4 May 2022

Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140
Attention Financial Markets Policy

By email: insurancereview@mbie.govt.nz

Submissions on Exposure draft Insurance Contracts Bill

This submission is made on behalf of AIA New Zealand Limited and its related entities (together "**AIA NZ**") in response to MBIE's Consultation on the exposure draft Insurance Contracts Bill (the **Bill**).

About AIA New Zealand

AIA NZ is a member of the AIA Group ("**AIA**"), which comprises the largest independent publicly listed pan-Asian life insurance group. It has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (excluding Japan) based on life insurance premiums and holds leading positions across the majority of its markets.

Established in New Zealand in 1981, AIA is New Zealand's largest life insurer and has been in business in New Zealand for over 40 years. AIA's vision is to champion New Zealand to be the healthiest and best protected nation in the world.

AIA NZ offers a range of life and health insurance products that meet the needs of over 450,000 New Zealanders. AIA NZ is committed to an operating philosophy of *Doing the Right Thing, in the Right Way, with the Right People*. AIA NZ operates a shared value insurance model with science-backed health and wellbeing programme AIA Vitality, and promises to help Kiwis to lead Healthier, Longer, Better Lives.

AIA NZ is also a prominent member of the Financial Services Council ("**FSC**").

About this submission

AIA NZ supports the underlying purpose of the proposed legislative changes to reform and modernise the law relating to contracts of insurance and to ensure informed participation and fair operation of the New Zealand insurance market. Given the importance of ensuring that any reforms are effective, and will not result in unintended consequences, AIA NZ welcomes the opportunity to submit feedback on the practical effect of the proposed Bill for AIA NZ, our partners and our valued customers.

As a life and health insurer, our submission focuses on the likely impacts of the proposed changes on the life and health insurance sector. We consider the impacts of the Bill are likely to vary substantially between the life/health and general insurance sectors for several reasons.

General insurance contracts are generally underwritten at each policy anniversary (e.g. annually), allowing general insurers to re-assess risk annually and adjust policy terms and premiums accordingly. Life and health insurance contracts are generally underwritten at inception and then renewed annually without further

underwriting. As a result, life and health policies undergo detailed underwriting prior to inception and are issued with bespoke policy settings via personalised exclusions or premium loadings (an increase for a higher-risk applicant's premium over and above a company's standard premium rate). This also reflects the fact that life and health insurance is assessed and priced in respect of highly individualistic circumstances. No two people's characteristics and medical history are the same. General insurers, by contrast, are working with a smaller and more homogenous set of risks – e.g. natural disaster risk, age of a property etc. We set out below our views on a selection of the specific questions posed in the Consultation Paper, following the submission template provided by MBIE. We look forward to continued opportunities to engage with MBIE as the proposed Bill progresses and in relation to any future regulations.

Key submission points:

In summary, our key submission points are:

- The definition of a 'life policy' requires further consideration. The Bill adopts the definition in section 84 of the Insurance (Prudential Supervision) Act 2010 (**IPSA**), but this definition is wider than the previous definition of a life policy under the Insurance Law Reform Act 1977. The special provisions for life policies would therefore apply to income protection, disability and trauma policies. That is nearly all AIA NZ's products, apart from standalone health business. We do not understand that MBIE intended to expand the law in this way. In our view, 'life policy' should have the meaning set out in section 84(1)(a)–(c) of the Insurance (Prudential Supervision) Act 2010. We also suggest MBIE considers how to address composite policies which provide for both life and non-life cover, noting section 85 of IPSA.

- AIA NZ agrees that a high threshold should apply before a life policy can be avoided. The Bill carries across section 4(1) of the Insurance Law Reform Act 1977, where avoidance can only occur where there is a fraudulent misrepresentation or a material misrepresentation within three years of the date of avoidance or the death of the life insured. However, the definition of fraudulent misrepresentations from the 1977 Act has not been carried over. There is no definition of fraudulent in the Bill. Clarity is needed on the meaning of fraudulent and whether the proposed definitions of reckless and deliberate under the Bill are sufficient.

- AIA NZ supports the alignment of remedies for life and non-life policies and the amended duty for consumers to take reasonable care not to make a misrepresentation. AIA NZ seeks more clarity around how insurers evaluate when a policyholder has not taken 'reasonable care' and when a policyholder's representations are considered to be reckless or deliberate. This is because the test has moved from insurers assessing whether the disclosure was substantially incorrect and material to insurers, to assessing the reasonable knowledge, special circumstances and conduct of policyholders. This could be difficult for insurers like AIA NZ who often do not deal directly with policyholders, but rather with their financial advisers.

