

3 May 2022

Financial Markets Policy  
Ministry of Business, Innovation and Employment  
PO Box 1473  
Wellington 6145

By Email to: [insurancereview@mbie.govt.nz](mailto:insurancereview@mbie.govt.nz)

Dear Sir/Madam,

Re: Submission Exposure Draft Insurance Contracts Bill

Southern Cross Health Society agrees with the submission made by the FSC (we are a member), but wishes to additionally submit on Points 2 and 3.

I can be contacted on [redacted] Privacy of natural persons if you require further clarification.

Yours sincerely,

[redacted] Privacy of natural persons

**Stefan Azzopardi**  
Chief Finance & Risk Officer

# Submission on *Exposure draft Insurance Contracts Bill*

## Your name and organisation

<b>Name</b>	Stefan Azzopardi, Chief Finance & Risk Officer
<b>Organisation (if applicable)</b>	Southern Cross Medical Care Society
<b>Contact details</b>	Privacy of natural persons

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

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## Responses to consultation paper questions

### Part 1: preliminary provisions

1 *Do you have any feedback on Part 1 of the Bill?*

No

### Part 2: disclosure duties and duty of utmost good faith

2 *Do you have any feedback on the Bill's provisions in relation to the duty for consumers to take reasonable care not to make a misrepresentation, including the matters that may be taken into account to determine whether a consumer policyholder has taken reasonable care not to make a misrepresentation?*

The change to the consumer's duty of disclosure effectively puts the onus on the insurer to ask specific questions, to which the consumer in answering must take reasonable care to not make a misrepresentation (i.e. answer truthfully and accurately). Section 17 however provides that a failure by the consumer to answer or an obviously incomplete or irrelevant answer to a question is not a misrepresentation by the consumer. Our concern is that this arguably puts the onus back on the insurer, which we don't believe is fair or reasonable in the circumstances and could lead to uncertainty in what needs to be done next. If the onus is shifting to the insurer to ask specific questions, then in our view it makes sense and is only fair that the onus must then remain on the consumer to answer those questions fully and accurately and any failure to do so may amount to a misrepresentation. Clause 17 should therefore be removed.

3 *Do you have any feedback on the Bill's provisions in relation to remedies for breach of the consumer duty?*

We are concerned that the way these provisions have been drafted means only the prescribed remedies for breach of the consumer duty of disclosure can be applied and an insurer is not able to elect a lesser remedy if the policy allows it. For example, would it still be open to an insurer to choose to not avoid a contract for, but rather amend its terms so that cover for an undisclosed pre-existing condition is excluded but the insurance contract remains in force? In our view that's a much better outcome for the consumer while still putting the insurer back to the position it would have been in had proper and full disclosure been made. If it is the intent of the Bill that the insurer's discretion to apply a lesser remedy is allowed, can that be clearly stated?