

Submission template

Exposure draft Insurance Contracts Bill

This is the submission template for responding to the Consultation Paper accompanying the Exposure draft Insurance Contracts Bill.

The Ministry of Business, Innovation and Employment (MBIE) seeks your comments by **5pm on 4 May 2022**.

Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the discussion document questions in the table: “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission, please:
 - a. Delete this first page of instructions.
 - b. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
 - i. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - c. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Send your submission as a Microsoft Word document to insurancereview@mbie.govt.nz.

Please direct any questions that you have in relation to the submissions process to insurancereview@mbie.govt.nz.

Submission on *Exposure draft Insurance Contracts Bill*

Your name and organisation

Name	Financial Advice New Zealand
Organisation (if applicable)	Financial Advice New Zealand
Contact details	Katrina Shanks 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.

I do not want my submission placed on MBIE's website because... [Insert text]

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.

I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]

Responses to consultation paper questions

Part 1: preliminary provisions	
1	<p><i>Do you have any feedback on Part 1 of the Bill?</i></p> <p>No comment</p>
Part 2: disclosure duties and duty of utmost good faith	
2	<p><i>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?</i></p> <p>Agree</p>
3	<p><i>Do you have any feedback on the Bill's provisions in relation to remedies for breach of the consumer duty?</i></p> <p>Remedies based on intention and materiality; no avoidance for non-fraudulent material non-disclosure - which allows balanced outcomes and appropriate remedies for both the insured and the insurer. We strongly believe where the insurer has not suffered any significant loss or where it would be harsh and unfair the contract should not be voided.</p> <p>We acknowledge there are numerous examples where the insurer has adjusted a claim to reflect the non-disclosure position. Sometimes this is a reduction in the amount of cover or could be issued with modified terms.</p>
4	<p><i>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?</i></p> <p>Agree but question why this only applies to Life Insurance contracts. Why are contracts such as Permanent Disablement excluded from the provision?</p>
5	<p><i>Do you have any feedback on the Bill's provisions in relation to the disclosure duty for non-consumers?</i></p> <p>No comment</p>
6	<p><i>Do you have any feedback on the Bill's provisions in relation to remedies for breach of the non-consumer duty?</i></p> <p>No comment</p>
7	<p><i>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?</i></p> <p>All insured regardless of individual, or business should be made aware of the duty to disclose. The issue is the relevancy of disclosure. A reasonable person does not understand what is deemed material by the insurance company. Therefore, there is a gap in disclosure requirements between the insurance company and the insured. This can lead to a reluctance to purchase insurance as disclosure requirements appears complex and time consuming and the uncertainty of whether you have disclosed everything weighs on the mind if the insured then had to make a claim and had accidentally forgotten</p>

something which the insurance company then claimed was material which resulted in a lack of payment at claim time.

We know from our experience as advisers even after reading a section titled 'your duty of disclosure' very few consumers fully understand their duty of disclosure.

We know questions need to be specific, explicit, and understandable and many advisers have seen clients change their answers after the adviser intervened with an explanation or prior knowledge of the client's circumstances.

As stated in previous submissions we believe having a questionnaire can create a false sense of security for a consumer as they feel they have answered all the necessary questions, therefore all the material areas for the contract.

Real Example: Most applications have a generic question such as "Any other symptoms or signs for which you are currently experiencing, or have experienced at any time ..." Which is often answered "no" - sometimes due to a lack of understanding what is material, and other times due to question fatigue. The consumer cannot possibly know what is important and what is not unless they seek assistance from a specialist in the field like a financial adviser who deals with these disclosure duties on a daily basis.

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?*

We agree that insurers should lose its remedies for qualifying misrepresentations if it fails to inform consumer policyholders of their duty of disclosure and if the insurer seeks to obtain access to medical and other third-party records about a consumer. The disclosure should be required for the issue of an insurance contract and for a claim.

There will be better outcomes for consumers if they understand when access to their records occurs. There needs to be transparency and clarity at the contract formation point as to when 3rd party records are accessed so there are no false expectations there has been fuller disclosure by attaching or allowing access to medical records.

We know our clients feel if they have stated contact the GP for all records that there is less of an onus on them to disclose in more detail on their insurance application form. As intermediated advisers we understand and guide clients to disclose everything regardless of attachments and accessibility of records.

9 *Do you have any feedback on how the Bill codifies the duty of utmost good faith?*

We agree to Codify the duty of utmost good faith. We believe this would provide guidance on the scope and limits of the duty but leave courts flexibility to develop the law further.

10 *Do you have any feedback on the Bill's provisions relating to information provided by a policyholder to a specified intermediary?*

FSLAA and the new code requires a higher level of compliance and competency for all advisers which did not previously exist. Under the new regime there is greater responsibility and accountability of adviser actions. Any liability that sits between a financial institution and an intermediary should be captured within commercial contracts and it is not necessary to be legislated through this bill.