- AIA NZ agrees with the remedies proposed for scenarios 1 and 2, but does not support the proposed scenario 3:

    - First, AIA NZ does not support the 'difference in premium' based approach proposed for scenario 3. AIA NZ submits that the proportionate basis adopted in United Kingdom legislation is the only actuarially valid approach to ensure fair treatment of all policyholders. As a fundamental principle, life insurance premiums collected from a group of customers should be sufficient to cover those customers' claims risk. The proposal to reduce the claim by underpaid premiums is actuarially invalid because underpaid premiums would only ever be collected from the subset of customers who submit a claim; other non-disclosing

customers who do not submit a claim would have transferred a higher level of risk to the insurer than allowed for in their (lower) premiums paid. In other words, underpaid premiums recovered only from claimants is insufficient to cover the higher risk exposure from all non-disclosing customers. Aside from the actuarial considerations, we are also concerned that the proposed approach may create an incentive for customers to non-disclose – for example, smokers might be inclined not to declare their smoking status since they will pay lower (non-smoker) premiums if they don't claim and will only pay the correct (smoker) premium if they claim.

- Second, AIA NZ does not support the remedy in scenario 3 (whether taking the 'difference in premium' approach or proportionate approach) being codified as a mandatory formula as currently set out in clause 5 of Schedule 2 of the Bill. This approach is not sufficiently flexible to deal with common situations that arise, particularly in the life and health insurance industry. In cases of careless misrepresentations or non-disclosure, insurers regularly use discretion in applying remedies to ensure the outcome is fair in the circumstances and we are concerned that requiring insurers to apply a premium deduction based on a formula and only at claim time would constrain this.

- Some clarifications are required in the legislation for the application of the new disclosure duties in the Bill to life and health insurance contracts, which are long-tail insurance policies (i.e. when is there a qualifying 'renewal').

- Any amendments to the Unfair Contract Term regime must recognise the unique characteristics of insurance policies, where the premium charged to consumers is necessarily directly linked to the scope of cover for the risks insured. Insurers require certainty over their right to apply contractual exclusions in reserving funds for contingent claims based on statistics and in their capacity to claim under their reinsurance treaties (where claims are usually assessed under the terms of the policy document). That was the reason for introducing the insurance specific exemptions under the Unfair Contract Terms regime in 2015. Of the two options proposed, Option B is preferred as it better reflects that there are necessary exclusions in insurance policies which define the scope of cover. In practice, we expect that Option A will lead to more legal disputes as insurers are challenged to justify limiting terms within policy contracts.

- AIA NZ submits that the Bill should be amended to recognise that failure by an intermediary to comply with an insurer's instruction to pass on information to the consumer regarding the disclosure duty does not amount to the insurer's breach of their duty. Alternatively, clauses 55 and 57 could be clarified to confirm that the insurer has met its duty if it takes all reasonable steps to clearly inform policyholders of their disclosure duties, where a reasonable step would be instructing the intermediary to pass on that information.

Please feel free to contact us should you have any questions in relation to our submission or would like to discuss any aspect further.

Yours sincerely

Privacy of natural persons

General Counsel
AIA New Zealand Limited

Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

Name	Kristina Kilner (Head of Regulatory Affairs)
Organisation (if applicable)	AIA New Zealand Limited and related entities (**AIA NZ**)
Contact details	Privacy of natural persons

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

☐ The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

Please check if your submission contains confidential information:

☒ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

Under Question 3, AIA NZ's response to the remedies for non-life policies includes a working example of the differences between using the proposed Scenario 3 remedy and a remedy commonly used in practice, to demonstrate outcomes. As this may be considered commercially sensitive, the relevant part of the response has been labelled as confidential.

Responses to consultation paper questions

Part 1: preliminary provisions	
1	*Do you have any feedback on Part 1 of the Bill?*
	AIA NZ supports the stated purpose of the Bill.
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?*
	Policyholders' disclosure of true and correct information is vital to enabling insurers to appropriately set premiums so it can pay out claims insurers are on risk for. Under AIA NZ's current practices, AIA NZ does not expect consumers to disclose information outside of the answers to the questions covered in AIA NZ's application forms. In situations of misrepresentation in response to specific application questions, AIA NZ takes an approach of weighing the public policy reasons to deter fraud and encourage consumers to act honestly while having regard to the harsh outcome of non-disclosure under the current law. As a result, AIA NZ infrequently avoids policies. Accordingly, AIA NZ supports the modified duty of disclosure for consumers to take reasonable care not to make a misrepresentation, shifting the onus on insurers to ask specific and clear questions in their proposal forms. However, AIA NZ submits that more clarity is required regarding how insurers, in practice, are to evaluate: 1. When a policyholder has not taken reasonable care not to make a misrepresentation. 2. When a misrepresentation is 'deliberate' or 'reckless' as defined in the Bill. Under the current law, the evaluation is from the point of view of the insurer (what information is relevant and material to them which the policyholder has failed to disclose) and this will shift to insurers needing to evaluate whether the policyholder, having regard to their particular characteristics or circumstances, has taken reasonable care to not disclose that information and/or whether that policyholder knew that the misrepresentation was untrue or misleading or did not care and knew the matter was relevant. AIA NZ has some concerns that this will require evaluation of consumers' interpretation of the application form and might lead to difficulties in practice, including: 1. Finding the right balance between clarity and specificity in the questions asked, especially when enquiring about consumers' medical history and using medical terminology. Using complex medical terms may be necessary to achieve specificity and ensure disclosure of material about rare conditions, however this could create confusion for consumers. AIA NZ wants to avoid the unintended consequence of this duty being long application forms that are not user-friendly; and 2. The role of intermediaries and financial advice providers in assisting or guiding consumers through an application form. There is potential for miscommunication

and misunderstanding to arise. For example, AIA NZ has customers and some brokers who are not fluent in English or for whom-English is not their native language and it is unclear how the standard for the 'reasonable policyholder' might apply to them (and whether that is a 'particular circumstance' that AIA NZ must take into account).

