the ICNZ submission.

**Preamble qn 29**

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

FMG is aligned with the ICNZ submission; this is not relevant to general insurers.

**Preamble qn 30**

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

FMG has no comment on this matter.

**Your name**

Lisa Murray

**Your organisation**

FMG

**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.**