11 *Do you have any other feedback on the drafting of Part 2 of the Bill?*

no

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?*

	Agree
13	<i>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?</i>
	Yes
14	<i>Do you have any other comments on clause 69 of the Bill (Time limits for making claims under claims-made liability policies)?</i>
	No
15	<i>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)?</i>
	No comment
16	<i>Do you have any other feedback on Subpart 4 of Part 3 of the Bill (Third party claims for liability insurance money)?</i>
	No comment
17	<i>Do you have any feedback on Schedule 3 of the Bill (Information and disclosure for third party claimants)?</i>
	No comment
18	<i>Do you have any comments on not carrying over section 10(1) of the ILRA 1977?</i>
	No comment
19	<i>Do you have any other feedback on the drafting in Part 3 of the Bill?</i>
	No comment
Part 4: payment of monies to insurance intermediaries	
20	<i>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?</i>
	No comment
21	<i>Do you have any feedback on the proposed penalties for non-compliance with Part 4 of the Bill?</i>
	Agree
22	<i>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?</i>
	No comment

23 Do you have any other feedback on Part 4 of the Bill?

no

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.*

We agree with the principal that 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.

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?*

No comment

26 *Do you have any feedback on the Bill's requirements relating to assignments and registrations generally?*

No comment

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?*

Yes

28 *Do you have any other feedback on Part 5 of the Bill?*

No comment

Part 6: regulation-making powers and miscellaneous provisions

29 *Do you have any feedback on Part 6 of the Bill?*

No comment

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?*

It makes sense to update all insurance law at the same time - what would be the sense in having one insurance law which is outside of the review and modernisation. A piece meal approach to reviewing legislation can create gaps and have unintended consequences. This Marine Insurance Act 1908 has not been reviewed for 6 years.

31 *In relation to unfair contract terms: which option do you prefer and why?*

Option 2 - unfair contract terms: core terms are exempt unless not transparent and prominent. Insurance as a product can be unique where certain variables such as age and pre-existing conditions can make a significant difference to the insurer determining the risk and costs.

	<p>This needs to be balanced with transparency and accuracy in contracts so all parties understand the basis and terms of the contracts.</p> <p>When comparing New Zealand to other jurisdictions it is important to remember New Zealand's unique risk profile especially in relation to ACC, public health and the different risks associated with our various demographics and their particular needs.</p>
32	<p><i>Do you have any feedback on the drafting of either of the options?</i></p> <p>no</p>
33	<p><i>Do you have any comments on the obligation that consumer insurance contracts be worded and presented in a clear, concise and effective manner?</i></p> <p>Agree with this</p>
34	<p><i>Do you have any comments on the regulation-making powers in clause 184?</i></p> <p>Noted that more consultation is intended here from the material available.</p>
35	<p><i>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.</i></p> <p>Require plain-language insurance policies; require core policy wording to be clearly defined; require a summary statement to be provided.</p> <p>If we are to ensure insurance is accessible for most it must be easy to understand, have clear definitions and a simple summary of the policy.</p> <p>A complex document which has dozens of pages does not build consumer trust and confidence. Those that do not use a financial adviser are severely disadvantaged as many consumers are uninformed and would not take the time to understand the complex documentation.</p> <p>It is fundamentally important insurance companies have the ability to deliver multi-faceted insurance products, so consumers remain to have choice in the market. Many insurance products are inherently complex by nature and there has to be a balance between simplifying insurance so consumers can understand the product and allowing the insurance companies the ability to design insurance products which are relevant to the needs of the insured.</p> <p>As stated in previous submissions, to effectively compare insurance policies you would need to have an understanding of the different elements which each policy covers, the exclusions in each policy, how the policies interface with each other in terms of discounts and premiums just to name a few of the variations.</p> <p>Real Example: Trauma policies can range from 11 trauma conditions to 40+. Definitions across different 'trauma' policies can vary widely - for example the treatment of 'heart attack' - one insurer requires 'prolonged chest pain', where another does not. Some life policies have special increase options, some don't. Some income policies will 'offset' ACC income, and some don't. Some are agreed value; some you have to prove the 'pre disability income'.</p> <p>The above differences can be difficult for consumers to see and understand yet can fundamentally affect the price of the cover and their claim outcome.</p> <p>However financial advisers provide advice based on knowledge and tools such as subscription-based research to consumers. Financial Advice New Zealand has a website which allows consumers to select a financial adviser to obtain advice as to which is the best provider for them.</p> <p>We do acknowledge there are simple insurance products which would be suitable for a comparison website.</p>
36	<p><i>Do you think regulations specifying publication requirements for insurers would help consumers to make decisions about insurance products? If so, please explain.</i></p> <p>See above response - 35.</p>

Do you have any initial feedback on when the Bill's provisions should come into effect?

No comment

Do you have any feedback on the transitional provisions in Schedules 1 or 4, or other proposed transitional arrangements?

No comment

Do you have any feedback on Schedule 5 of the Bill?

No comment

Other comments

--