The matters listed in the Bill which may be taken into account in determining whether a policyholder has taken reasonable care (Clause 15) are broad and do not assist with how this is to be determined in practice.

AIA NZ considers that clarity or guidance is necessary regarding what special circumstances or special characteristics must be taken into account by insurers in considering whether a policy holder takes reasonable care (for example, does this include age, disability, English as second language).

AIA NZ submits that clarity or guidance could be provided regarding how insurers assess whether a misrepresentation was deliberate or reckless beyond the assumptions noted in the Bill about a reasonably policyholder.

There is potentially a difficult and costly burden on insurers of investigating and proving a policyholder's intention (compared to the current test which is based on whether the representation was substantially incorrect and material from the insurers' perspective). This could also lead to complexity and delays to the claims process, which is contrary to the consumers' interests. Due to the nature of insurance, this would mean the insurer (and other consumers through increased premiums) have to bear the costs of one consumer's failure to disclose.

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

<u>For non-life policies</u>

AIA NZ understands that the provisions in Schedule 2 Part 1 and 2 would apply to AIA NZ's non-life consumer insurance contracts, which includes products where the consumer suffers illness or injury.

AIA NZ agrees with the proposed remedies for deliberate or reckless misrepresentations and misrepresentations which are not deliberate or reckless where the insurer would not have entered into the contract on any terms (scenarios 1 and 2).

AIA NZ considers it would be helpful to clarify how the remedies apply when disclosure would have led to the insurer providing cover but including an exclusion, which is later claimed when the non-disclosure is discovered. In those circumstances there would not have been any change in premium charged. AIA NZ understands it would be permitted to apply the relevant exclusion it would have applied but for the misrepresentation, but that the policy remains on foot.

AIA NZ submits that the proposed 'difference in premium' remedy for misrepresentations which are not deliberate or reckless, where the insurer would have entered into the contract on different terms (i.e. scenario 3) is not preferable and not equitable. AIA NZ submits that the proportionate test in the United Kingdom is more appropriate:

1. We consider that the 'difference in premium' remedy is actuarially invalid because underpaid premiums would only ever be collected from the subset of customers who submit a claim. Other non-disclosing customers who do not submit a claim would have transferred a higher level of risk to the insurer than allowed for in their (lower) premiums paid, regardless of whether the insurer becomes aware of the non-disclosure or not. In other words, underpaid premiums recovered only from claimants is insufficient to cover the higher risk exposure from all non-disclosing customers. This would be detrimental to the ability to price sustainably and affordably for the whole pool customers, as there would be lost premiums from other non-disclosing policyholders that are never able to be recovered, and most likely a significant increase in compliance costs.

   Aside from the actuarial considerations, we are also concerned that the proposed approach may create an incentive for customers to non-disclose – for example, smokers might be inclined not to declare their smoking status since they will pay lower (non-smoker) premiums if they don't claim and will only pay the correct (smoker) premium if they claim.

   Commercial Information

2. By contrast, the proportionate test followed in the United Kingdom, in circumstances where New Zealand is looking to adopt the United Kingdom's 'reasonable care' duty of disclosure, represents an actuarially valid approach to ensure fair treatment of all policyholders. As a fundamental principle, life insurance premiums collected from a group of customers should be sufficient to cover those customers' claims risk. Further, AIA NZ has always strived to resolve issues in a fair manner and carefully assessing the materiality of any non-disclosure against both

the policy and the claim. Reducing the claim proportionately based on the premium paid is consistent with this policy and is a more flexible approach that would allow AIA NZ to better account for the customer's individual circumstances at claim time. This approach is also in the interests of all consumers as AIA NZ would not have to price for the risk of premium losses as a result of non-disclosure where there is no claim to recover premiums against.

For life policies

AIA NZ acknowledges that life policies differ significantly from other contracts of insurance, in particular due to the commonly long duration of policies, and the provisions for fraudulent or recent misrepresentations adds an extra layer of protection for life insurance consumers. AIA NZ agrees that life policies should not be avoided unless the misrepresentation was substantially incorrect and material, and made within three years preceding the claim (and notes that the exact wording of s 4(1) of the Insurance Law Reform Act 1977 has been carried across). However, we note that the requirement for the misrepresentation to be fraudulent, if made longer than three years preceding the claim, has been carried across from the 1977 Act without including the corresponding definition of fraudulent misrepresentations under set out in section 4(2) of the 1977 Act. That definition is similar but different to the new 'deliberate and reckless' definition under proposed Clause 28 of the Bill.

AIA NZ considers that the draft Bill needs clarity around the definition of fraudulent and how this differs from 'deliberate and reckless' or whether the definition of fraudulent in the Insurance Law Reform Act 1977 also needs to be carried over, in order to avoid confusion, confirm that the test for fraud in insurance is different to the common law test for fraud, and differs to deliberate or reckless misrepresentations.

Additionally, we note that "life policy" is defined in the draft Bill as having the meaning set out in section 84 of IPSA. However, the definition of "life policy" under section 84 of IPSA is broad – for example, an income protection policy comes within the definition by virtue of s 84(1)(d). We understand that it is not MBIE's intention to subject disability and income protection contracts to the special provisions that apply to life policies, as this would go beyond the definition of "life policy" in Insurance Law Reform Act 1977 and represent an expansion of the current law. The expansion of the law in this way would have significant impacts on disability and income protection contracts, which do not necessarily share the same characteristics as policies that are linked to the death of the policyholder. We do not consider that the special provisions that currently apply to life policies under the Insurance Law Reform Act 1977 should also apply to disability, trauma or income protection policies.

Accordingly, we consider that "life policy" should be defined in the draft Bill as having "the meaning set out in section 84(1)(a) – (c) of the Insurance (Prudential Supervision) Act 2010. We also suggest MBIE considers how the Bill will address composite policies which provide for both life insurance and non-life insurance.

4	*Do you have any feedback on the Bill's provisions on remedies for breach of the consumer duty in relation to life insurance policies where the misrepresentation was not fraudulent and more than three years ago?*
	AIA NZ is content that for life policies, the position should remain that they should not be avoided unless the misrepresentation was fraudulent or made less than three years preceding the claim (as is the current position under the Life Insurance Act 1977). However,

	as above, AIA NZ notes that the drafting of the Bill requires clarity over the meaning of a fraudulent misrepresentation as the definition has not been carried across from the 1977 Act and is not defined in the Bill, but is similar to the new definitions for deliberate and reckless under clause 28 of the Bill.
5	*Do you have any feedback on the Bill's provisions in relation to the disclosure duty for non-consumers?*
	The provisions relating to Group Insurance under Clause 22 onwards of the Bill are likely to apply to AIA NZ's group employment policies, where the 'consumer duty of disclosure' (Pt 2, Subpt2) is applied to the employee. However, AIA NZ also underwrites policies which are likely to be considered 'non-consumer' products under the draft Bill in the form of AIA NZ's Business and Farm Insurance. These types of policies are similar to group insurance in that they are entered into by a business (i.e. Person A), and provide cover in respect of illness, injury or death for individuals – in this case key persons - who are not a party to the contract (i.e. Person B). However, these policies are unlikely to qualify as 'Group Insurance' under section 21 of the draft Bill, as the policy provides cover for the business (person A), not the insured individual (person B). In addition, the benefit of the insurance cover is not wholly or predominantly for personal, domestic or household purposes, but rather for the purposes of business continuity. AIA NZ considers these policies should be subject to the same duty of disclosure and range of remedies as consumer policies and 'Group Insurance'. The insured individuals provide information directly or indirectly to the insurer before the contract is entered into. It therefore makes sense for Person B to have a duty to take reasonable care not to make a misrepresentation to the insurer. Given the underwriting approach for these policies is the same as for 'consumer' and 'group insurance' policies, we would expect the same remedies to apply for qualifying misrepresentations.
6	*Do you have any feedback on the Bill's provisions in relation to remedies for breach of the non-consumer duty?*
	We refer to our comments in response to Question 3 above.
7	*Do you have any feedback on the provisions in relation to the insurer's duties to inform policyholders of the disclosure duties, and insurer access to third party information, including how the duties apply for variations of insurance contracts?*
	AIA NZ supports a requirement that insurers clearly inform consumers of their duty of disclosure before a contract of insurance is entered into or varied. This is consistent with the approach we already take in our proposal documents and the policy wording. For example, our application forms contain a plain-language summary of the nature and consequences of the duty, and states that applicants should read this prior to completing the application form. We also inform of the duty of disclosure in the quotation software used by our intermediaries, as well as set out the requirement for intermediaries to explain the duty in our intermediary guidelines. However, there is some inherent reliance on intermediaries to provide documentation that informs policyholders of the duty and/or communicate the duty in accordance with the

	guidelines and instructions provided by AIA NZ. Accordingly, we submit that the provisions could be amended to recognise that failure by an intermediary to comply with an insurer's instruction to pass on information on the consumer of the disclosure duty, does not amount to the insurer's breach of their duty. Alternatively, clauses 55 and 57 could be amended to require the insurer to take all reasonable steps to clearly inform, where a reasonable step would be instructing the intermediary to pass on information. AIA NZ supports transparency in relation to informing customers of our access to third party information and seeks to be transparent with customers through clear privacy wording in our application forms. Currently, AIA NZ informs customers (in its application forms) that we may obtain personal information from third parties for the purpose of assessing a customer's application (e.g. doctors, counsellors, psychologists etc). We note that there are also privacy considerations in respect of obtaining medical records, including commentary/guidance from the Office of the Privacy Commissioner that insurers should not be collecting all information on medical files over a period of years. These additional considerations should be taken into account to ensure the industry had clear direction on its obligations. AIA NZ would be interested in any further proposal or consultation by MBIE on future regulations or suggested wordings insurers could use when explaining the duty of disclosure to consumers or insurer's access to third party information. For example, MBIE may wish to provide standard form wording for describing the duty of disclosure in the form of a "safe harbour" provision. Insurers would not be required to use the prescribed wording, which would retain flexibility for insurers, but doing so would create a presumption that the insurer has complied with their duty.
8	*Do you have any feedback on the consequences in the Bill if an insurer breaches duties to inform policyholders of the disclosure duties, and insurer access to third party information?*
	As discussed above, AIA NZ considers that there would be benefit in providing further clarity regarding a breach of this duty when intermediaries are involved. Otherwise, we do not have any further feedback on the consequences for breach of duty to inform policyholders of disclosure duties and access to third party information, which as drafted still allows the insurer remedies for breach of the consumer duty of disclosure where the misrepresentation was knowingly untrue or misleading. Maintaining the remedies in these circumstances is necessary to deter consumers from intentionally making a misrepresentation. We note that the reference to "the information referred to in subsection 3(a)" in subclause 57(4) is unclear and may be an error.
9	*Do you have any feedback on how the Bill codifies the duty of utmost good faith?*
	AIA NZ agrees that the current common law duty of utmost good faith for both insurers and consumers is a fundamental and important principle of insurance law. However, we are uncertain whether Clause 59 and 60 will in practice assist policyholders to understand the meaning of utmost good faith or achieve MBIE's intention to reflect the common law position in New Zealand. Clause 59 does not describe the scope of the duty or the relationship between the legislative provision and the current common law position,

	which may lead to uncertainty in how future courts may interpret the provision. We therefore consider that the duty of good faith should remain as a common law duty. Additionally, the effect of Clause 60 in limiting the duty for consumers to the duty of disclosure (reasonable care not to make a misrepresentation) also means that the duty of utmost good faith would no longer reflect the common law duty. AIA NZ submits that a better way to address this point would be to include in the disclosure duties section a clause confirming that the duty of disclosure as set out in the Bill modifies the common law duty of disclosure (including any disclosure duties arising from the common law duty of utmost good faith).
10	*Do you have any feedback on the Bill's provisions relating to information provided by a policyholder to a specified intermediary?*
	AIA NZ provides intermediaries with guidelines and training to assist with their understanding of the material information that AIA NZ requires and provides intermediaries with tools and processes to assist with communicating this information. AIA NZ supports the Bill's provisions requiring intermediaries to take all reasonable steps to pass onto the insurer all material representations a policyholder makes to the intermediary and the introduction of insurers having a remedy against intermediaries for any loss they suffer. However, AIA NZ is concerned about subclause 63(3) of the draft Bill which suggests that intermediaries do not need to pass on information which the intermediary believes on reasonable grounds to be a misrepresentation. The Bill does not set out the circumstances on how an intermediary is to evaluate when they have reasonable grounds to believe there has been a misrepresentation. AIA NZ is uncertain about whether the intermediary will be in the best position to properly determine if the representation is a misrepresentation. It would be preferable to remove this subclause and allow for the free flow of information from the intermediary to the insurer, and let the insurer identify and investigate misrepresentation. AIA NZ also notes that the position in the Bill (at clause 20) is different to Australia and the United Kingdom position where the insurer is only deemed to know information from the intermediary if the intermediary is the insurer's agent. The Bill includes a remedy for insurers under Clause 65 to apply to court if the intermediary fails to pass on information and this causes loss, but it is difficult to see if whether in practice insurers would use this remedy except in extreme circumstances.
11	*Do you have any other feedback on the drafting of Part 2 of the Bill?*
	We do not have any feedback in response to this question
Part 3: terms of insurance contracts	
12	*For claims-made policies, do you consider that 60 days after the end of the policy term is an appropriate period for allowing the policyholder to notify relevant claims or circumstances that might give rise to a claim?*
	We do not have any feedback in response to this question.

13	*Do you consider that insurers should be required to notify policyholders in writing no later than 14 days after the end of the policy term of the effect of failing to notify a claim or circumstances that might give rise to a claim before the end of the 60 day period?*
	We do not have any feedback in response to this question.
14	*Do you have any other comments on clause 69 of the Bill (Time limits for making claims under claims-made liability policies)?*
	We do not have any feedback in response to this question.
15	*Do you have any feedback on the exclusions listed in clause 71(3), which are not subject to the rule for increased risk exclusions in clause 71(1)?*
	We do not have any feedback in response to this question.
16	*Do you have any other feedback on Subpart 4 of Part 3 of the Bill (Third party claims for liability insurance money)?*
	We do not have any feedback in response to this question.
17	*Do you have any feedback on Schedule 3 of the Bill (Information and disclosure for third party claimants)?*
	We do not have any feedback in response to this question.
18	*Do you have any comments on not carrying over section 10(1) of the ILRA 1977?*
	AIA NZ agrees with not carrying over section 10(1) of the Insurance Law Reform Act 1977 (which deemed a representative who acts for insurer during negotiations of insurance contract to be agent of insurer) and considers that the provisions in Part 2 of the Bill in relation to intermediaries appropriately captures their role.
19	*Do you have any other feedback on the drafting in Part 3 of the Bill?*
	We do not have any feedback in response to this question.
Part 4: payment of monies to insurance intermediaries	
20	*Do you consider that changes should be made to requirements for how insurance brokers must hold premium money such as restrictions on brokers' ability to invest or more stringent requirements in line with the client money and property rules in the FMC Act?*
	We do not have any feedback in response to this question.
21	*Do you have any feedback on the proposed penalties for non-compliance with Part 4 of the Bill?*
	We do not have any feedback in response to this question.

22	*Is it necessary to retain clause 102 (broker to notify insurer within 7 days if a premium has not been received by the broker), and if so, what should be the consequence for breach of clause 102?*
	We do not have any feedback in response to this question.
23	*Do you have any other feedback on Part 4 of the Bill?*
	We do not have any feedback in response to this question.
Part 5: contracts of life insurance	
24	*If you consider that change needs to be made regarding interest payable from 91st day after date of death, please provide any further reasons and provide feedback on whether interest should only begin accruing after 90 days if the insurer has been notified of the death claim and (where relevant) letters of administration or probate have been obtained.*
	AIA NZ submits that the provisions regarding interest payable from the 91st day after the date of death should be amended. Namely, the Bill should provide for interest to be payable from the 91st day after the date on which the requirements are met for proof of the claim, including notification of the claim and (where relevant) letters of administration or probate being obtained and provided to AIA NZ. As noted in the MBIE consultation paper, in some cases life insurers have been required to pay unduly high interest amounts (significantly more than the use of money interest rates) due to circumstances outside of both the insurer's and policyholder's control. With increased delays in the Court system including due to the impact of COVID-19, it is taking longer to obtain probate and letters of administration. Also, payments of interest can be sizeable where there is significant delay in notifying a death. It is also, in practice, incorrect to assume that the insurer is able to earn a relatively equivalent amount of interest from the money held during the period of the delay, especially where the claim is notified but there is a delay in obtaining probate. The interest that insurers earn on claim amounts is highly likely to be low given the conditions under which it must be held – i.e. as a contingent liability and available for immediate claim payment as soon as the requirements are met. Due to the nature of insurance, carrying over this provision unamended would mean the insurer (and other consumers through increased premiums) must bear the costs of the risks of significant and disproportionate interest payments. This proposed change would balance compensating customers in circumstances where all claim requirements have been met but the payment of the claim is delayed with situations where an insurer has taken all possible steps to process a claim but is delayed in paying the claim by circumstances outside of its control (and in the meantime, is accruing interest owed to the customer which is not offset by interest earned on the claim payment). In addition, we note that there are other incentives for insurers to pay claims expediently and not create undue delay where processing the claim is within the insurer's control, including reputational risk. We note that the MBIE Consultation Paper distinguishes between the pre- and post-Interest on Money Claims Act 2016 environment, contrasting the higher interest amounts owed by

	insurers pre-2018 (under the statutory rate in the Life Insurance Act 1908) with the lower interest rate environment of 2020-2021 and the corresponding effect on the interest rate payable under the Interest on Money Claims Act 2016. We note that caution should be taken not to make policy decisions based solely on the current low interest rate environment which will change over time. Additionally, we note that the civil debt interest rate in the Interest on Money Claims Act 2016 has a premium component which reflects the compensatory nature of civil debt payments. This premium component is especially impactful in a low interest environment and represents an additional interest gain for customers. An alternative solution would be for the Bill to set a lower interest rate than the civil debt interest rate if interest is to accrue from the 91st day after the date of death.
25	*Do you have any feedback on the proposal that any mortgaging of life insurance policies under new policies be dealt with under the Personal Property and Securities Act 2009?*
	We do not have any feedback in response to this question.
26	*Do you have any feedback on the Bill's requirements relating to assignments and registrations generally?*
	The Bill does not provide for the circumstances where the joint policy owner refuses to sign the transfer of a policy. AIA NZ has found these circumstances commonly occur in relationship property disputes and AIA NZ has limited options available to assist policyholders in these circumstances. One possible solution is to allow the transfer of a policy by one joint owner when that joint owner is also the life insured.
27	*Are section 75A of the LIA (relating to a policy entered into by a person for the benefit of the person's spouse, partner or children) or section 2(1) of the Life Insurance Amendment Act 1920 (relating to the reversion or vesting of life policy assigned to a spouse or partner) still necessary?*
	We do not have any feedback in response to this question.
28	*Do you have any other feedback on Part 5 of the Bill?*
	AIA NZ is concerned that sections 63 and 64 of the Life Insurance Act 1908 have been carried over to the new Bill without any amendments. The application of the current provisions can, in some cases, increase the risk of detrimental consequences for consumers (or their Estates) where the insurer no longer has up-to-date contact details for the customer, or the customer is deceased, but their death has not been notified to or otherwise identified by the insurer. Those administering the deceased's estate may not be aware of the existence of the policy. This can lead to significant delays and the accumulation of overdue premiums that significantly diminish the surrender value of the life policy. AIA NZ suggests that clause 37 is amended to include an obligation on the insurer to take all reasonable steps to contact the customer, within 12 months of the date of the first arrears, to positively confirm the client intends to continue to apply the surrender value. Where no contact can be established with the client after taking all reasonable steps to contact the client, and the insurer is on reasonable notice that the client may be deceased, the insurer

	must treat the policy as being subject to a claim and hold the claims monies subject to the Unclaimed Money Act 1971.
Part 6: regulation-making powers and miscellaneous provisions	
29	*Do you have any feedback on Part 6 of the Bill?*
	We do not have any feedback in response to this question.
Part 7: unfair contract terms and presentation of consumer policies	
30	*Do you see any unintended consequences from removing sections 18-20, 34-39 and 42 from the MIA?*
	We do not have any feedback in response to this question.
31	*In relation to unfair contract terms: which option do you prefer and why?*
	Insurance contracts differ from other types of contracts in that in order to operate, insurers need to have a clear understanding of the extent of risk they are accepting. This is especially the case for life insurance (and products related to illness and disability), such as where specific terms are required to address particular health conditions and risk factors or define medical events which trigger cover. Reliance on these terms is necessary to price and reserve accurately and to claim under reinsurance treaties, which are based on the terms of the policy document. Applying the terms of the policy wording also ensures a consistent treatment of customers. The specific requirements for insurance contracts were recognised in the 2015 Unfair Contract Terms regime by allowing certain exemptions to the regime relating to certain standard terms in insurance contracts. The regime still allowed for the Commerce Commission to seek declarations on unilateral variations or other unfair terms which the regime was implemented to protect against. AIA NZ considers there are good policy reasons to maintain exceptions for certain terms in insurance contracts. Of the two options proposed, AIA NZ strongly prefers Option B, which defines the main subject matter of insurance contracts in broader terms. As was recognised when the Unfair Contract Terms provisions were introduced with the specific exceptions for insurance contracts, insurance contracts are unique in their operation and role in society. The broader exceptions to review for unfairness under Option B reflect the unique nature of insurance contracts, and the existing regulation of the insurance industry. Option B therefore protects insurers from paying out claims in circumstances which they did not intend to cover and did not price for. As noted in the consultation paper, AIA NZ considers that the "legitimate interests" test under Option A creates uncertainty which impacts insurers' ability to accurately price risk, recover under reinsurance treaties, or deliver a consistent and fair customer experience. For example, AIA NZ's Life Cover policies contain an exclusion for death as a direct or indirect result of an intentional self-inflicted act within 13-months of the commencement of the risk. This exclusion manages anti-selection risk and is an important component affecting pricing. However, cases may arise where a customer's risk profile in respect of suicide is altered by an unexpected event within the first 13 months (for example, an unexpected loss of a close

	family member or onset of serious illness), and it might be argued that this exclusion may not be considered reasonably necessary to protect the insurer's legitimate interests. We expect that scrutinising and justifying such exclusions for fairness based on a customer's individual circumstances will lead to more disputes. We also expect some loss of consistent customer treatment, as exclusions may be waived for some customers based on the individual circumstances giving rise to their claim. In addition, the narrower terms of Option A are likely to have unintended consequences for reinsurance. Reinsurance contracts generally contain clauses requiring New Zealand insurers to utilise certain exceptions. If these exceptions were to be overturned in respect of an insurance policy, this would limit New Zealand insurers' ability to be protected under reinsurance contracts. The ability to obtain and maintain reinsurance is of genuine concern to the New Zealand insurance industry, and a vital part of minimising barriers to insurers participating in the insurance market. The broader terms of Option B which protect terms which exclude or limit liability from review for unfairness allows New Zealand insurers to meet their obligations in reinsurance contracts.
32	*Do you have any feedback on the drafting of either of the options?*
	AIA NZ consider there are strong reasons to incorporate more of the insurance specific exceptions to the Unfair Contract Terms regime, as neither Option A nor Option B recognise the unique nature of insurance where the contract itself is the product and the pricing of that product is inherently driven by the contract terms. The lack of certainty under both options is likely to have unintended negative consequences on insurers and consumers. Regardless of regulations, insurers are already incentivised to not rely on onerous or unfair contract terms to avoid paying claims due to reputational risks and their obligations under the FSC Code of Conduct for life and health insurers. The fair conduct principle to be introduced imminently under the Financial Markets (Conduct of Financial Institutions) Bill shall also aid in protecting consumer interests. If Option B is adopted, we consider that it should be clarified that the premium payable is excepted as part of the 'upfront price payable under the contract'.
33	*Do you have any comments on the obligation that consumer insurance contracts be worded and presented in a clear, concise and effective manner?*
	AIA NZ always aims to provide consumers with sufficient information about products and services to enable them to make informed decisions. We introduced our New Zealand Conduct Framework in February 2019, which sets out AIA NZ's commitment to customer engagement and good customer outcomes, including a commitment to communicate with customers in a clear, effective and transparent way. However, it is important to recognise that policy wordings are legal contracts and the particular wording used by an insurer is important. It is inherently challenging to accurately translate complex insurance terms into plain language. This is especially true for some product types where policies may refer to specific medical language to define the scope of coverage. For example, trauma policies are designed to provide cover for serious medical conditions and rely on medical / clinical language to specify the criteria for a claim. It would not be

	possible to accurately translate the definition of (say) "cancer" into plain language, as cancer is a complex disease with numerous pathologies at different levels of severity. Reverting to a plain language trauma policy would result in insurers losing the benefit of technical medical definitions and loss of objective medical evidence to confirm the diagnosis. Insurers also rely on medical definitions to set minimum severity levels for some claimable conditions, which on a plain language basis would become impossible. This would lead to an increase in claims costs and would result in insurers withdrawing or restricting the scope of their policies because the translation of policies could result in ambiguity. For life insurance, many consumers are also assisted by advisers to understand the policy terms. Whilst AIA NZ supports in principle the requirement to present insurance contracts in a clear, concise and effective manner, a statutory obligation would be inflexible and lead to negative consequences where using plain language in a technical document such as an insurance policy can result in meaning being lost. Converting technical documents to plain language may also create a mismatch with reinsurance treaties (which will retain technical language and wording), leaving a gap for insurers. If introduced, there would be significant costs for insurers to review existing terms and documents in an attempt to meet this broad, high-level obligation. AIA NZ suggests that the meaning of “clear, concise and effective” is clarified in light of the unique realities of insurance policy wordings, especially in the context of life and health insurance where using specific medical terminology is necessary and important. Alternatively, the obligation could take a principle-based approach in any regulations, rather than a prescriptive approach to encourage all insurers to aim to assist policyholders with understanding insurance contracts.
34	*Do you have any comments on the regulation-making powers in clause 184?*
	AIA NZ agrees that further consultation on any future regulations relating to the form and presentation of insurance contracts or publishing of information is necessary. Depending on the nature of the regulations proposed, AIA NZ would want to provide feedback on how such regulations may impact on business and create unintended consequences. It is important to find the right balance between clarity and transparency, and avoiding unnecessary compliance costs through overregulation of the insurance industry. AIA NZ recommends that MBIE consider the impacts of any similar regulation on insurers in Australia before prescribing requirements.
35	*Do you think regulations specifying form and presentation requirements for consumer, life and health insurance contracts (eg a statement on the front page that refers to where policy exclusions can be found) would be helpful? If so, please explain.*
	AIA NZ supports the principle of assisting consumers to understand its insurance contracts through the form and presentation of policy wordings and already is committed to helping customers make fully informed decisions.
36	*Do you think regulations specifying publication requirements for insurers would help consumers to make decisions about insurance products? If so, please explain.*

	AIA NZ supports the provision of key information to consumers. However, as set out above in response to questions 33 and 34, AIA NZ considers that further consultation would be necessary to ensure that any regulations achieve this intended outcome for consumers in practice. Given the variation of insurance products, again, any regulations should be principle-based rather than prescriptive.
Timing and transitional arrangements	
37	*Do you have any initial feedback on when the Bill's provisions should come into effect?*
	AIA NZ agrees with MBIE's views as set out in the Consultation Paper, including that commencement dates should allow sufficient time for insurers to take the necessary steps to be compliant. The amount of time required should not be underestimated. AIA NZ understands that insurers in Australia required significant time and resources to achieve compliance following legislative changes. MBIE should consult with the industry at a later stage to establish the appropriate timeframes.
38	*Do you have any feedback on the transitional provisions in Schedules 1 or 4, or other proposed transitional arrangements?*
	Most of AIA NZ's policies are long-term and do not 'renew' annually for the purposes of disclosure duties but there may be annual anniversaries which use renewal language in relation to changes in premium, such as for a Consumer Price Index Inflation Adjustment. Such recalculations of premium are not necessarily affected by any change in health of a life assured and so are not based on disclosure by the consumer and is not a 'fresh underwriting event.' Clarity is sought regarding the application of the proposed Bill and disclosure duties to existing long-term contracts. Our preference is for the new obligations to attach to new policies issued on or after the effective date. Long-standing insurers, such as AIA NZ, have thousands of in force insurance contracts and re-drafting and reissuing these contracts would require significant operational effort.
Schedule 5: amendments to other Acts	
39	*Do you have any feedback on Schedule 5 of the Bill?*
	We do not have any feedback in response to this question.

Other comments
